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ST. HELEN'S HOTEL (VANCOUVER) LTD.

v.

ASSESSOR OF AREA 9 - VANCOUVER

Supreme Court of British Columbia (A841429) Vancouver Registry

Before: MR. JUSTICE M.R. TAYLOR (in chambers)

Vancouver, September 6, 1984

Brian H. Shpak for the Appellant
Peter W. Klassen for the Respondent

Reasons for Judgment October 3, 1984

The central question raised on this appeal by way of case stated from the Assessment Appeal Board is whether the accommodation portion of an older downtown Vancouver hotel now used primarily by monthly tenants should be classified for taxation purposes as residential accommodation or placed in a special seasonal hotel category, rather than being treated as ordinary hotel accommodation and subjected as a result to the higher local taxation rate applicable to business premises.

The lodging accommodation portion of the hotel was classified by the assessor within the Class 8 (a) "seasonal accommodation" category established by Regulations under the *Assessment Act*, R.S.B.C. 1979, Chapter 21:

> (a) that part of any land or improvements or both used to provide overnight sleeping accommodation, including hotels, motels, trailer parks, recreational vehicle parks, campgrounds and resorts where, during an off season period of 150 days a year or more,
>
> (i) the accommodation is closed, or
>
> (ii) at least 1/2 of the gross rental income from the accommodation is derived from rent paid by tenants residing in the accommodation for periods comprising of 28 consecutive days or more.

The beer parlour portion of the hotel was placed in the general Class 6 "business" classification, so as to be taxed at the higher rate.

The hotel company appealed first to the Court of Revision and then to the Board, asserting that too much of the value had been assigned to the Class 6 "business" classification. Prior to the hearing of its appeal by the Board the appellant reached an agreement with the assessor under which the portion of the total assessed value to be assigned to the Class 8 (a) "seasonal accommodation" category would be somewhat increased and that placed in the Class 6

"business" category would be reduced accordingly. The assessor recommended to the Board that the appeal be allowed and the assessment revised in accordance with this agreement.

The Board declined to accept the agreed disposition of the appeal. After hearing the parties it decided instead that the whole property should be classified in the Class 6 "business" category.

On the present appeal by case stated from the Board the appellant argues firstly that the Board ought to have accepted the agreement - in effect, that it should have allowed the appeal by consent. In the alternative, the appellant argues that the Board ought to have found that the accommodation portion of the hotel falls within the Class 1 "residential" category. In the further alternative, the appellant says the Board erred, in any event, in placing the sleeping accommodation, like the beer parlour, in the Class 6 "business" category, and should have left that part of the premises in the Class 8 (a) "seasonal accommodation" category.

With respect of the first position taken by the appellant, it seems to me to follow from the powers of the Board enumerated in Section 69 of the *Assessment Act*, R.S.B.C. 1979 Chapter 21, that it is not obliged to accept an agreement between taxpayer and assessor as determinative of an appeal.

Section 69 (1) confers on the Board all the powers of a Court of Revision and clause (6) of that sub-section specifically empowers the Board to deal with the classification of land and improvements. A consideration of the powers of a Court of Revision, enumerated in Part 4 of the *Act* and particularly in Section 44, shows that a Court of Revision is entitled to inquire into all assessments, whether complained against or not. Provided appropriate prior notice is given to the registered owner, a Court of Revision is empowered to change the classification which the assessor has assigned to property without any complaint having been made. The Court of Revision has a general jurisdiction over the roll, and a duty to remedy errors however they come to its attention, and is not a tribunal concerned simply with the resolution of disputes brought before it by others.

Since the Assessment Appeal Board has the powers of a Court of Revision, it is apparent that, subject to proper notice being given, it may enquire of its own motion into any question relating to the correctness of the roll, without the need of any issue being raised by an assessor or taxpayer. It must follow from this that the Board can resolve issues which have been raised before it as it sees fit, and is not bound by any agreement between the disputants.

The second argument made by the appellant, that the portion of the property used for sleeping accommodation ought to be classified in the Class 1 "residential" category, is deserving of sympathy but I cannot find that it discloses any error of law in the Board's decision.

Since "hotels and motels" are specifically excluded by the regulations from the Class 1 category, the appellant must show that the Board fell into error of law in deciding that its premises constitute a "hotel". The appellant says that while called a hotel, the true character of the premises is that of a rooming house - what the regulations call a "multi-family residence" - because the majority of its rooms are occupied for monthly or longer periods. But it seems to me that neither this nor any other fact disclosed by the stated case necessarily takes that part of the premises outside the definition of a hotel *in law*, and it is in respect of error of law only that the decision is open to review in these proceedings. It was open to the Board to find that the premises constituted either a "hotel" or a "multi-family residence" with a beer parlour separately classified and taxed.

Provided there is no discrimination in the application of the statute as between these premises and other similar premises in the City, the Board cannot be said to have erred in law in finding the whole property to be a "hotel" and therefore, by definition, outside the Class 1 "residential" category.

The third ground of appeal is that the Board erred in law in holding the sleeping accommodation to fall outside the Class 8 (a) "seasonal resort" category, the definition of which is fully set out above.

The statement of facts shows that throughout the year much more than half of the gross rental income of the premises is derived from tenants residing in the accommodation for periods of 28 days or more. But the Board notes that the Regulations require, in order that accommodation qualify under this classification, that there be “an *off-season*" period of 150 days a year or more" (emphasis added) during which at least half of the gross income is derived from such tenants.

The Board says in its final decision that the Class 8 (a) definition is intended to cover facilities which have a seasonal business, and that the evidence in this case, rather than establishing that the appellant's business has an "on-season" and an "off- season", simply shows that it caters on a year-round basis primarily to tenants who occupy rooms for periods in excess of 28 days. Such premises, it says, do not have the seasonal character required for classification in that category.

I think the Board was correct in interpreting the Class 8 (a) definition as one intended only to encompass accommodation having a seasonal business, and in holding that the accommodation in question therefore does not qualify.

It follows that the only issue on which the appellant could succeed in the present case is that of equity, or "equitability". It has, of course, long been a principle of tax law, applicable in the administration of all forms of taxation, that there shall be no discrimination as between taxpayers except such as is expressly authorized by statute: *Jonas* v. *Gilbert* (1881) 5 S.C.R. 356; *Reventhlow- Criminil* v. *Streamstown* (1921), 63 S.C.R. 8; *Chapman* v. *McLeod* (1948) O.W.N. 395.

The case stated does not say that the Board gave consideration, before it raised the appellant's tax classification, to the question of whether other premises in the city offering similar accommodation had been placed wholly in the Class 6 "business" category. It would have been open to the Board to place the accommodation portion of the appellant's premises in Class 1 "residential" category if the Board thought that course appropriate in order that the appellant be fairly treated in relation to the owners of similarly-used properties in the City.

The matter should be referred back to the Board for consideration of that question.

The first and second questions submitted for the opinion of the court are answered in the negative with the qualification: "provided that the Board is satisfied that in reclassifying the property it did not treat the appellant's premises unfairly in relation to similar premises in the City occupied in a similar manner."

The third question is answered in the negative.