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TIBERON INVESTMENTS INC.
and
GANDALF ENTERPRISES LTD.

v.

ASSESSOR OF AREA 1 - CAPITAL

Supreme Court of British Columbia (85/1105) Victoria Registry

Before: MR. JUSTICE C.C. LOCKE (In Chambers)

Victoria June 10, 1985

The Appellants in person
Gerald B. Stanford for the Respondent

Reasons for Judgment June 14, 1985

This is a case stated by the Assessment Appeal Board. The Board's facts and questions are admirably short and I reproduce them.

The issue of this appeal is whether or not a valid appeal is properly before the Assessment Appeal Board pursuant to the *Assessment Act*.

The facts are as follows:

> (1) Mr. Madera, agent for the appellant, did not appeal in writing to the Court of Revision on or before October 31, as stipulated by section 40(3)(a) of the *Assessment Act*.
>
> (2) A few days after October 31, Mr. Madera contacted the assessor, Mr. Craven, and requested that his appeal be heard by the Court of Revision.
>
> (3) The assessor placed the appeal before the Court of Revision. Both parties agree that Mr. Madera appeared in person before the Court of Revision wherein the Court of Revision ruled orally refusing to hear the appeal due to the late filing of the complaint.
>
> (4) Mr. Madera filed an appeal to the Assessment Appeal Board within the specified time requirements and now seeks relief from the Board to hear and determine the appeal.
>
> (5) The assessor opposes the application due to the lateness of the original appeal by the appellant to the Court of Revision.

The issue is then whether or not under the circumstances the Board has the jurisdiction to validate the appeal.

The jurisdiction of the Board emanates from section 67(1) of the *Assessment Act* which is quoted as follows:

> "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." (underlining by the Board.)

The Board finds the wording underlined above to be persuasive of the intent of the legislature to provide a mechanism to a person to receive a hearing before the Board if the original complaint to the Court of Revision is refused. In fact, the Court of Revision did hear the appellant and decided to refuse the complaint. This action constitutes a decision of the Court of Revision as a refusal within the meaning of section 67(1) and the Board, therefore, finds the appeal to the Board to be valid.

The two questions on which the opinion of the Court is required are:

> 1. Did the Assessment Appeal Board err in law in its interpretation of section 67(1) of the *Assessment Act*, R.S.B.C. 1979, c. 21, in finding that the refusal of the Court of Revision to hear an appeal was a refusal to hear or determine a complaint within the meaning of the said section?
>
> 2. Did the Assessment Appeal Board err in law in its interpretation of the *Assessment Act*, R.S.B.C. 1979, c. 21, in finding that there was a valid appeal before the Assessment Appeal Board in the circumstances?

Section 40(3) and (4) of the *Assessment Act*, R.S.B.C. 1979, c. 21, read as follows:

> (3) Notice in writing of every complaint in respect of an entry in
>
> > (a) an assessment roll shall be delivered to the assessor not later than October 31 of the year in which the assessment roll is completed, or
> >
> > (b) a revised assessment roll shall be delivered to the assessor not later than October 31 of the year in which the revised assessment roll is completed.
>
> (4) Notwithstanding subsection (3)(a), where no complaint is made within the time limit specified in subsection (3)(a) in respect of an entry in an assessment roll, a notice of complaint in respect of that entry may be delivered to the assessor not later than October 31 of the year following the calendar year in which the assessment roll was completed, but an amendment in the assessment roll made pursuant to that complaint shall have effect only in relation to liability for taxation in the second calendar year following the completion of the assessment roll.

I follow the case of *Mellor* v. *Harbour Park Developments Ltd. et al.*, B.C. Assessment Authority Stated Case No. 67 (B.C. Court of Appeal, May 19, 1970). In that case Mr. Justice McLean for the court pointed out that the provisions of the largely predecessor statute, the *Assessment Equalization Act*, constituted a code.

Section 67(1) of the present *Assessment Act* provides that where a person is dissatisfied with the decision of the 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. That constitutes a general right of appeal.

However, sections 40(3) and (4) previously quoted give a very specific remedy for a very specific complaint, and are carved out of the general right of appeal, specifying both offence and remedy. While the right to state a case within the time limited may only be directory, so far as the appellant is concerned they are mandatory, and a specific remedy is provided. No reversion to the general right of appeal under the *Assessment Act* is permitted, in my opinion.

It is my opinion therefore that as to Question 1 my answer is "Yes, the Assessment Appeal Board did err in law". As to Question 2, my answer likewise is "Yes, the Assessment Appeal Board did err in law".

There will be no costs.