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CAPTAINS ENTERPRISES LTD.
DEWDNEY INN LTD.
VANPAT INVESTMENTS LTD.
I. & B. INVESTMENTS LTD.

V.

ASSESSOR OF AREA 13 - DEWDNEY - ALOUETTE

SUPREME COURT OF BRITISH COLUMBIA (A872843) VANCOUVER REGISTRY

Before Mr. Justice Legg

Vancouver, January 8, 1988

J.R. Lakes for the appellants
C.R. Considine for the respondent

Reasons for Judgment January 12, 1988

The issue on this appeal is whether the Assessment Appeal Board (the Board) exceeded its jurisdiction when it gave leave to the appellants to withdraw their appeals to the Board over the objection of the Assessor who had not appealed but who wished to lead evidence to support increased assessments of the appellants' properties under appeal to the Board.

Facts in the Stated Case

The appellants own neighbourhood public houses. They appealed the assessed values of the lands and improvements comprising these properties to the Court of Revision. The Assessor did not appeal these assessments. The stated case does not reveal the outcome of the Court of Revision's decisions but presumably the results were not acceptable to the appellants because appeals were taken to the Assessment Appeal Board.

The first of these appeals by Captains Enterprises Ltd. came on for hearing before the Board on April 10, 1987. What then occurred is set out in the stated case as follows:

> 4. At the beginning of the hearing, Mr. Bill Hunter, a principal of Captains Enterprises Ltd., appeared and advised the Board that on the evening of April 9, 1987 he had received a telephone call from a member of the Assessment Authority staff who informed him that the Assessment Authority would be taking the position at the hearing that the value of the appellant's property should be increased from $247,200 to $700,000, nearly a threefold increase.
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> 5. The other appellants named herein were all represented at the hearing, and all advised that they had also been lately advised of the Assessor's intention to seek substantial increases at the hearing of the appeal.
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> 6. The values appealed against were the values recommended by the Assessor to the Court of Revision, which recommendations were confirmed by the Court of Revision.

7. Mr. Hunter requested, and was granted, an adjournment to engage counsel to represent his company. Mr. Hunter and the representatives of the other appellants then conferred and agreed that since the issues arising out of all these appeals were likely to be the same, the appeals should be consolidated and a lawyer retained to represent all their respective companies. The respondent did not object to this procedure, and the Board adjourned all four appeals to April 30, 1987 for a consolidated hearing.

8. On April 30, 1987, the appellants were represented by J.R. Lakes, and the respondent by Christopher Considine. Mr. Lakes advised the Board that upon further consideration, the appellants had each decided to abandon their appeals and requested leave to withdraw each of the appeals pursuant to Rule 5 of the Province of British Columbia Assessment Appeal Board Rules of Practice and Procedure. Mr. Considine opposed Mr. Lakes' application.

9. The Board, for reasons expressed in its decision dated June 18, 1987, allowed Mr. Lakes' application and granted all the appellants leave to withdraw their appeals.

Reasons of the Board

In its reasons for allowing the appellants to withdraw their appeals the Board referred to its earlier decision in *District of Tumbler Ridge and Assessor of Area 27 - Peace River* v. *Assessor Area 27 - Peace River* (The Tumbler Ridge case). In that case appeals had been initiated by the District of Tumbler Ridge and by the Assessor with respect to lands owned by Quintette Coal Ltd. The values of the assessments in issue were substantial, the issues relatively complex and a large amount of preparation had been required by all parties to the appeal. If the Board had allowed those appeals to be abandoned the values that would have been confirmed would have prevailed for two assessment years. The Board refused leave to the appellants in the Tumbler Ridge case to withdraw their appeals and ordered that the hearing proceed. The Board stated that it was satisfied that the assessments in that case could not be correct and that it was the Board's duty to ascertain the correct actual value of the properties under appeal. The Board's decision was reviewed on an application under the *Judicial Review Procedure Act* by Mr. Justice Meredith of this court (8 B.C.L.R.) (2d) 51 who held that Rule 5 of the Assessment Appeal Board Rules of Practice and Procedure which provided that an appeal might be abandoned or withdrawn only with leave of the Board was a valid rule and that he would not interfere with the Board's exercise of its discretion.

In its reasons in the case at bar the Board stated that in the *Tumbler Ridge* case it was aware of factors which cast doubt on the accuracy of the assessment, that confirmation of the assessment would have imposed the consequences of any error on the taxpayer for the present as well as the succeeding taxation years and that it had complied with its mandate to establish proper assessed values.

It found the circumstances of the appeals in the case at bar "quite different" and noted that the Assessor, who had valued the properties under appeal, made recommendations to the Court of Revision which were implemented. The Assessor's reason for opposing the appellants' withdrawing their appeals was that this would:

> "deny him the opportunity to establish that a different method of assessment should be employed and still different and vastly higher values found for these properties".

The Board rejected the position taken by the Assessor in the following passage of its reasons:

> The Assessor's counsel now asserts that the Assessor wishes the opportunity to show that still another set of values should be applied. Faced with this curious state of affairs the Board can not help but have some misgivings about all the values propounded at various times by the Assessor, including the values recommended to the Court of

Revision, which values ultimately became the values on the Rolls. In addition the Board is mindful that Mr. Justice Meredith, at the very least, cast doubt on the decision of the Board in the *Wellington Apts. Ltd.* appeal, in which case the Board allowed an owner to withdraw his appeal in the face of a threat by the Assessor that the Board would be asked to increase the assessed values.

Notwithstanding these factors the Board is not disposed to require the Appellants to proceed with these appeals.

This is not a situation like the *Tumbler Ridge* case in which the Board is aware of specific considerations not properly taken into account which, if taken into account, would have an obvious effect on the values.

All the Assessor was able to proffer in the present cases was that he had decided that a different method of valuation should be employed. This contention certainly lacks the specificity of the taxpayers assertion in the *Tumbler Ridge* case that no allowance had been made for economic obsolescence.

Nor does the Board consider that Mr. Justice Meredith's apparent reservations regarding the decision in the *Wellington Apts. Ltd.* case lend support to the Assessor's case. It would be otherwise if the values on the roll had not been reduced by the Court of Revision in response to recommendations put forward by the Assessor. In these circumstances, the threat that a case would be made in support of a large increase when the resulting values are appealed could be viewed as being coercive.

Also, unlike the situation in the *Tumbler Ridge* case, if the Assessor believes that the assessed values are in error and if the error is one upon which the Assessor could justify making an entry on the revised roll, that expedient is open to him in the second year of the biennial process.

The Respondent counsel's contention that Section 70 of the *Assessment Act* entitles him to a hearing is not persuasive. The Board finds that in this instance, Section 70 has no application until the preliminary determination of whether there is to be a hearing is made. Taking all the circumstances of the present case into consideration the Board hereby grants leave to the Appellants to withdraw their appeals in these proceedings.

The Questions

The questions stated by the Board for the opinion of this Court are:

1. Was the Assessment Appeal Board acting in excess of its jurisdiction when it allowed the appellants to withdraw their appeal and failed to take evidence from the assessor pursuant to Section 70 of the *Assessment Act*?

2. Did the Assessment Appeal Board err in law in failing to take evidence from the assessor and failing to determine the assessment of both land and improvements pursuant to Sections 69 and 70 of the *Assessment Act*?

3. Did the Assessment Appeal Board err in law in granting leave to the appellants to withdraw their appeal?

Opinion

The answers to the questions on which this court is requested to give an opinion depend on whether a request made by the assessor to hear the evidence which the assessor sought to

adduce at the commencement of the hearing of the appeals placed the Board under a mandatory duty to hear the evidence.

Counsel for the Assessor submitted that Section 70 of the *Assessment Act* was mandatory in requiring the Board to proceed with an appeal if either party to the appeal requested it. Once this request was made, the Board was under a statutory duty to proceed and could not exercise its discretion to grant leave to an appellant to abandon an appeal.

Section 70 of the *Assessment Act* provides:

> **70.** An appeal under this part shall be deemed to be in respect of both land and improvements and, at the request of a party to the appeal, the board shall take evidence with respect to, and determine the assessment of, both land and improvements in accordance with Section 69.

Counsel argued that the word "shall" in the third line of this section must be construed as imperative (he relied upon Section 29 of the *Interpretation Act*, R.S.B.C. Chapter 206, *Gibson* v. *Adams* [1905] 2 W.L.R. 72 (B.C.C.C.) at p. 73 and Driedger *The Construction of Statutes* p. 14). He referred to Rule 5 of the Assessment Appeal Board Rules of Practice and Procedure which I have referred to earlier and to Section 61 (c) of the *Assessment Act* which provides that the Board:

> "61 (c). . . may make rules not inconsistent with this Act for its own government and for conducting hearings and proceedings before it".

He submitted that Rule 5 was inconsistent with the procedures laid down by the *Assessment Act* and in particular with the mandatory provision in Section 70:

> ". . . at the request of a party to the appeal, the Board shall take evidence".

In my opinion counsel's argument focuses on the literary meaning of the word "shall" and fails to give proper regard to the Board's right to govern its procedures as an appellate tribunal.

If counsel's interpretation is given to Section 70 the Board would be required to take evidence on an appeal at the dictation of a respondent despite a conclusion reached by the Board that there was good reason for permitting an appellant to withdraw an appeal. I do not think that the drafts man of Section 70 intended that result. Moreover, this court should avoid an interpretation which leads to an absurdity. (See *Re District of Surrey* v. *Assessment Appeal Board*, (1962) 33 D.L.R. (2d) 746 at 749 referring to *Maxwell on Interpretation of Statutes*, 10th ed., pp. 206-208.)

In my opinion the purpose of the section was to state precisely that the Board had jurisdiction to determine the assessment of both land and improvements on any appeal.

The words ". . . at the request of a party to the appeal, the Board shall take evidence with respect to and determine the assessment of both lands and improvements . . ." are a direction to the Board to take evidence and determine the assessment of both land and improvements. That wording must be read in conjunction with other provisions of the *Assessment Act* which govern the appellate function of the Board. In particular the provisions of Section 70 must be read with sections governing the Board's jurisdiction (part 6, Sections 61-73 inclusive and in particular Section 61 (c)).

Section 61 (c) has already been quoted earlier but for ease of reference I quote it again:

> **61.** The board

(c) may make rules, not inconsistent with this Act, but for its own government and for conducting hearings and proceedings before it.

The interpretation of Section 70 of the Act must be consistent with that provision which gives statutory authority to the Board to make rules for its own government and for conducting hearings. To interpret Section 70 in the manner contended for by counsel for the Assessor would permit a party who is respondent to an appeal to prevent the Board from exercising its jurisdiction over its own government and over the conduct of hearings before it and make a mockery of its rule-making power.

The Board has made Rule 5 which provides that an appeal may be abandoned or withdrawn only with its leave. In the *Tumbler Ridge* case Mr. Justice Meredith of this court held that the power to make this pre-hearing rule was consistent, not inconsistent, with the Act. The questions of law in this stated case do not question the validity of that rule or the power of the Board to make that rule.

In my opinion proper effect can be given to the provisions of Section 70 of the *Assessment Act* by reading the words: "At the request of a party to the appeal the board shall take evidence with respect to . . ." as being subject to the right of the Board to enact a rule, such as Rule 5 and to exercise its discretion pursuant to that rule. To require the Board to proceed with an appeal when it has considered that leave to abandon the appeal should be granted negates and frustrates its jurisdiction in a manner not intended by the wording of Section 70.

I therefore conclude that the Board did not act in excess of its jurisdiction when it allowed the appellants to withdraw their appeals. Having exercised its discretion pursuant to Rule 5 to allow the withdrawal, the Board did not fail to take evidence from the assessor pursuant to Section 70. The answer to the first question asked is "No". It follows for the reasons contained in this opinion that the answer to questions 2 and 3 are also "No".

The named appellants are entitled to costs against the respondent.