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254861 B.C. LTD.

v.

ASSESSOR OF AREA 02 - CAPITAL

Supreme Court of British Columbia (A84/2582) Victoria Registry

Before: MR. JUSTICE J. G. RUTTAN

Victoria, January 23, 1985

James Roth for the Appellant
J.E.D. Savage for the Respondent

Reasons for Judgment

February 4, 1985

This is a case stated by the Assessment Appeal Board, seeking the Court's opinion on certain questions as set out below in respect of which the following are the material facts:

1. On August 17, 1983, the Appellant, 254861 B.C. Ltd., deposited an application for a Plan of Subdivision in the Victoria Land Title Office, making application for subdivision of the subject property which at that time was a single parcel of land.
2. The application for a Plan of Subdivision was pending from August 17, 1983 to January 4, 1984.
3. On November 30, 1983, reference to the records of the Land Title Office at Victoria showed the subject property as a single parcel of land with the application for a Plan of Subdivision (as noted herein) pending.
4. The Assessor, in completing the 1984 Assessment Roll on December 31, 1983, assessed the property as a single parcel of land.
5. On January 5, 1984, the Plan of Subdivision referred to above was approved by the Registrar of Land Title Office at Victoria providing for seven individual lots.
6. On February 16, 1984, the Court of Revision ordered that the original folio be cancelled and that individual lot values be placed on seven new folios for the individual lots.
7. The Assessment Appeal Board confirmed the decision of the Court of Revision in its decision dated July 26, 1984, a copy of which is attached hereto and, marked as Schedule "A" to this Stated Case.

The questions proposed by the Board are:

1. Was the Assessment Appeal Board correct in its interpretation of Section 37 of the *Land Title Act*, specifically:

(i) should section 37 of the *Land Title Act* be interpreted in light of section 36 of the *Land Title Act*?

(ii) does section 37 of the *Land Title Act* apply to an application for registration of a Plan of Subdivision?

2. Was the Assessment Appeal Board correct in finding, for purposes of the 1984 Real Property Assessment Roll, that the subdivision of real property approved by the Registrar of the Victoria Land Title Office on January 5, 1984, was effective from August 17, 1983, being the date of deposit with the Registrar of the Plan of Subdivision?

On presentation of evidence that the property had been divided into seven residential lots, the Court of Revision on February 16, 1984 ordered that the value be deleted on the original parcel and that individual lot values be placed on seven new folios for the individual lots. In upholding this decision, the Assessment Appeal Board relied on its own decision in the appeal of *Sahali Mews Inc. v. Assessor of area 23-Kamloops*, decided in 1980, and s. 37 of the *Land Title Act*. In that case the Board found that, referring to the status of the property-whether stratified or subdivided, "where application for registration is made on or before November 30th but completion of registration does not occur until after November 30th that status is determined at the time of completion of registration and in accordance with Section 37 of the *Land Title Act*, is retroactive to the date of filing or deposit of the application in the Land Title Office."

Mr. Savage, counsel for the respondent, agreed that November 30th was an incorrect date and the proper date to be taken for the completion of the assessment roll by the Registrar is December 31st. Subject to that correction, and following this argument, the date of subdivision of the property in issue would be the application date of August 17th, 1983, when the application was lodged with the Registrar of Titles, and the property would be considered to be in a subdivided status as of December 31st, 1983. It was held that the action of the Court of Revision would therefore be correct in purporting to apply s. 37 of the *Land Title Act*.

Mr. Roth, on behalf of the appellant, has argued that the *Sahali Mews* case is incorrect, and that s. 37 does not apply to this situation at all but must be read with and applied only to s. 36. Mr. Roth further argues that the section of the *Land Title Act* which applies here is s. 22. These sections read as follows:

Operation of instrument as from time of registration

22. Every instrument purporting to transfer, charge, deal with or affect land or an estate or interest in it shall pass the estate or interest either at law or in equity created or covered by the instrument at the time of its registration, irrespective of the date of its execution.

Completion of Registration

36. (1) The Registrar after registration of title in fee simple or a charge or a cancellation of a charge, shall, unless the director otherwise orders, make on an instrument deposited in support of the application for registration or cancellation or, if no instrument is deposited, on the application, an endorsement in the prescribed form which shall be received in all courts as conclusive evidence of the registration of the instrument or application.

(2) Where an application affects records that are stored by electronic means, the registration of the instrument or application is complete when the particulars of it have been entered, other than as a pending application, in the appropriate part of the register.
1982-60-11, proclaimed effective August 1, 1983.

Registration effective from time of application

37. (1) Every instrument or application so registered shall be deemed to have been registered and to have become operative for all purposes in respect of the title, charge or cancellation claimed by the application for registration, and according to the intent of the instrument or application, as of the date and time when the application was received by the registrar.

(2) Every indefeasible title stored by electronic means, when entered in the register, other than as a pending application, shall be deemed to be registered and take effect as of the date and time when the application for the title was received by the registrar.

(3) Every indefeasible title not stored by electronic means, when signed by the registrar, shall be deemed to be registered and take effect as of the date and time when the application for the title was received by the registrar.

(4) Every certificate of charge, when signed by the registrar, shall be deemed to be issued and take effect as of the date and time when the application for the certificate was received by the registrar.

1979-2-38; 1982-60-12, proclaimed effective August 1, 1983.

It is apparent that s. 22 distinguishes between the date of registration and the date of execution of an instrument, making the effective date that of registration. But it does not spell out what actually shall be deemed the date of registration. For that we must refer to s. 37 which in subsection (1) deems the date of registration be the date of application. However, counsel for the appellant submits that s. 37 refers only to registrations of a title in fee simple or a charge or cancellation of a charge. He points out that s. 37 begins with the words "Every instrument or application *so registered*. . . ." Clearly "so registered" refers to instruments or applications referred to in s. 36. The appellant therefore submits the retroactive feature set forth in s. 37 whereby registration of fee simple reverts back to the time when the application was first applied for to the Registrar, applies only to titles, charges or cancellations, and not plans for subdivisions which are covered only by the provisions of s. 22.

But s. 36 deals only with proof of registration, and its acceptance as evidence. Endorsement on the newly issued Certificate of Title provides conclusive evidence in any court of the due registration of any application. In the present case, as counsel for the respondent points out, this of course was done. Seven separate titles were registered and endorsed as provided. It seems therefore that s. 37 does refer to s. 36 (1), but thereby also applies to the new titles registered by the subdivision. Section 22 is wide enough to cover subdivision applications, but so are s. 36 and s. 37.

In any event, if s. 37 (1) refers only to the items specified in s. 36, and if I am wrong and the items in s. 36 do not include subdivisions, then s. 37 (3) applies. That subsection reads:

Every indefeasible title not stored by electronic means, when signed by the registrar, shall be deemed to be registered and take effect as of the date and time when the application for the title was received by the registrar.

This subsection of s. 37 does not relate back to s. 36, but does govern in my opinion applications for subdivision.

So therefore though counsel for the appellant would submit that subdivisions are governed only by s. 22, and presumably take effect only at the actual date of registration, and not the date of application to register as provided in s. 37 (1), and therefore in fact should have no retroactive effect, section 37 (3) is wide enough to cover subdivision applications.

Here the application for the subdivision was received by the Registrar in August of 1983. At time and date of the reception the existing Certificate of Title was filed pursuant to s. 92 (1) (a) and (b) of the *Land Title Act*.

When the new Certificates of Title were issued, pursuant to s. 98 of the *Act*, the Registrar would have transmitted a print of the plan to the appropriate taxing authorities as required.

The Assessment Appeal Board, in its reasons for judgment, set out clearly the reading of the relevant sections of the *Land Title Act*, which I have referred to above. I agree with their clear, concise summary of the three sections 22, 36 and 37, which reads as follows:

Section 22 distinguishes between the date of registration and the date of *execution* of an instrument, making the effective date that of registration. Section 37 deems the date of registration to be the date of application. Section 36 deals with the proof of registration, and its acceptance as evidence. The Board is satisfied that each of these sections is independent of the others in its provisions; and that Section 37 is the final and determinative provision with respect to the effective date of registration.

The Board therefore rejects the Appellant's argument regarding the assessability of the individual lots, and concludes the property is properly assessable, for the 1983 Roll, as subdivided.

In accepting the Board's conclusion, I therefore rule that the answers to the questions shall be:

Question No. 1-Yes.

Question No. 2-Yes.

Question No. 3-Yes.

There will be no order of costs.