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TRIZEC EQUITIES LTD.

v.

ASSESSOR OF AREA 09 - VANCOUVER

BRITISH COLUMBIA COURT OF APPEAL (CA 003649) Vancouver Registry

Before: MR. JUSTICE A. B. B. CARROTHERS (in chambers)

**Reasons for Judgment of Mr. Justice Carrothers**

May 13, 1985

I have before me an application by the appellant assessor for leave to appeal to this Court the opinion of Bouck, J., of the Supreme Court of British Columbia dated January 30, 1985, on two questions of law put to him at the request of the respondent Trizec Equities Ltd. ("Trizec") by the Assessment Appeal Board ("the Board") pursuant to subsection 74 (1) of the *Assessment Act*, R.S.B.C. 1979, c. 21 ("the Act").

Subsection 74 (1) read as follows:

**74.** (1) At any stage of the proceedings before it, the board, on its own initiative or at the request of one or more of the persons affected by the appeal, may submit, in the form of a stated case for the opinion of the Supreme Court, a question of law arising in the appeal and shall suspend the proceedings and reserve its decision until the opinion of the final court of appeal has been given and then the board shall decide the appeal in accordance with the opinion.

I observe that this subsection 74 (1) provides a procedure for obtaining the opinion of the Supreme Court on a question of law arising in an appeal in advance of the Assessment Appeal Board making its decision in that appeal in order that the Board's decision will then be made in accordance with the opinion; that is an ante-decision opinion.

Subsection 74 (2) sets out the procedure for obtaining the opinion of the Supreme Court on a question of law arising out of the Board's actual decision on appeal; that is a post-decision opinion.

The factual matrix from which the question of law arose can be described briefly. The fundamental problem was the correct determination for the 1984 tax roll of "actual value" of a 35-storey office building in Vancouver, commonly known as "Royal Centre" which has been assessed for the 1983 tax roll at an actual value of \$119,727,000.

Between December 31, 1982 and December 31, 1983 there had been no change in the physical state or condition of the building itself, but a long-standing major tenant, the Insurance Corporation of British Columbia, had during that period vacated 10 floors or about 27 per cent of the building. There was a physical change in the assessable contents of the building in that year and the Court of Revision had deleted from the 1984 tax roll \$8,000,000 in respect of machinery and equipment removed by this departing tenant.

In reaching determination of actual value on a notional revenue basis of the subject building for the 1984 tax roll, the assessor and the Court of Revision had taken into account the overall or average vacancy rate for buildings in downtown Vancouver generally comparable for assessment purposes to the subject building. On the one hand, the average rate had grown in 1983 from 6.2 per cent to 7.1 per cent. On the other hand, the vacancy rate of the subject building had grown from virtually full occupancy to approximately 30 per cent vacancy or about 33 times the change in the average vacancy rate.

The questions of law put to the Supreme Court, and both answered by Bouck, J., in the affirmative, were:

1. Was the fact that there was a change in the average vacancy rate for the buildings in Vancouver comparable to the subject from December 31, 1982 to December 31, 1983 a "state and condition" that the Board must take into account in determining the actual value of the subject for the 1984 Assessment Roll?
2. Must the Board consider the change in the actual occupancy in the subject from August 31, 1983 to December 31, 1983 as a change in the state and condition of the subject as those words are used in British Columbia Regulation 440/83 and in the *Assessment Amendment Act 1984*, in determining the actual value of the subject for the 1984 Assessment Roll?

It is the second question which is of primary concern on the intended appeal to this Court. Regulation 440/83 referred to in the second question and passed November 23, 1983 by Order-in-Council No. 1887, sometimes referred to as the two-year assessment freeze, reads as follows:

2-1: In section 26 of the Act, "actual value" means the actual value that land and improvements would have had on December 31, 1982 had they been on that date in the state and condition that they are in on December 31, 1983, and had their use and permitted use been on December 31, 1982 the same as they are on December 31, 1983.

(my emphasis)

What is called into question on the intended appeal is the proper construction and application of the words "state and condition" and "use and permitted use" in relation to possible change in the subject building during the calendar year 1983. The impugned wording has since been incorporated into section 26 of the Act by section 41 of the *Assessment Amendment Act 1984*.

In my view, the intended appeal, while it has merit, is premature. The opinion of Bouck, J., was obtained in advance of the Board's decision. The opinion of Bouck, J., gives the Board some direction in reaching its decision but in no way derogates or detracts from the Board's appellate jurisdiction under the Act. We do not know what impact these directions will have on the decision of the Board. It would be speculative to anticipate the Board's decision and permit an appeal which might well be ineffectual. Both parties might be content with the Board's decision when it is made. Surely it would be time enough to pursue an appeal under subsection 74 (2) of the Act when the basis of the decision of the Board can be examined, and if either party is then discontent with the Board's decision when made.

Leave is no longer granted simply if some merit is shown. There must be some clear benefit to be derived from the appeal. As was said by Seaton, J. A., In the Matter of the Utilities Commission Act, SBC 1980 c. 60 and Amendments Thereto and In the Matter of an Application by West Kootenay Power and Light Company, Limited for Leave to Appeal from a Decision and Order G-60-82 of the British Columbia Utilities Commission dated August 25, 1982, October 2, 1982, CA 821123: "I think that the court should not add another proceeding unless it seems necessary to do that." In this Case I think it neither necessary nor desirable.

In the result, I conclude that this not an appropriate case in which to grant leave to appeal. Leave to appeal is refused.