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GENSTAR LTD.

v.

DISTRICT OF MISSION

British Columbia Court of Appeal (CA 810521) Vancouver Registry

Before: MR. JUSTICE E.B. BULL
MR. JUSTICE E.E. HINKSON
MR. JUSTICE J.A. MacDONALD

Vancouver, October 26, 1981

Colin D. McQuarrie and W.A. Owen McQuarrie for the Appellant, District of Mission.
John R. Lakes for the Respondent, Genstar Ltd.

Reasons for Judgment of Mr. Justice Bull (Oral) October 26, 1981

Coram

HINKSON, J.A.: I am going to ask my brother Bull to deliver the first judgment.

BULL, J.A.: This is an appeal by a Municipality under the provisions of section 74 of the *Assessment Act* 1979. R.S.B.C. chapter 21. I may say that the applicable 1979 sections of the statute are the same as those in the earlier revision. The appeal to this Court is from the determination by the Supreme Court on a Stated Case made to it upon the finding and determination of the Appeal Board.

The appeal has reference to the valuation for assessment purposes of some 2,710 acres of land in the Mission area which is composed of a number of parcels and lots.

The Assessment Appeal Board concluded and made a finding that the market value for assessment purposes of the property in question was $7,000.00 an acre, as opposed to the roughly $2,310.00 per acre found by the assessor. The Assessment Appeal Board ordered that the Assessor reassess the property in question by applying to each parcel the formula of 7,000 over 2,310 which, of course, meant that lots of various sizes, and presumably of different value, would all end up with the same proportionate value increase.

The taxpayer, the respondent, Genstar Ltd.. owned the property in question which, I might add, included a greater number of acres and lots than the 2,710 acres which I have mentioned. The excess was not the subject of any appeal as to its assessment. What happened was that as the 1980 Assessment Roll was being prepared, and in fact completed, in the fall of 1979, another adjoining area of 439.71 acres, covering 13 parcels, or 25 lots, was sold by the City of Mission, the taxing authority, to Block Bros. Ltd., for a price that worked out at $3,925,000.00 which roughly, in view of the terms of the transaction, amounted, according to the Board of approximately $7,000.00 an acre. It is that valuation that resulted in the formula which I have already mentioned being devised and applied to the lands here in issue.

The taxpayer, Genstar Ltd., duly appealed the decision of the Board to a judge of the Supreme Court by way of Stated Case. He held that the assessment was bad and remitted the matter to

the Assessment Appeal Board. The principal ground was that it was an arbitrary assessment because of the formula adopted and used and the resulting failure in the Board to properly assess the value of each parcel or lot on the assessment roll. In *Pacific Logging Company* v. *British Columbia* (1977) 16 N.R. 513 McIntyre, J.A., (who dissented in this Court) was confirmed as correct by the Supreme Court of Canada. The decision was that the Assessor must determine the actual value of the lands. He must give consideration to various factors but he must not apply an arbitrary assessment, as was there done. The judge here concluded that *Pacific Logging Co.* applied and held that the assessment must be remitted to the Board for reconsideration. I agree with that conclusion.

The learned judge here also indicated that he thought that it was probable that the Board, in accepting as a basis for its formula the $7,000.00 valuation given to the acreage bought by Block Bros. Ltd. in the fall of 1979 may have inadvertently included therein a special value to owner, in view of the relationship between Block Bros. Ltd.. their own large holdings in the area, and those of the respondent, Genstar Ltd.

I may add that the property bought by Block Bros. Ltd., was in the centre of the Genstar holdings.

In any event, the net result was that the appeal by Stated Case was allowed by the Supreme Court Judge and the assessment set aside and the matter remitted. That is not questioned before us as the appellant, the City of Mission, does not object to that decision but it does complain against some advice, directions or instructions which were appended to the judge's reasons for judgment. The judge said this:

> "What the Board is required to do is to determine the actual value of the Genstar lots on an individual basis. In that determination, the Board must give consideration to the other sales relied upon by the Assessor, but, it seems to me, the Board may also consider the Genstar purchases and the Block Bros. purchases. In this latter connection, however, it is my view-although this is entirely a matter for the Board-it should consider the circumstances of that acquisition, and it should make such discounts as it thinks proper not just for the uneconomic interest rate, but also for the other terms particularly the deferred payment provision and the question of special value."

The appellant has raised several points in connection with these directions, of which we found only two necessary to have argued before us.

The first was that the direction that the Board should consider other sales relied upon by the Assessor when the highest and best use of such other lands might be quite different from that of the subject lands, was incorrect. The second was that the opinion expressed that the price paid by Block Bros. Ltd. might have or contain an element of special value to owner when, in fact, both Block Bros. Ltd. and the respondent were bidding on the same land at approximately the same price, so that the Genstar bid also contained an element of special value to owner and, therefore, was not a true indicator of market value.

I do not read into the language which I have quoted from the learned judge as directing anything to support those two complaints by the appellant. In my view, all the learned judge said was what was correct and what he was entitled to make. The Board is required to determine the actual value of the respondent's lots on an individual basis. That is a matter that has been long decided. And then he goes on:

> "In that determination, the Board must give consideration to the other sales. . ."

That is quite appropriate because although the Assessor did give consideration to some other sales, he did not consider the Block Bros. Ltd. sale. All the judge was saying was that all other appropriate sales should be considered, but he also added, to make it sure beyond all doubt, that

the Board could still consider the Genstar Ltd. purchases, as well as Block Bros. Ltd. purchases; in other words, the matter was wide open.

In this connection in my view he was careful to say that it was entirely a matter for the Board to decide but that it should consider the circumstances surrounding the whole acquisitions and should make such proper discounts and allowances for various matters, including (if they find it) any special value built in the price paid by Block Bros. set to acquire its acreage.

Accordingly, it seems to me that the learned judge has not given any advice or directions which are contrary to what should have been given in remitting the assessment. I refer to section 26 of the *Assessment Act* which says:

> "26. (1) The assessor shall determine the actual value of land and improvements.
>
> (2) In determining the actual value under subsection (1), the assessor may give consideration to the present use, location, original cost, cost of replacement, revenue or rental value, the price that the land and improvements might be reasonably expected to bring if offered for sale in the open market by a solvent owner, and any other circumstances affecting the value, and the actual value of the land and the improvements so determined shall be set down separately in the columns of the assessment roll."

To my mind what the learned judge said here, after setting aside the award and remitting, it was merely carrying out in a little more detail, perhaps applicable to this particular case, what the Assessor was bound to do under the Act. Accordingly, I find nothing wrong with the directions or instructions given by the learned judge and I would not vary them. I would dismiss the appeal.

HINKSON, J.A.: I agree.

MACDONALD, J.A.: I agree.

HINKSON, J.A.: The appeal is dismissed.