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GENSTAR LIMITED

v.

DISTRICT OF MISSION
and
ASSESSOR OF AREA 13-DEWDNEY-ALOUETTE

Supreme Court of British Columbia (C826097) Vancouver Registry

Before: Chief Justice Allan McEachern, (in chambers)

Vancouver, November 25, 1982

J.R. Lakes for the Appellant
Robert Crawford for the Respondent

Reasons for Judgment December 2, 1982

This is the current chapter of a continuing battle between these parties which has been before this Court and other tribunals on many occasions.

The Appellant and another substantial land development company have acquired large tracts of land in the Respondent District of Mission ("Mission"). In response to the 1980 fixing of the value of these properties for assessment purposes Mission appealed a decision of the Court of Revision to the Assessment Appeal Board ("the Board"). The latter substantially increased such values from what had previously been fixed.

The first skirmish came before me in early 1981 when I reluctantly upheld an objection by Mission that an appeal by way of Stated Case to this Court on behalf of the other land developer to review the decision of the Board had not been requested in time. That appeal was accordingly dismissed. I do not believe any appeal was taken against that decision.

Later I heard this Appellant's appeal by way of Stated Case and I found the Board had erred in its method of valuing the Appellant's 28 separate lots, and I directed the Board to reconsider its decision in accordance with my findings. The District of Mission appealed that decision to the Court of Appeal and that appeal was dismissed (1981) 32 B.C.L.R. 158).

In the meantime, this Appellant had appealed the 1981 assessment through the Court of Revision to the Board, and on June 3 and 4, 1982 the Board heard evidence relating to the 1981 roll. At that time the Board had my judgment, and possibly the judgment of the Court of Appeal, and the Board considered that it should respond to my decision regarding the 1980 roll before dealing with the 1981 appeal.

On November 17, 1981 and May 19, 1982 the Board also heard evidence and submissions relating to the 1980 roll, and gave a decision on both 1980 and 1981 for both developers on September 21, 1982.

Mr. John R. Lakes represented the Appellant and Mr. Colin D. McQuarrie, Q.C. represented Mission in all the above proceedings, including the Court of Revision, the Board, this Court, and the Court of Appeal.

Following the decision of the Board on September 21, 1982 Mr. Lakes, pursuant to s. 74 (2) (a) of the *Assessment Act*, R.S.B.C. 1979, c. 21 requested the Board to state a case for the opinion of the Court regarding the 1980 and 1981 roll values.

Section 74 (2) and (3) of the *Assessment Act*, supra, is as follows:

> "74. . . .
>
> (2) A person affected by a decision of the board of appeal, including a municipal corporation on the resolution of its council, the Minister of Finance, the commissioner, or an assessor acting with the consent of the commissioner, may require the board to submit a case for the opinion of the Supreme Court on a question of law only by
>
> (a) delivering to the board, within 21 days after his receipt of the decision, a written request to state a case; and
>
> (b) delivering, within 21 days after his receipt of the decision, to all persons affected by the decision, a written notice of his request to the board to state a case to the Supreme Court.
>
> (3) The board shall, within 21 days after receiving the notice under subsection (2), submit the case in writing to the Supreme Court."

On September 29, 1982, within the 21-day period, Mr. Lakes delivered a copy of his Notice to State a Case to a process server for the purpose of delivering it to Mission as required by s. 74 (2) (b). On the same day Mr. Lakes spoke to Mr. Owen McQuarrie, who practises law with his distinguished father, and informed him of his intention to deliver a Notice of Request to State a Case to Mr. McQuarrie's firm and to the District of Mission.

On the same day Mr. Lakes wrote and sent a letter to Mr. McQuarrie's law firm for the attention of Mr. McQuarrie, Sr. which states:

> "We have delivered a Notice to State a Case concerning the Assessment Appeal Board decision in the 1980 and 1981 assessment appeals to the Assessment Appeal Board, the Assessor, the District of Mission and Block Bros. as being the parties interested, as referred to in the *Assessment Act*. We enclose a copy of the Notice to you as counsel for the District of Mission in these appeals and would appreciate it if you would please acknowledge delivery on the copy of this letter provided for that purpose."

Mr. McQuarrie, Sr. acknowledged receipt of that letter by signing the usual stamped acknowledgement of service commonly used in the exchange of pleadings. Mr. McQuarrie, in his own handwriting, styled himself "Solicitor for District of Mission." Although this acknowledgement is undated, it is conceded it was signed and returned by Mr. McQuarrie within the 21-day period.

In early November 1982 Mr. McQuarrie informed Mr. Lakes that the District of Mission had not received a copy of the Notice to State a Case. It appears that the process server had gone to Mission on Friday, October 8, 1982 but found the office closed. Mr. Lakes was informed of this on October 18th but he considered the notice was adequately delivered to Mr. McQuarrie. On November 15, 1982, however, Mr. McQuarrie wrote to Mr. Lakes saying:

> "We have received instructions from the District of Mission, a person affected by the decision, to advise the Court that written notice of the request of the Appellant to State a

> Case was not delivered to the District of Mission as required by section 74 (2) (b) of the Act."

In order to comply with the time requirements of the *Assessment Act* Mr. Lakes had already filed a Notice of Motion returnable November 18, 1982 for an order that the Stated Case be set for hearing on January 4, 1983 which is a date Mr. Lakes had arranged with the Registry. That motion was adjourned to November 25th.

On the return of the Notice of Motion before me on November 25th, Mr. Crawford, on behalf of Mission, took the preliminary objection that the appeal was out of time, even though a Case had been stated by the Board on October 17, 1982, because a copy of the request had not been delivered to Mission.

Mr. Crawford relies upon a number of authorities which suggest that statutory appeals must be brought strictly in conformity with the enabling legislation. There is much authority on that question but I do not think that is the real question. The real question, as I see it, is whether a failure to deliver a copy to an interested party in time (the Board having its copy in time) is fatal to the appeal when a Case has actually been stated, and secondly whether, in all the circumstances, the delivery of a copy of the Notice to State a Case to Mr. McQuarrie, and his acceptance as solicitor for Mission, is a sufficient compliance with s. 74 (2).

As to the first question, I see no reason why the principles of practice established with respect to Summary Conviction Appeals and other matters in criminal procedure should be imported into this civil area. We are concerned here with a statutory appeal procedure but, unlike criminal law, I see no reason why this legislation should not be given a fair, large and liberal interpretation. In addition, I note that s. 74 (2) only calls for delivery of the Notice, not service. This confirms my view that cases dealing with the formal requirement of "service" are not helpful. See also the definition of "deliver" in the *Interpretation Act*, R.S.B.C. 1979, c. 206, which is:

> "with reference to a notice or other document, includes mail to or leave with a person, or deposit in a person's mail box or receptacle at the person's residence or place of business"

I observe that an affected party ". . . may require the Board to submit a case for the opinion of the Supreme Court. . . by (a) delivering to the Board within 21 days written request to state a case. . ."

That was done, and the Board did state such a case. Is the Court precluded from proceeding with the appeal because an affected party (Mission) did not receive a written notice of the request to state a case?

Mr. Crawford points out that subsections (a) and (b) of s. 74 are joined by the conjunctive "and". This, he argues, makes it clear that both requirements must be satisfied.

It is clear from the mandatory language of s. 74 (3) that the Board must state a case whether all affected parties are served in time or not. This satisfies me that delivery to all affected parties within 21 days is not a prerequisite to the obligation of the Board to state a case, and it would take stronger language than s. 74 (2) (b) to oust the jurisdiction of the Court to respond to a case for the opinion of the Court properly before it. Delivery to interested parties is a requirement which must be complied with before the Court proceeds with the hearing of the matter, but I regard the purpose of s. 74 (2) (b) to be to make it clear, if such is necessary, that all affected parties are entitled to notice. I do not think a failure to comply with s. 74 (2) (b) goes to jurisdiction. Such a failure is an irregularity which can be corrected.

It follows that the preliminary objection is dismissed and I set January 4, 1983 as the date for the continued hearing of this matter.

I also wish to say that if I am wrong in the above, I would still dismiss the preliminary objection. Mr. McQuarrie, Sr. has acted as the legal representative of Mission in all the proceedings I have described. If he was not still acting in that capacity, or was otherwise disabled from acting for Mission, I would have expected an affidavit from him or some responsible officer of Mission establishing that his retainer had been terminated or explaining why delivery to him was not sufficient. No material was filed on behalf of Mission. It is true that the onus of establishing delivery is upon Mr. Lakes, but the material he has filed, which is not contradicted in any way, satisfies me that Mr. McQuarrie was correct and accurate when he accepted service of the Notice as the solicitor for Mission.

The requirement of s. 74 (2) (b) is to deliver a copy of the Notice to all "persons" affected by the decision. By definition. in the *Assessment Act*, "person" includes the agent of a person. Mission is a person, and a solicitor is an agent.

I regard this to be consonant with the principles relating to the service of Notices of Appeal in regular appellate proceedings as established by a number of authorities including *Dahl* v. *Landry* (1962), 40 W W.R. 442 (B.C.C.A.); *Webster* v. *Flowers et al.* (1967), 62 W.W.R. 256 (B.C.C.A.); and *Harder* v. *Hayter*, [1975] 4 W.W.R. 765 (Alta.C.A.). I recognize that there may well be differences between appeal procedures, but s. 74 (2), supra, does not, in my view, abrogate the general law of agency.

On this ground as well, therefore, the preliminary objection must be dismissed with costs.