

BOBAN CONSTRUCTION LTD.

v.

ASSESSOR OF AREA 4 - NANAIMO

Supreme Court of British Columbia (1107/85) Victoria Registry

Before: MR. JUSTICE J.C. BOUCK

Victoria, November 13 and 19, 1985

Guy E. McDannold for the Appellant
R.S. Gill for the Respondent

Reasons for Judgment

December 3, 1985

DESCRIPTION OF PROCEEDINGS

Boban Construction Ltd. (Boban) owns industrial property on Jingle Pot Road in Nanaimo, B.C. By way of a stated case it is appealing an assessment made by the Assessment Appeal Board under the provisions of the *Assessment Act*, R.S.B.C. 1979, c. 21.

FACTS

According to the amended stated case dated 18 September, 1985 the facts relating to this appeal are set as follows:

- "1. These appeals arise out of the appellant's appeal of their 1984 assessments on twenty parcels in a light industrial subdivision owned and developed by the appellant.
2. The properties owned by the appellant formerly consisted of two parcels of land, one of which was 34.3 acres and the other 17 acres, which were assessed as such for the 1983 Assessment Roll.
3. The appellant filed with, and applied to, the Registrar of the Land Title Office at Victoria, British Columbia, for registration of the subdivision plan on December 17, 1982 and subsequently the two former properties were subdivided to twenty individual properties by registration of Certificates of Title filed on January 27th, 1983.
4. On the 1984 Assessment Roll, the twenty individual parcels were represented by twenty separate folio numbers; the subject matters of the instant appeal.
5. At the hearing before the Assessment Appeal Board on September 26, 1984, the appellant gave a lengthy dissertation of the history of the various stages of the development of the subject property.
6. The assessor adduced market evidence of some thirteen sales of comparable light industrial properties which, in his opinion, supported the values on the 1984 Assessment Roll.
7. During the hearing, the appellant sought an adjournment to obtain a plan which had been filed with the Court of Revision. The Assessment Appeal Board denied the appellant's application.

8. The Board, in denying the appellant's request for adjournment for production of the specific plan filed with the Court of Revision, understood that the appellant's position was that the said plan represented an allocation of the 1983 actual values for the former two (2) parcels (as set out in Fact No. 1 previously) proportionately allocated to the now twenty (20) parcels as set out for assessment on the 1984 Assessment Roll.
9. The appellant accepted the understanding of the Board of the evidence filed in relation to the plan.
10. The Assessment Appeal Board found that the appellant had failed to provide it with any evidence to support the claim of excessive value being placed on the appealed properties for the 1984 assessment.
11. The Assessment Appeal Board found that the respondent had fulfilled the duty placed upon him when he valued the individual properties as separate parcels once the registration of the separate parcels had been legally completed for the 1984 Assessment Roll.
12. The Assessment Appeal Board confirmed the values as shown on the 1984 Assessment Roll, and a copy of the Decision of the Board, dated November 1, 1984, is attached hereto and marked Schedule 'A'."

QUESTIONS

Six questions are contained in the stated case. When the application came on for hearing the appellant abandoned a request to answer three of them. It is now only seeking answers to the remainder. They are:

- "1. Was the Assessment Appeal Board correct in refusing the appellant's request and/or application for an adjournment in order to allow the appellant to produce the necessary evidence which was no longer in its possession and control?
4. Was the Assessment Appeal Board correct in law in ruling that the assessor had fulfilled the duty placed upon him when he valued the individual properties as separate parcels once the registration of the separate parcels had been legally completed?
5. Was the Assessment Appeal Board correct in law when it ruled that the registration of the separate parcels increased the actual value of the subject properties by approximately 53% from the previous year's assessment when there was no other change in the state and condition of the subject properties?"

ISSUES

There are really two issues arising from the questions.

1. Did the Assessment Appeal Board err in law when it rejected the adjournment application of the appellant so that it could file a "plan" of the property?
2. Did the Assessment Appeal Board err in law by assessing the property for the calendar year 1983 as 20 separate parcels rather than the original 2 parcels from which the 20 were subdivided?

LAW

1. *The Adjournment Issue*

There is no doubt the Board must act judicially and fairly: *Assessment Commissioner v. Lydia M. Hill*, S.C.B.C. Victoria Registry (22/81) 27 January, 1981, Stated Case # 143 at page 839. Ruttan J. at page 841:

"But I do remind the Board of its duty to act judicially and to observe the rules of natural justice."

Adjournments of Board hearings are also contemplated by the Rules of Practice and Procedure adopted by the tribunal. These came into effect on 25 January, 1984. Rule 14 reads:

"14. Adjournments

From the commencement of the hearing of an appeal before a Board, the hearing shall proceed from day to day until completed, but may be adjourned from time to time by order of the Board."

From this and other well-known authorities, it is clear the Board could have granted an adjournment to the appellant so that the appellant could produce the "plan". But the real question is whether the failure to give the adjournment was a breach of its duty to act fairly and judicially?

Refusing to allow an adjournment does not necessarily mean the Board acted unfairly. Sometimes adjournments are requested for frivolous reasons and are rightly rejected. So, it all depends upon why the petitioner needed the adjournment and what difference it made because the adjournment was refused.

There is no material before me which indicates the "plan" the appellant wished to produce had any particular probative value. Nor does counsel for the appellant suggest the decision of the Board might have been different if the Board adjourned the hearing in order to inspect the "plan". Given this situation, I am satisfied no criticism should be directed at the Board for refusing the adjournment request of the appellant. Hence, the first ground of appeal must fail.

2. Assessing the Property for the Calendar Year 1983 as 20 parcels rather than 2 parcels.

Here is the nub of the appeal. Until 17 December, 1982 the land in question was characterized as two undivided pieces of land. On that date an application was made to the Registrar of Land Titles for the purpose of dividing these two lots into 20 separate individual parcels. The application was subsequently approved on 17 January, 1983. Because of s. 37 (1) of the *Land Title Act*, R.S.B.C. 1979, c. 219, the subdivision is deemed to have occurred on 17 December, 1982 and not on 27 January, 1983. The section reads:

"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."

When the Assessor examined the property at the end of 1982 for the 1983 assessment roll, he was only bound to enquire as to its state in accordance with the records of the Land Title Office as of 30 November, 1982: *Assessment Act*, s. 2 (1) and (3):

"2. (1) The assessor shall, not later than December 31 in each year, complete a new assessment roll in which he shall set down each property liable to assessment within the municipality or rural area and give to every person named in the assessment roll a notice of assessment.

(3) For the purposes of subsection (1), the assessor shall make reference to the records of the land title office as those records stood on November 30 in the year referred to in subsection (1)."

(Amended 1974, c. 6, s. 3; 1977, c. 30, s. 3; 1978, c. 25, s. 334)

Consequently, the assessment roll made up to 31 December, 1982 shows the property as comprising only two parcels. However, by operation of s. 37 (1) of the *Land Title Act*, the land was retroactively subdivided into 20 parcels as of 17 December, 1982.

It is the contention of the appellant that the effect of the *Land Title Act* and the *Assessment Act* caused the Assessor to fall into error. This error could have been corrected by the Assessor prior to 31 December, 1983 since he would have known by then that as of 31 December, 1982 the property actually consisted of 20 subdivided lots and not just the two original larger parcels. Such a mistake was capable of correction by the issuance of a supplementary roll under s. 11 of the *Assessment Act*.

Instead of correcting the defect in this way, the Assessor came to the conclusion the subdivision occurred on 27 January, 1983 and not on 17 December, 1982. This view was accepted by the Board.

By reason of the 20 lot subdivision, the Board decided the value of the land increased by approximately 53% as of 27 January, 1983 over its previous value as of 31 December, 1982. On the other hand, the appellant says that if any increase occurred because of the subdivision, this took place prior to 31 December, 1982 and not after. Of course, the 20 lots could have become more valuable during the calendar year 1983 for other reasons, and not just because of the subdivision but that is not why the Assessor found the property more valuable.

The issue revolves around an interpretation of s. 41 (1) and (2) of the *Assessment Act* 1984, S.B.C. 1984, c. 11, proclaimed in force 14 May, 1984. They read:

"41 . (1) In this section the reference to section 26 of the *Assessment Act* is a reference to that section as it stood on December 31, 1983.

(2) In relation to the completion during 1983 of an assessment roll for the purpose of taxation during the year 1984, the expression 'actual value' in section 26 of the *Assessment Act* means and shall be conclusively deemed always to have meant 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 were in on December 31, 1983, and had their use and permitted use been on December 31, 1982 the same as they were on December 31, 1983."

In *Trizec Equities Ltd. v. Assessor of Area 9 - Vancouver*, Vancouver Registry No. A842726, 30 January, 1985, Stated Case #196, page 1101, I attempted to ascertain the meaning behind s. 41 (1) and (2). At page 1106 I said this:

"Consequently, in the fall of 1983 the assessor was required to adopt as the actual or market value of the Trizec building, that value as prescribed on the assessment roll for 31 December, 1982. Then he was supposed to determine if there were any changes in the state and condition of the Trizec building since 31 December, 1982. Any such changes could increase or decrease its actual or market value as of 31 December, 1982. The question is whether the vacancy rate of 30% in late 1983 was a change in the state or condition of the Trizec building since 31 December, 1982 within the meaning of the statute?"

Transposing the words from the *Trizec* case to the facts before me reveals the following:

- (a) In the fall of 1983 the Assessor was required to adopt as the actual value of the 20 lot subdivision the value prescribed on the assessment roll for 1983 as of 31 December, 1982;
- (b) Then, he was supposed to determine if there were any changes in the "state and condition" of the property since 31 December, 1982;
- (c) If there were no such changes, then the assessed value on 31 December, 1983 remained the same as it did on 31 December, 1982.
- (d) If there were changes, then the assessed value is increased or decreased from the original assessed value of 31 December, 1982. The new assessed value as of 31 December, 1983 is then statutorily presumed to have existed on 31 December, 1982 and it becomes the assessed value for the purpose of the 1984 taxation year.

A somewhat similar dilemma faced my colleague Lysyk, J. in *The Prudential Insurance Co. of America v. Assessor of Area 11 - Richmond-Delta*, 15 July, 1983, Vancouver Registry No. A851244, Stated Case #208 at 1165. When assessing the property of the Prudential Insurance Co. of America as of 31 December, 1983, the Assessor discovered he had undervalued the property in the assessment roll for the year ending 31 December, 1982. It was conceded that no changes in the state and condition of the lands occurred between 1 January, 1983 and 31 December, 1983. Instead of issuing a supplementary roll under s. 11 of the *Assessment Act*, the Assessor increased the value as of 31 December, 1983 to correct the error. The Court of Revision agreed with this procedure, but on appeal to the Assessment Appeal Board it held "the Assessor was prevented from changing the value of the property from the 1983 assessment roll (assessed as of 31 December, 1982) value". Lysyk J. upheld the reasoning of the Assessment Appeal Board.

Now, it is said the same point arises on the facts before me. The appellant submits the Assessor is prevented from changing the value of the Boban property as of 31 December, 1983 since any change in the state and condition occurred prior to 31 December, 1982, namely on 17 December, 1982 and not after. I think that is right.

As I said in *Trizec* at page 1108, when completing the assessment roll as of 31 December, 1983 the Assessor starts with the assessment of 31 December, 1982 as a base. Then, he may take into account changes in the state and condition of the lands and improvements since 31 December, 1982. Next, he can increase or decrease the 31 December, 1983 assessment if such changes occurred, on the statutory assumption these 1983 changes existed as of 31 December, 1982. The resulting answer yields the assessment as of 31 December, 1983 for the 1984 taxation year.

The year ending 31 December, 1982 was apparently picked as a base year for the implementation of a biennial system of assessment. Generally speaking, the 31 December 1982 assessment was intended to apply to the 1983 and 1984 taxation years. Then a new assessment date of 30 September, 1984 begins. Again, it is meant to apply to the 1985 and 1986 taxation years, and so on: *Assessment Act*, R.S.B.C. 1979, c. 21, s. 2 (1) (as amended):

"2. (1) The assessor shall, not later than September 30, 1984 and September 30 in each even numbered year after that, complete a new assessment roll in which he shall set down each property liable to assessment within the municipality or rural area and give to every person named in the assessment roll a notice of assessment, and in each case the roll so completed shall, subject to this Act, be the assessment roll for the purpose of taxation during the 2 following calendar years."

(As amended 1974, c. 6, s. 3; 1977, c. 30, s. 3; 1978, c. 25, s. 334; 1984, c. 11, s. 2, 3; effective May 14, 1984 (B.C. Reg. 131/84).)

To determine the actual value as of 30 September, 1984 in each two year period, the Assessor only goes back to 1 July of that year to look at state and condition as opposed to the 1983 practice of going back to 31 December, 1982: *Assessment Act*, s. 26 (1); (as amended) 1974, c. 6, s. 24; 1974, c. 105, s. 1; 1977, c. 1, s. 4; 1977, c. 30, ss. 16, 17, 18; 1979, c. 26, s. 2; 1983, c. 23, s. 1, see retroactive effect, 1983, c. 23, s. 24; 1983, c. 24, s. 1, effective January 1, 1984 (B.C. Reg. 472/83); 1984, c. 11, s. 16, effective May 14, 1984 (B.C. Reg. 131/84), see transitional provision, 1984, c. 11, s. 41.)

A revised assessment roll may be completed in odd numbered years beginning 30 September, 1985 if special circumstances exist: *Assessment Act*, s. 2, (1.1), (1.2) (as amended) 1974, c. 6, s. 3; 1977, c. 30, s. 3; 1978, c. 25, s. 334; 1984, c. 11, ss. 2, 3; effective May 14, 1984 (B.C. Reg. 131/84).

On the basis of this analysis, I am satisfied the Board erred when it concluded the approval of the 20 lot subdivision by the Registrar of Land Titles on 17 January 1983 was a matter that could be taken into account in deciding whether there was any change in the state and condition of the property during the calendar year 1983. By operation of law, the change in the state and condition occurred in 1982, and not in 1983, namely on 17 December, 1982. For these reasons the questions must be answered as follows:

1. Was the Assessment Appeal Board correct in refusing the appellant's request and/or application for an adjournment in order to allow the appellant to produce the necessary evidence which was no longer in its possession and control?

Answer: Yes.

4. Was the Assessment Appeal Board correct in law in ruling that the assessor had fulfilled the duty placed upon him when he valued the individual properties as separate parcels once the registration of the separate parcels had been legally completed?

Answer: No.

5. Was the Assessment Appeal Board correct in law when it ruled that the registration of the separate parcels increased the actual value of the subject properties by approximately 53% from the previous year's assessment when there was no other change in the state and condition of the subject properties?

Answer: No.

JUDGMENT

The appeal is allowed in accordance with these reasons. Costs follow the event.