ALLARD CONTRACTORS LTD.

v.

ASSESSOR OF AREA 12 - COQUITLAM

Supreme Court of British Columbia (A841238) Vancouver Registry

Before: MR. JUSTICE MCKAY

Vancouver June 21, 1984

C.F. Willms for the Appellant
J.E.D. Savage for the Respondent

Reasons for Judgment June 21, 1984

I am not prepared to deal with the Stated Case in its present form. I note that the Chairman of the Assessment Appeal Board has, with respect to each of the appeals before me expressed his opinion with respect to certain aspects of the Appeal. Such comments are inappropriate and the Stated Case is referred back to the Assessment Appeal Board for restatement.

ALLARD CONTRACTORS LTD.

v.

ASSESSOR OF AREA 12 - COQUITLAM

Supreme Court of British Columbia (A841238) Vancouver Registry

Before: MR. JUSTICE W.J. TRAINOR

Vancouver, August 10, 1984

Charles F. Willms for the Appellant
John E.D. Savage for the Respondent

Reasons for Judgment October 5, 1984

This case stated by the Assessment Appeal Board concerns the assessment over several years on two properties which for ease of reference I shall call the Belcarra property and the Gravel Pit. An appeal from the 1982 Court of Revision resulted in a decision on the 20th day of January, 1983 of the Assessment Appeal Board (the 1982 Board). The appeal taken by the appellant from the decision of the 1982 Board could not proceed as the tape recording of the evidence of the hearing was erased and the 1982 Board was unable to comply with the provisions of section 74

(5) of the *Assessment Act* that it should file with the case stated a certified copy of the evidence dealing with the question of law taken during the appeal.

A consent order of this Court was obtained:

> "that the Assessment Appeal Board re-hear and re-determine the appeal of the Appellant Allard Contractors Ltd. from the decision of the 1982 Court of Revision."

Pursuant to that order a reconstituted Assessment Appeal Board (the 1983 Board) heard the parties and its decision was given on the 9th day of February, 1984.

The questions posed in these proceedings arise from that decision.

A. *Gravel Pit - 1981 Supplementary Assessment*

This property consists of two, contiguous lots used as an integrated sand and gravel aggregate extraction and processing operation. The 1982 Board found that by virtue of a lease executed by the appellant in 1981, the supplementary assessment in 1981 was proper and effective against it as the holder or occupier of these two lots from August 14,1981 through December 31, 1981. On the re-hearing pursuant to the consent order, the 1983 Board "reviewed the letters of appeal and found as a fact that no mention was made in the letters of appeal regarding a supplementary assessment and that insufficient fees had been paid by the appellant to initiate such an appeal and it therefore ruled the appeal to be invalid."

In my view, it was not open to the 1983 Board to enquire into the procedural steps taken to launch the proceedings before the 1982 Board. Its responsibility as spelled out in the order was to re-hear and re-determine the matters heard by the 1982 Board and in respect of which the transcript of evidence had been lost. The appeal on the 1981 supplementary assessment had been heard. The responsibility of the 1983 Board was to re-hear that appeal. Its refusal to do so was an error.

B. *Belcarra Property - 1982 Assessment*

This is a residential waterfront lot located in the village of Belcarra. It was assessed by the 1983 Board to have a value of $175,000.

The evidence before the Board was of the sale of a smaller vacant lot situated near the subject property in March 1981 for $83,500. The Assessor also led evidence of two sales of land and buildings and used the land residual approach to calculate land value. Notwithstanding a finding by the Board, that with one exception "the totality of the adjustments made to the comparable sales were unsubstantiated by the respondent appraiser", it then went on to use the resultant land residual value.

The appellant submits that the only comparable sale was that of the vacant property. It is argued that the Board has found that there was no basis in the evidence for the adjustments to the value of the developed property. It seems to me that by that finding the Board was precluded from using the developed properties as comparables. To say that the totality of the adjustments were unsubstantiated and then proceed to use those values, must be error.

I appreciate that in discharging his duty to find actual value, an assessor may use several different methods and consider many different elements. But whatever approach is taken, it must be done on the basis of evidence. In view of its finding that there was no evidence to support the adjustments in value to the developed property, it was an error in principle to use this method of evaluation. In my view, therefore, the only proper evidence before the Board of value was that of the vacant property.

In answer to the question posed, I am satisfied that the Board did err in law in holding that sales of improved properties were comparable sales to be considered in assessing the value of the subject property.

C. *Gravel Pit - 1982 and 1983 Assessments*

The method of assessment used to find actual land value was the comparative approach. The Board did not use an income annuity land reversion method. The use of this latter method was urged upon the Board by the appellant but rejected by it when it found:

> "The evidence to be inconclusive, misleading, contradictory, arbitrary, and at best the conclusions reached to be based on pure conjecture."

In its Reasons, the Board said that it found the appellant's submission did not meet the criteria of a *prima facie* case and failed for that reason.

The attack by the appellant upon the Board's adoption of the comparative approach to assessment is based on the sufficiency of that evidence. Of course, that is a matter for the Board.

In answer to the questions posed in the stated case, I am satisfied that the Board did not err in the approach which it took to assessment of value.

The responsibility under the *Assessment Act* is to determine actual value. Assessors are not required to become involved in assessing owners on the basis of the use to which land is put at any particular time. In my view, the Board did not err in failing to assess the leased property on the basis of the actual value of the property to the lessee.

In summary, the questions posed and my answers to them are as follows:

A. *Gravel Pit. 1981 Supplementary Assessment*

> 1. Did the 1983 Board (Senior Chairman-Frampton) err in law in ruling the appeal on the 1981 supplementary assessment invalid having-regard to the Order of the Honourable Mr. Justice Finch dated August 3, 1983 to re-hear and re-determine the matters before the Board from the 1982 Court of Revision?
>
> ANSWER Yes.
>
> 2. Did the 1983 Board (Senior Chairman-Frampton) err in law in failing to hold that the failure to mention the supplementary assessment in the letters of appeal and to pay sufficient fees to initiate the said appeal was a procedural defect which had been waived by the 1982 Board (Chairman-Vernon) in earlier proceedings?
>
> ANSWER Not necessary to answer.

B. *Belcarra Property - 1982 Assessment*

> 1. Did the Board err in law in holding that the sales of improved properties were comparable sales for the purpose of assessing the subject vacant property when there was evidence of sales of vacant property before the Board?
>
> ANSWER Yes.

C. *Gravel Pit - 1982 and 1983 Assessments*

1. Did the Board err in law in failing to assess the subject properties on the basis of the income/annunity/land reversion method?

ANSWER No.

2. Did the Board err in law in holding that the actual value of the subject properties could be determined on the basis of market comparisons of lands put to different uses in the neighbourhood area?

ANSWER No.

3. Did the Board err in law in failing to assess the subject leased properties on the basis of the actual value of the property to the lessee?

ANSWER No.

Although success on this appeal is divided, I believe that the appellant should be entitled to its costs. However, if the respondent wishes to make representations with respect to the question of costs, appropriate arrangements to that end could be made through the Registrar.