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LANDSDOWNE INVESTMENT CORP.

v.

ASSESSOR OF AREA 23 - KAMLOOPS

Supreme Court of British Columbia (A862414) Vancouver Registry

Before: MR. JUSTICE W.J. WALLACE (in chambers)

Vancouver, Oct. 17, 1986

K.A. Cairns for the appellant
J.K. Greenwood for the Respondent
J.J. Arvay for the Attorney General of British Columbia

Reasons for Judgment October 28, 1986

Introduction

This matter comes before me by way of a case stated by Mr. F. D. Vernon, Senior Chairman of the Assessment Appeal Board on behalf of all members thereof.

The facts reveal that a building was constructed over a period of time from October 15, 1980 to March 1983. The property was assessed on July 1,1984 by the Assessor to have an actual value of $1,518,000 for the purpose of the 1985 assessment roll. The actual value of $1,518,000 reflected the value of a non-completed building when in fact the building had been completed and had an actual value of $4,278,200.

In November, 1985 the Assessor discovered that the building had been completed and he brought his error to the attention of the Court of Revision pursuant to s. 9 of the *Assessment Act*. On November 29, 1985, a Court of Revision notice was sent to the owner, pursuant to s. 44 (3), of the Court's intention to direct an increase in the 1986 assessment on the subject property at a hearing to be held on December 10, 1985.

The owners were represented at the hearing before the Court of Revision and objected to the jurisdiction of the Court of Revision to vary the assessment. The Court proceeded with the hearing and confirmed the assessment of the property at $4,278,200.

The questions on which this Court's opinion is sought are:

1. Did s. 2 (1.2) of the *Assessment Act*, R.S.B.C. 1979, c. 21, and amendments thereto, apply to the facts of this case so as to warrant a revised assessment under s. 2 (1.1)?

2. Was there authority under the *Assessment Act* to alter the owner's 1986 real property assessment after September 30, 1985?

3. Was there authority under the *Assessment Act* to alter the owner's 1986 real property assessment after October 31, 1985?

> 4. If there was authority under the *Assessment Act* to alter the owner's 1986 real property assessment after October 31, 1985, is that portion of the *Assessment Act* inconsistent with s. 15 of the *Canadian Charter of Rights and Freedoms* and is that portion of the *Assessment Act* of no force and effect pursuant to s. 52 of the *Constitution Act*, 1982?

Legislation

A perusal of the *Assessment Act* reveals that the overall scheme of the Act is that the Assessor shall, not later than September 30th of each even numbered year, complete a new assessment roll, which shall be the assessment roll for the purposes of taxation during the two following calendar years (s. 2 (1)). Furthermore, the Assessor shall, not later than September 30th of each odd numbered year, complete a revised assessment roll containing revisions to the assessment roll for the purpose of taxation for the following year (s. 2 (1.1)). A revision is appropriate where, by reason of error, the actual value of the property is not the same as the actual value entered in the assessment roll (s. 2 (1.2) (b) (1)). "Error" includes an entry based on incorrect facts. In addition to changes made as revisions to the assessment roll on odd numbered years (s. 2), there are other provisions for correcting errors or omissions in a particular assessment roll, or a revised assessment roll, after completion of the roll. They include ss. 11, 40 and 9.

Section 11 was not utilized by the Assessor in this case for either the 1985 assessment roll or the 1986 revised assessment roll.

Under s. 40 (1) where a person is of the opinion that an error exists in the contemplated assessment roll, in that land or improvements have been valued at too high or too low an amount, he may notify the Court of Revision. A "person" includes the Assessor (s. 40 (2)). However, notice in writing of every such complaint must be delivered not later than October 31st of the year in which the assessment roll or the revised assessment roll is completed (s. 40 (3)). Since the Assessor did not become aware of his error until November, 1985 he could not proceed under s. 40 insofar as the 1986 assessment roll was concerned.

The Assessor in this instance relied on s. 9 of the *Assessment Act*. It provides in part:

> 9. (1) The assessor shall bring all errors or omissions in a roll completed under section 2 to the Court of Revision for correction.

The Court of Revision must complete its deliberations by December 15th of each year (s. 40 (10)), and the completed assessment roll as confirmed by the Court of Revision (except in certain situations which are not pertinent to this decision) is valid and binding on all parties notwithstanding any error in an assessment roll (s. 10).

In summary we have a building erroneously assessed in July of 1984 as having an actual value of $l,518,000 when in fact its true completed value was $4,278,200. The erroneous assessment is recorded on the 1985 assessment roll and would normally be recorded in the same amount for the 1986 assessment roll unless revised when the Assessor completed his revised assessment roll on or before September 30, 1985. The Assessor, however, did not pick up the error until November of 1985 - too late to include it in his 1985 assessment roll. As a consequence he brought the error to the Court of Revision by notice given on November 29, 1985 for a hearing to be held on December 10, 1985 at which hearing the Court raised the assessment for the 1986 assessment roll from $1,518,000 to $4,278,200.

Issue

Is an assessor, invoking s. 9 of the Act, required to bring an error in a completed roll to the Court of Revision for correction within the time limitation imposed by s. 40 of the Act, i.e., October 15th, or may he do so at any time prior to the Court of Revision completing its deliberations on December 15th of the year in question?

Appellant's counsel acknowledges that there is no limitation time expressed in s. 9 within which the Assessor shall bring errors to the Court of Revision for correction. He points out however, that s. 40 enables a "person" (which term includes both a taxpayer and the assessor) to make a complaint of error to the Court of Revision only if notice of such complaint is delivered not later than October 31st of the year in which the assessment roll, or revised assessment roll, is completed. Furthermore, s. 10 of the Act provides that a completed assessment roll, "as confirmed and authenticated by the Court of Revision under s. 47, is. . . valid and binding on all parties concerned", notwithstanding any error in the assessment roll.

Counsel for the appellant therefore asserts that s. 9 should be interpreted as restricting the Assessor to bring any errors in the roll before the Court of Revision within the same time limits imposed upon the taxpayer's right to complain of errors in the roll - namely, October 31st of the pertinent year. Only in this way, he asserts, are the objectives achieved of attaining the speedy completion and authentication of the assessment rolls, as well as attaining equal treatment of the assessing authorities and the taxpayers.

Counsel for the respondent answers this submission by pointing out that, although the taxpayer is restricted to filing his complaint of error before October 31st, there is nothing to restrict his advising the Assessor of the alleged error after that time. He asserts that the Assessor would then be obliged, pursuant to s. 9, to bring all errors in a roll to the Court of Revision for correction. In this way equality of treatment to the taxpayer and the Assessor is achieved.

Opinion

Section 9 clearly omits any specific time restriction within which the Assessor is to carry out his obligation to draw to the Court of Revision's attention errors in the roll. As previously noted many of the sections do specify certain dates within which action must be taken, the omission to do so in s. 9 cannot be considered an oversight on the part of the legislature. I cannot, therefore, read into the section, by implication, a term that the legislature has declined to include in it.

> It is a corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are adequate grounds to justify the inference that the legislature intended something which it omitted to express. Lord Mersey said: 'It is a strong thing to read into an Act of Parliament words which are not there, and in the absence of clear necessity it is a wrong thing to do.' ''We are not entitled' said Lord Loreburn L.C., 'to read words into the Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself'.

Maxwell on the Interpretation of Statutes, 12th Ed. p. 33.

I must concede I have difficulty with the logic of several of the provisions of the Act. In particular, where, on the one hand, it specifically restricts the taxpayer's and the Assessor's right to deliver notice of error to the Court of Revision to October 31st of the year in which the assessment roll is completed (s. 40 (3)) and yet, on the other hand, without any time restriction, directs the Assessor to bring all errors to the attention of the Court of Revision for correction, presumably at any time prior to the Court completing its sitting.

While there appears to be an inconsistency in these provisions, it is not such that, in my opinion, warrants my reading into s. 9, by implication, a time within which the Assessor must bring all errors or omissions in a roll to the Court of Revision for correction. Accordingly, I answer the questions put before me in the following manner.

Questions

1. In my view Question 1 must be answered in the affirmative. There is no doubt that the Assessor, when assessing the property and improvements, failed to appreciate that the building was completed. In this regard the lower assessed value which was entered into the rolls resulted from an error on the Assessor's part. Section 2 (1.2) (b) of the *Assessment Act* clearly applies and a revised assessment under s. 2 (1.1) was warranted.

2. In my view Question 2 must be answered in the affirmative. Both the owner and Assessor may notify the Court of Revision of alleged error in the completed assessment roll and the Court of Revision may direct amendments to be made to the roll to reflect their decision (s. 44 (1) (b) (c)).

3. In my view Question 3 must be answered in the affirmative. The clear wording of s. 9 does not restrict the time within which the Assessor is directed to bring all errors and omissions in a roll to the Court of Revision for correction. Accordingly, he may bring an error in the completed assessment roll to the attention of the Court of Revision for correction at any time prior to the Court of Revision completing its deliberations on December 15th of the year in question.

4. As time did not permit submissions to be made with respect to Question 4, this issue was adjourned *sine die* by consent. If counsel consider it appropriate to do so, they may fix a mutually convenient date to hear the argument on the issue. As the Charter argument is separate and distinct from that raised with respect to Questions 1, 2 and 3, I do not consider myself seized of the matter.

In all the circumstances of this case it is my present view that it is appropriate to dismiss the application without costs. However, since counsel have not addressed me on this subject, if they are not in accord with my tentative disposition of the matter, they may file a memorandum on the question of costs at a mutually agreeable date.