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S. BREMNER

v.

ASSESSOR OF AREA 11 - RICHMOND-DELTA

Supreme Court of British Columbia (A863052) Vancouver Registry

Before: MR. JUSTICE MACDONALD (In Chambers)

Vancouver, October 1, 1987

Richard Fister for the Appellant
John E.D. Savage for the Respondent

Reasons for Judgment October 5, 1987

The first question on this appeal by way of stated case turns on whether or not the Assessment Appeal Board "refused to consider" evidence of the assessed value of a comparable parcel of land. It seems clear from the authorities reviewed by counsel that:

(a) Not only is the Board entitled to consider evidence of the assessed values of comparable land (see, *B.C. Assessment Authority et al.* v. *Simpsons-Sears* (1981) 27 B.C.L.R. 77 (C. of A.) at pp. 83 and 84), it has an obligation to consider such evidence (see, *Oxford Development Group* v. *Assessor of Area No. 02-Capital* (1980) 12 M.P.L.R. 259 (B.C.S.C.) at pp. 266 and 267).

(b) The weight to be attached to such evidence is for the Board to decide. It is entitled to "disregard" such evidence in the sense that it attaches no weight to it. (See, *Pointer* v. *Norwich Assessment Committee* [1922] 1 K.B. 471 (C. of A.) at p. 476.)

With those principles in mind, I have considered both the Reasons of the Board delivered on April 22, 1986, and the extracts from the transcript of the proceedings before the Board on March 4, 1986 to which I was referred by counsel in the course of argument. While it is easy to understand why the remarks of the Board during the course of the hearing left the impression with the appellant that the Board was refusing to consider the evidence which he presented regarding the assessed value of lot 239, I have concluded that his impression was incorrect.

The problem arose in part from a submission by the counsel who appeared for the respondent on the hearing before the Board. He submitted at the conclusion of the appellant's direct evidence before the Board, that the appellant had "submitted no evidence as to actual market value" and asked for the appeal to be dismissed. Against that background, the Board's comments on the evidence which had been led by the appellant were easily misunderstood. As Lambert, J.A. stated for the court in the *Simpsons-Sears* case (above, at p. 84), "evidence of comparable land. . . may not be the best evidence of actual value. . . but it is some evidence."

The evidence which the appellant sought to introduce was admitted. I have concluded, after reviewing the transcript of the proceedings before the Board, that the Board considered that evidence. Statements such as "you have not shown that the (assessed) value of lot 239 . . . is correct" (transcript p. 50) and". . . there has been insufficient evidence of value to make a case" (transcript p. 53) support that conclusion. It is reinforced by the Chairman's oral summary of the

Board's reasons for dismissing the appeal before it in respect of the lots H and the remainder of lot 72:

> . . . the principal requirements are with respect to finding the correct actual value. . . and . . . while the requirements with respect to a fair and equitable relationship [between comparables] are important, they must be satisfied by finding proper value for all properties. . . the correct thing to do is to correct the property that is incorrect. . . the Board is not satisfied that any proof has been presented to indicate what the true market value of the subject property is or that the roll value given to the comparables is any more reliable than that of the subject property.

A restatement of the last portion of those reasons to read "sufficient evidence," rather than "any evidence," might have avoided this stated case. However, I am satisfied from the whole of the oral reasons that the Board considered the apparent disparity arising from the appellant's analysis between the assessed values of lot 239 and lot H to be of insufficient weight to justify granting his appeal in respect of the latter. On the appellant's evidence, one of those assessments was wrong. The Board concluded that the assessment error may well have been in respect of lot 239 rather than lot H.

The bottom line is that the Board, in my view, did not "fail to consider" the evidence of the assessed value of lot 239. Thus, Question 1 on the stated case is based on a false premise. No error in law has been shown. The appellant did not argue Question 2 (the onus on the appellant) before me.

With respect to Question 3, involving a third parcel and the question of whether the assessed value of dairy buildings should be reduced by 25% from market value because of the lack of a milk quota, the appellant's argument is that the *de minimus* principle does not apply to what is essentially a taxing statute. The respondent replies by pointing to the Board's written reason in respect of the third parcel under appeal. The Board states that "Unfortunately, the appellant's position of 25% [reduction in assessment of farm buildings] is not further quantified, or supported in any other manner by evidence."

I agree with the submission of the respondent that the absence of evidence was the basis for the Board's rejection of the appeal in respect of the third parcel, and the *de minimus* comment simply a passing remark to justify so doing in the light of the Board's expressed sympathy for appellant on this issue. The transcript disclosed the Board's attempts to develop an analogy between the lack of a milk quota and the pulp and sawmill situations in the forest industry insofar as "economic and functional obsolescence and any other circumstances affecting the value. . ." is concerned. Question 3 is also based on an incorrect premise. No error in law occurred.

Costs should follow the event, but there will be liberty to apply in that regard.