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CHEVRON CANADA LIMITED

v.

ASSESSOR OF AREA 9 - VANCOUVER

B.C. Court of Appeal (CA005532) Vancouver Registry

Before: MR. JUSTICE SEATON, MR. JUSTICE ANDERSON, and MADAM JUSTICE McLACHLIN

Vancouver, February 13, 1987

S.B. Armstrong for the Appellant, Chevron Canada Limited
John E.D. Savage for the Respondent, Assessor of Area 09 - Vancouver

Reasons for Judgment of Mr. Justice Seaton (Oral) February 13, 1987

SEATON, J.A.: Mr. Savage, we do not propose to call upon you.

This is an appeal from the decision of Mr. Justice Wood, who in turn was hearing an appeal from the Assessment Appeal Board. He allowed that appeal.

The background is this: On October 15, 1984, the appellant appealed the assessment of its property on Dunbar Street, in Vancouver, to the Court of Revision, claiming that the assessed value of the land was excessive.

On October 24, 1984, it withdrew its appeal.

Then on November 20, 1984, after the time for appeal had gone by it wrote to the Assessor requesting that the value of that property be considered by the Court of Revision under s. 44 (1) (b) of the *Assessment Act*. The letter said:

> "While the assessed land value for the subject property is not currently under appeal, we ask for your consideration of s. 44 (1) (b) of the *Assessment Act*."

The letter recites that they have an appraisal report showing a market value which we are told is substantially lower than the assessed value. Then the final paragraph:

> "We respectfully request your review of this assessment and early advice as to your findings and recommendations."

There was reference to s. 44 (1) (b) and (d) of the Act. It reads:

> "44. (1) The powers of a Court of Revision constituted under this Act are
> (b) to investigate the assessment roll and the various assessments made in it, whether complained against or not, and subject to subsections (4) and (4.1), to adjudicate on the assessments and complaints so that the assessments shall be fair and equitable and fairly represent actual values within the municipality or rural area;
> (d) to confirm the assessment roll, either with or without amendment."

On November 22nd the Assessor brought the appellant's request to the attention of the Court of Revision, and I now read from the Stated Case because it is this paragraph 4 that is of significance on this appeal:

> "The Court of Revision noted that the letter of November 20, 1984 was too late for a complaint. The Court of Revision then made reference to its power of review under S. 44 (1) (b) of the *Assessment Act* and asked the Assessor whether he knew of anything indicating an error in the valuation. The Assessor said no. The taxpayer, Chevron Canada Limited, had not been given notice of this hearing before the Court of Revision and was not present to make any submissions on the question of valuation."

After that meeting the Assessor wrote to the taxpayer as follows:

> "November 22, 1984
>
> Chevron Canada Limited
> #1500 - 1050 West Pender Street
> Vancouver, B.C. V6E 3T4
> *Attn: S. B. Shellard, Tax Division*
>
> Dear Sirs:
>
> *Re: Roll No. 137-712-040-07-0000*
>
> Your letter of appeal was received on November 22, which does not comply with Section 40 [3] of the *Assessment Act*, which states that appeals must be delivered to the Assessor not later than October 31. Your appeal will be kept and treated as an early appeal against the 1986 roll in compliance with Section 40 [4], copy attached.
>
> The Court of Revision, in reviewing your late submission, has investigated your assessment under their powers in Section 44 [1] [b], a copy of which is attached.
>
> As the Court has chosen not to deal with your letter of appeal as it was out of time, you may wish to file an appeal to the Assessment Appeal Board. Attached are Sections 67 and 68 of the *Assessment Act* outlining the procedure and I would point out that the required fee is $5.00 for the first parcel and $2.00 for each additional parcel.
>
> Yours truly,
>
> "H.R. Jones"
>
> H.R. Jones
> Area Assessor."

In the Stated Case only the middle paragraph of that letter was quoted. A Stated Case should not take material out of context. The statement of facts should not be designed to mislead.

After receiving that letter the appellant appealed to the Assessment Appeal Board on the grounds set out in a letter dated December 6, 1984. Those grounds are stated:

> "(a) We believe the Court of Revision erred in law in refusing to deal with our letter of November 20, 1984.
> (b) We believe the assessed land value is excessive."

The Assessment Appeal Board then heard evidence and argument as to whether the appeal should be considered. It ruled on October 31, 1985 that the appeal could proceed on its merits.

That means to hear the appeal from the assessment of the Dunbar Street property. It is common ground that we are here talking about an appeal from the assessment of the property, not from the decision not to consider the assessment. The letter that started the appeal, the December 6th letter, seemed to contemplate that there was no decision when it said that "the Court of Revision erred in refusing to deal with our letter".

After the Appeal Board decision the assessor gave the notice required for a Stated Case and that case raised three questions:

> "1. Did the Board err in law in finding that the appeal to the Board complied with the requirements of the *Assessment Act*?"

The answer in the order of Mr. Justice Wood was yes.

> "2. Did the Board err in law in ruling that the appellant, Chevron Canada Limited, was entitled to proceed with its appeal on the assessed value of its land?

The answer to it was yes.

There was a third question but the order under appeal gives no answer to that.

Oral questions for judgment were given and it is this statement that attracts this appeal:

> "The answer to each of the three questions depends on my determination of what exactly occurred before the Court of Revision. I am satisfied on the material before me that the Court of Revision refused to hear the "appeal" of the taxpayer due to the fact that it was out of time."

The appellant says that this shows error; it demonstrates that the trial judge was considering a question of fact, not law. But reading on discloses that that is not so. Mr. Justice Wood continued:

> "The question apparently put to the assessor by the court, namely whether there was any indication of an error in valuation, may have been a request that the assessor make any report required by Section 9 of the Act, or it may have been a general inquiry made so as to enable the court to exercise its discretion whether or not to hear the late appeal. In any event, it was not an inquiry that amounted to a determination of the appeal on its merits, and it is my opinion that a determination on the merits is what is meant by the phrase "decision of a Court of Revision" in the second line of Section 67 (1) of the Act."

S. 67 (1) provides that:

> "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."

That is a very broad provision indeed. I wish to say nothing that would narrow it. For the purposes of this appeal we are concerned with whether or not there was a decision upholding the assessed value of the property on Dunbar Street. We are not concerned about whether there was any other sort of decision that was appealable.

The question on which the appeal to Mr. Justice Wood turned was whether or not what the Court of Revision did constitutes a decision of the Court of Revision with respect to the assessed value of the property in question. In my view the decision of the Appeal Board included a decision of fact and law whether under the circumstances the statute permitted an appeal on the merits of the assessment (I emphasize on the merits of the assessment) to the Assessment Appeal Board.

The facts considered by the Board to come to its conclusion are those set out in the Stated Case. The questions raised by the Stated Case then are whether the Board's conclusion could follow properly as a matter of law on those facts.

The Chambers judge, notwithstanding the part of the reasons to which I first referred, accepted the facts as found and decided the legal consequences. He was deciding whether on the facts found by the Board there was an appealable decision on the merits of this assessment. He said in his reasons:

> "The wording of the second paragraph of Mr. Jones' letter of November 22, 1984 would, at first blush, suggest that the Court of Revision made a decision under Section 44 (1) (b), but I am satisfied that a mere investigation without an adjudication on the assessment or complaint, that is to say without a determination that the assessment in question is fair, equitable and fairly represents actual values within the municipal or rural area, does not amount to a decision as that term is used in Section 67 (1) of the Act."

That is a decision on a question of law. Accepting the facts, was there a decision on the merits of this assessment as the term 'decision' is used in s. 67 (1)? On that question I think that the Chambers judge clearly came to the right conclusion.

Other issues were argued by counsel for the appellant, but all depend on the finding that there was a decision by the Court of Revision on the merits of this assessment. As I agree with Mr. Justice Wood that there was not, I need not deal with those other questions. I conclude that the decision below was on a question of law and that it was decided correctly. Consequently, I would dismiss the appeal.

ANDERSON, J.A.: I agree. I would add that there was an argument by counsel for the appellant that the Court of Revision failed to adhere to the principles of natural justice by hearing the assessor only in determining that "investigation" would not be made by the Court of Revision in accordance with s. 44 (1) (d) of the *Assessment Act*. This issue was not raised in the appellant's factum and I, therefore, have not considered this argument.

McLACHLIN, J.A.: I agree.

SEATON, J.A.: The appeal is dismissed.