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TRIZEC EQUITIES LTD.

v.

ASSESSOR OF AREA 10 - BURNABY-NEW WESTMINSTER

Supreme Court of British Columbia (No. A830013) Vancouver Registry

Before: MADAM JUSTICE B.M. MCLACHLIN (in chambers)

Vancouver, February 25, 1983

J.R. Lakes for the Appellant
J.E.D. Savage for the Respondent

Reasons for Judgment May 6, 1983

This is a stated case from the Assessment Appeal Board requesting the Court's opinion on certain questions concerning the jurisdiction of the Court of Revision and the Assessment Appeal Board. The appeal before the Board is from a decision of the Court of Revision increasing the 1982 assessment on two shopping centres owned by the appellant, Trizec Equities Ltd.

The court's opinion is requested on five questions. I will consider each in turn.

> 1. Did the Court of Revision exceed its jurisdiction by giving notice of its intention to increase the Appellant's assessment when there was no appeal by the Area Assessor concerning the Assessment?

The appellant, Trizec Equities Ltd., owns two large shopping centres in the District of Burnaby. The 1982 assessment notices issued by the Assessor showed the total actual value of the Lougheed Mall to be $32,409,050, and put the value of the Brentwood Shopping Centre at $23,281,550. Subsequently, the assessor determined that an error had been made in establishing the amount of both assessments.

The Area Assessor did not appeal the values stated in the 1982 Notice of Assessment, as he might have done under s. 40 (2) of the *Assessment Act*. Nor did the assessor proceed by way of supplementary assessment, as he might have done under s. 11 of the Act. Instead, without prior notice to Trizec Equities Ltd., he informed the Court of Revision that the values should be amended upward. Trizec Equities Ltd. was then given notice of the Court of Revision's intention to direct that the increases be made at the hearing on March 17, 1982.

Counsel for Trizec Equities Ltd. submits that the assessor should have proceeded by way of appeal or supplementary assessment and that the Court of Revision erred and exceeded its jurisdiction when it gave notice to Trizec Equities Ltd. of its intention to increase the assessment on the basis of the representation of the assessor. Counsel for the Assessor, on the other hand, contends that the assessor and the Court of Revision acted in accordance with s. 44 (1) (b) of the *Assessment Act*. That section provides:

> "44. (1) The powers of a Court of Revision constituted under this Act are
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> . . . (b) to investigate the assessment roll and the various assessments made in it, whether complained against or not, and subject to subsection (4), to adjudicate on the assessments and complaints so that the assessments shall be fair and equitable and fairly represent actual values within the municipality or rural area . . ."

Counsel for Trizec Equities Ltd. does not dispute that pursuant to s. 44 (1) (b) the Court of Revision may investigate the assessment roll and the various assessments made in it in the absence of an appeal. However, he submits that the terms "assessment roll" and "various assessments" indicate that such an investigation can take place only with respect to a number or class of assessments, and not, as in this case, with respect to two specific assessments of a single taxpayer. The Assessor interprets "various" as referring to any or all of the assessments on the assessment roll with the result that investigations of selected particular assessments are permitted.

The *Assessment Act* is a taxation statute. It is well established that ambiguities in such statutes must be strictly construed against the taxing authority. But this does not mean that rules of construction applicable to all statutes are not available. Thus as Seaton, J.A. stated in considering the *Assessment Act* in *Trizec Equities Ltd.* v. *Assessment Area of Burnaby-New Westminster* (1979) 2 S.C., #122, 729 at 730 (B.C.C.A.):

> "Every section must be interpreted in the light of the provisions around it."

In my view, in interpreting s. 41 (1) of the *Assessment Act*, the Court must have regard to s. 9 of the Act:

> *"9. (1) The assessor shall bring all errors or omissions in the roll completed under section 2 of the Court of Revision for correction.*
>
> *(2) No assessor shall make changes in the completed assessment roll without the consent of the Court of Revision."*

Thus it is seen that the assessor has a duty to bring errors and omissions, such as those alleged to have occurred in the instant case, to the Court of Revision for correction. Notice of such errors and omissions is not a "complaint" or appeal under s. 40 of the *Assessment Act*. What then are the powers of the Court of Revision when it receives notice of an error or omission pursuant to s. 9? In my view, they lie under s. 44 of the *Assessment Act*, and in particular s. 44 (1) (b) which empowers the Court of Revision to "investigate the assessment roll and the various assessments made in it whether complained against or not", and to "adjudicate on the assessments and complaints". Should the error or omission brought before the Court of Revision indicate lower value than that shown on the assessment roll, the Court of Revision may vary the value without notice. However, should the error indicate that the assessment should be increased, notice of intention to direct the increase must be given under s. 44 (3), thus affording the taxpayer the opportunity to contest the increase. Viewed in this way, s. 9 and s. 44 of the Act work together to establish a system whereby errors and omissions can be corrected at the instance of the assessor without a formal appeal and without a supplementary assessment.

I am confirmed in this conclusion by consideration of the plain meaning of the language of s. 44 (1) (b). Pursuant to that section the Board is empowered to "investigate the assessment roll and the various assessments" and to "adjudicate on the assessments and complaints". *The Concise Oxford Dictionary, New Edition* defines "various" as follows:

> "1. different, diverse, (modes of procedure were various, types so various as to defy classification).

2. separate, several, more than one, (came across various people; for various reasons)."

Using the first definition, s. 44 (1) (b) may be read as empowering the Court of Revision to investigate the "different" or "diverse" assessments made in it. This language clearly empowers the Court of Revision to investigate individual assessments and adjudicate upon them.

The Court of Revision did not exceed its jurisdiction by giving notice of its intention to increase the appellant's assessments, even though there was no appeal by the Area Assessor concerning them. The answer to the first question is "no".

> 2. Did the Court of Revision exceed its jurisdiction by giving notice before the date the Appellant's appeal was to be heard, of its intention to increase the Appellant's assessments?

Trizec Equities Ltd. appealed the 1982 assessments in question before receiving notice that the Court of Revision intended to increase them. Counsel for Trizec Equities Ltd. submitted that the Court of Revision was wrong to give notice of intention to increase the assessments when these appeals for reduction were before it. He suggested that the notice of intention to increase the assessments indicated that the Court of Revision had already decided against the appeals.

I cannot accept this contention. First, the Court of Revision had little alternative but to give the notice as required by s. 44 (3). Secondly, I cannot construe the notice as indicating that a decision had been taken. Rather, it is notice of an intention to change the assessments at a future date, upon hearing submissions from interested parties. Accordingly, the answer to the second question is "no".

> 3. Did the Court of Revision have jurisdiction to vary the Appellant's assessments by increasing them when there was no appeal before the Court of Revision?

Before the date set for hearing, Trizec Equities Ltd. withdrew its appeals. Thus, when the Court of Revision made its decision to increase the assessments, there was no appeal before it.

In dealing with question number (1), I concluded that s. 44 (1) (b) of the *Assessment Act* empowers the Court of Revision to vary individual assessments by increasing them in the absence of an appeal. For the reasons there stated, the answer to the third question is "yes".

> 4. Did the Court of Revision exceed its jurisdiction by confirming an increase of the Appellant's assessments on the morning of the 17th day of March, 1982?

Trizec Equities Ltd. appeared on March 17, 1982, at the time and place stated in the notices served upon it, to contest the proposed increases in its assessments. It found no one there. Upon inquiry, it learned that the Court of Revision had considered the matter earlier that day in the absence of any representatives of Trizec Equities Ltd. and had purported to increase the assessed values of the shopping centres from $32,409,050 to $38,220,000, and from $23,281,550 to $26,924,550, respectively. At the request of the assessor and Trizec Equities Ltd. the Court of Revision convened on March 19, 1982, when a hearing was conducted. At the conclusion of the hearing, the Court of Revision concluded that the assessments should be increased to the values it had purported to confirm in the absence of Trizec Equities Ltd. two days earlier.

Counsel for Trizec Equities Ltd. and for the Assessor agree that the Court of Revision exceeded its jurisdiction when it met at a time other than that set out on its notice and purported to increase the assessments without affording Trizec Equities Ltd. an opportunity to be heard as required by s. 44 (3) of the Act.

However, this raises the further question of whether the defects in the proceedings of March 17, were cured by convening a hearing at the request of the assessor and the appellant on March 19, 1982. Counsel for Trizec Equities Ltd. submits that having purported to confirm the increase in the appellant's assessments at the meeting held the morning of March 17, the Court of Revision became *functus,* with the result that it had no power to make any further decision in the matter. Consequently, he argues, the decision taken at the hearing March 19 was without force and effect. Counsel for the Assessor, on the other hand, argues that the decision of March 17 was taken in excess of the Board's jurisdiction and was consequently a nullity. It being a nullity, he urges that it is as though it never existed. It was therefore open to the Court of Revision to reconvene, hold a proper hearing and thereupon render a valid and binding decision.

I am satisfied both as a matter of logic and on the authorities that a tribunal which makes a decision in the purported exercise of its power which is a nullity, may thereafter enter upon a proper hearing and render a valid decision: *Lange* v. *Board of School Trustees of School District No. 42 (Maple Ridge)*., (1978) 9 B.C.L.R., 232, (B.C.S.C:); *Wilfred M. Posluns* v. *The Toronto Stock Exchange* [1968] S.C.R. 330. In the latter case, the Supreme Court of Canada quoted from Lord Reid's reasons for judgment in *Ridge* v. *Baldwin* [1964] A.C. 40, where he said:

> "I do not doubt that if an officer or body realizes that it has acted hastily and reconsiders the whole matter afresh, after affording to the person affected a proper opportunity to present its case, then its later decision will be valid."

There is no complaint made by Trizec Equities Ltd. with respect to the hearing held March 19. Accordingly, while the Court exceeded its jurisdiction by purporting to increase the assessments on the morning of March 17, 1982, its subsequent decision of March 19, 1982 stands as valid.

> 5. If the Court of Revision did exceed or lose its jurisdiction, does the Assessment Appeal Board have jurisdiction pursuant to section 71 of the *Assessment Act* or otherwise?

I have found that the Court of Revision, while it exceeded its jurisdiction on March 17, 1982, subsequently acted within the scope of its powers when it rendered its decision on March 19, 1982, from which the appeal to the Assessment Appeal Board was launched. In such circumstances, it is established that under s. 71, the Assessment Appeal Board may reopen the whole question of the assessment on the property: *Trizec Equities Ltd.* v. *Assessment Area of Burnaby-New Westminster, supra*. However, that is not the question posed. The question posed is predicated on the assumption that the Court of Revision exceeded or lost its jurisdiction. In other words, assuming the Court of Revision's decision on March 19, 1982, was made without jurisdiction, does the Assessment Appeal Board nevertheless have jurisdiction under s. 71?

The *Assessment Act*, s. 67 (1) authorizes an appeal to the Board from a "decision", "omission", or "refusal" of the Court of Revision:

> "67. (1) Where a person, including a municipality, the minister, commissioner, or assessor, is dissatisfied with the decision of a Court of Revision, or with the omission or refusal of the Court of Revision to hear or determine the complaint on the completed assessment roll, he may appeal from the Court of Revision to the board,"

The question is whether what the Court of Revision did or purported to do in the case at bar falls within this description.

It is established that while a purported decision of an administrative tribunal reached in breach of the rules of natural justice may for certain purposes be void, it may nevertheless constitute a decision for purposes of appeal. In *Calvin* v. *Carr et al.*, [1979] 2 W.L.R. (1979) 2 All E.R. 440, 445, Lord Wilberforce stated:

> "Their Lordships' opinion would be, if it became necessary to fix on one or other of these expressions, that a decision made contrary to natural justice is void, but that, until it is so declared by a competent body or court, it may have some effect, or existence, in law. This condition might be better expressed by saying that the decision is invalid or vitiated. In the present context, where the question is whether an appeal lies, the impugned decision cannot be considered as totally void, in the sense of being legally non-existent."

Thus, His Lordship concludes on page 446 that:

> ". . . a decision of an administrative or domestic tribunal, reached in breach of natural justice, though it may be called, indeed may be, for certain purposes 'void', is nevertheless susceptible of an appeal."

In my view, this reasoning is applicable in the case at bar. Assuming the determinations of the Court of Revision were made in breach of the rules of natural justice and are thereby susceptible of being declared void, they nevertheless stand as "decisions" in respect of assessments of property for the purposes of appeal to the Appeal Board under Part 7 of the Act, ss. 67 and 71.

I am confirmed in this conclusion by the broad wording of s. 67 (1) of the *Assessment Act*, which extends the right of appeal to cases of the Court of Revision's "omission" or "refusal" to hear or determine a complaint on the completed assessment roll. An "omission" or "refusal" to decide is the equivalent of a failure or refusal by the Court of Revision to accept jurisdiction. Apart from statute, the aggrieved party's remedy in such cases would be by way of prerogative writ. Yet the *Assessment Act* gives the Assessment Appeal Board jurisdiction to hear appeals in such cases. The legislators must therefore be taken to have intended the Board to sit in appeal even where the proceedings of the Court of Revision were such that that Court lacked jurisdiction. This manifestation of legislative intent may serve to distinguish this case from that before O'Hearn, C.C.J. in *Dexter et al.* v. *Department of Municipal Affairs* (1981), 49 N.S.R. (2d) 169 at 174 (N.S.), where it was held that an appeal did not lie to the County Court of Nova Scotia, from a decision of an administrative tribunal purportedly made without jurisdiction.

The view that the Legislature intended the Assessment Appeal Board to hear appeals from decisions of the Court of Revision alleged to be invalid or void, is also supported by the fact that the Legislature has conferred wide powers on the Appeal Board pursuant to s. 71 of the *Assessment Act*. The whole question of the assessment in issue may be reopened on the appeal: s. 71. Moreover, the Appeal Board is not confined to matters raised or considered by the Court of Revision: *Trizec Equities Ltd.* v. *Assessment Area of Burnaby-New Westminster, supra*, (B.C.C.A.). In short, the appeal before the Assessment Appeal Board does not suffer from any defects or limitations which might support a restrictive approach to the question of whether an appeal lies. Rather, the hearing on appeal is of sufficient breadth to be capable of curing any defect due to a failure of natural justice in the original proceedings. As appears from the reasoning in *Calvin* v. *Carr et al., supra*, such considerations weigh in favour of a finding that an appeal lies from the ruling of an inferior tribunal.

For these reasons, I conclude that if the Court of Revision exceeded or lost its jurisdiction, the Assessment Appeal Board nevertheless has jurisdiction to review the matters at issue.

I would answer the fifth question, "yes".