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SHEILA A. COLWILL

v.

ASSESSOR OF AREA 01 - SAANICH/CAPITAL

Supreme Court of British Columbia (90/1634) Victoria Registry

Before MR. JUSTICE HUTCHISON Victoria

Victoria, October 14, 1990

The Appellant appeared in person
J. Legh for the Respondent

Reasons for Judgment (Oral) October 14, 1990

THE COURT: Mrs. Sheila Colwill appeals by way of Stated Case a decision of the Assessment Appeal Board attached to the Stated Case. The Assessment Appeal Board ruled on her assessment appeal May 18, 1990 and she, I think perhaps with the aid of her solicitor at one point, stated a case which she has this afternoon argued before me. The Stated Case poses four questions for resolution.

(1) Did the Board err when it did not assess the value of the subject land fairly to reflect the evidence given?

(2) Did the Board err in making a decision on the value of the subject property that does not bear a just and fair relation to the value at which similar land and improvements are assessed?

(3) Did the Board err in law by deciding the best indicator of improvement value of the subject property to be a Cost Approach?

(4) Did the Board err in law by accepting the Assessor's recommendation to increase the subject property value?

I will deal first with question number 4 because it poses a vexing problem to Mrs. Colwill who went to the Court of Revision to have her assessment lowered by reason of her property having recently been designated heritage by the Municipality of Saanich. After that hearing, her assessment was confirmed by the Court of Revision. The assessment was for land $93,000, for improvements $98,900, making a total assessment of $191,900. She appealed to the Assessment Appeal Board. At the Board, the Assessor relied on an appraisal by Ms. Passmore, she having prepared an appraisal which asked the Board to find the actual value of the subject property at $257,500, or broken down, land $128,500 and improvements $129,000. That was the Assessor's recommendation. The Board, which is not unusual in this type of case, came down with an assessment somewhat in the middle of the Court of Revision and the Assessor's $257,500, broken down this way: $130,000 for improvements and $93,000 for land, for a total of $223,000.

Does the Board have jurisdiction to move the assessment upwards when the appeal is by the taxpayer to have the assessment reduced? That is really the import of question number 4 in this Stated Case.

Unfortunately for Mrs. Colwill the answer to that question is yes, and the authority for that proposition is the British Columbia Court of Appeal in Case 122 cited by the Assessor involving the *Assessment Commissioner and the Assessment Area of Burnaby-New Westminster* v. *Trizec Equities Limited* and the *Assessment Commissioner* v. *Western Forest Industries Limited*, both argued before the Court of Appeal in 1980. I think that it is perhaps summarized by reading Mr. Justice Seaton in that case at page 730-4 where he says,

"Section 71 employs language that covers the questions on this appeal. If the Board decides that a property ought to be valued at $10,000 and it is in fact valued at $8,000, it seems to me that an assessment roll showing $8,000 contains an error that `may be corrected' so that `an accurate entry of assessment . . . may be placed on the assessment roll by the Board.' That is what section 71 authorizes the Board to do. The Board is permitted by section 71 to reopen `the whole question of the assessment on that property.' What could be broader than that?"

Read in its totality, that case is clearly authority for the proposition that when taxpayers appeal from the Court of Revision to the Assessment Appeal Board, the Board may move the assessment upwards as well as downwards. That is one of the risks taken on by the Appellant, unfortunately. Unfortunate because the Board, unlike the Court of Revision, does not have jurisdiction to move up to actual value other properties on the roll, the latter's jurisdiction being to revise the roll, the former confined by s. 69 (2) to over-assessments but not apparently to under-assessments, possibly a legislative glitch. When the matter is brought to this Court it has no jurisdiction except to determine whether or not the Board has made an error in law, and if so, say so and remit the matter back to the Board for appropriate and proper action.

Here, the question in my view is entirely one of fact. The Board is obligated to determine the actual value of the subject property. That is its fair market value as of July 1, 1988. The Board purports to have done that. The Appellant says that they failed in their obligation because the Board put in its reasons that it does agree that the heritage designation has effectively eliminated any subdivision potential and consequently the ultimate utility of the land is impaired.

Unfortunately, the Board goes on to say the Appellant did not present any expert documentation on how to measure this impairment. Then the Board goes on: "Having considered all of the evidence, the Board finds the best indicator of actual value for the subject property to be the land value as confirmed by the Court of Revision plus the improvement value calculated by Ms. Passmore in the Cost Approach to value."

I think it is clear that while it is not terribly well expressed, that the Board was aware that they had a difficult problem, namely, to allow something for the impairment of the value because of the heritage designation. The amount of that diminution was entirely for them and entirely in their jurisdiction. They pointed out the Appellant had brought them no evidence. It was for them to assess the amount, however.

It is similar to a court having a duty to award damages even though they be difficult in estimating. This Court's jurisdiction is only to look for error in law. The Board said that it considered all of the evidence and valued the property accordingly. I think when one considers the Assessor's valuation as brought to the Court of Revision and the Assessor's submission to the Board about actual value, the Board has reduced it in the way it said by adopting the Court of Revision's land value but allowing the Assessor's improvement value. That in effect was a reduction from the Assessor's figure of actual value, $257,500, marking it down to land value $93,000 for a diminution of $35,500 for heritage designation. The mechanics by which the Board does its work

is for the Board, or in arriving at an assessment, for the Assessor. The language is very broad and permissive and clearly, though, indicates to the Board, the Court of Revision, and the Assessor that they must find actual value. This Appellant says that they failed to arrive at a fair and just relation for the value of her property for other land and improvements assessed nearby her.

The argument is that the roll to be appropriate should reflect fairness by having assessed values bear a true and just relation, each with the other. Unfortunately, the law does not bear out that interpretation. The fact is that the obligation of both the Assessor and the Court of Revision and the Assessment Appeal Board is to find actual value on all land. Therefore, if they do so all property will have a fair and just relation one to the other. If for one reason or another some property is assessed under the actual value, the Assessor is not to lower the value of the Appellant's property, but the Appellant, whoever that person may be, must complain to the Court of Revision at the appropriate time to have the roll on other properties revised upward.

The authority for that proposition is found in the Stated Cases, and in particular *Simpsons-Sears Limited* v. *Assessment Area of Surrey-White Rock*, Case 136, and again B.C. Court of Appeal. I think it follows from a clear reading of the decision of Mr. Justice Lambert, in particular at page 802-3 where he says,

"There is provision in the *Assessment Act* for the owner of one property to appeal an assessment of an adjoining property, or any other property in the municipality, on the ground that it is too low and does not result in just and equitable treatment for the owner of the first property.

In my opinion, the approach that was taken by the Assessment Appeal Board in relation to that interpretation of the first question was the correct one."

The meaning of his decision is that the question stated for me, namely: Did the Board err in making a decision on the value of the subject property, that does not bear just and fair relation to the value of which similar land and improvements are assessed, must be answered no, it did not for the reasons given by Mr. Justice Lambert in that case.

I appreciate there is little satisfaction for the Appellant to be told her remedy is to appeal her neighbours' assessments. However, if Assessors stray from the readily ascertained formula of what a ready, willing and able buyer will pay to a ready, willing and able vendor on July 1st in exchange for some abstract concept of just and fair relationship of values, more mischief than justice is likely to occur. Most homeowners know, or at least have some idea, what they could sell their home for. They are less likely to know whether their home is worth more or less than their neighbour's and whether or not the neighbour's property is assessed at actual, that is fair market value.

I think that disposes of the real thrust of this Appellant's arguments, but I will for clarity review the questions and give the appropriate answers.

Question 1:

Did the Board err when it did not assess the value of the subject land to fairly reflect the evidence given? The answer is no. The reason is that they had the duty to look at all of the evidence and they did, thus the question to me is merely one of fact, not of law.

Question 2:

Did the Board err in making a decision on the value of the subject property that does not bear a just and fair relation to the value of which similar land and improvements are assessed? The answer is no and the reason is as I have previously stated, the obligation is to find actual value and that if all properties are assessed at actual value, they end up bearing a just and fair relation to each other. It is not to arrive at a roll that bears similarity in all respects, one to the other, although that will occur if all property is assessed at actual value.

Question 3:

Did the Board err in law by deciding the best indicator of improvement value of the subject property to be a Cost Approach? The answer is no, and the reason for that is that the method by which a Board arrives at its valuations is entirely up to it, and it is a question of fact. The Cost Approach is too well known to be subject to interference by this Court. It is not an error in law to use such an approach.

Question 4:

Did the Board err in law by accepting the Assessor's recommendation to increase the subject property value? The answer to that is no and for the reasons already stated. Once the assessment is open before the Assessment Appeal Board, that Board has jurisdiction to determine actual value and if it means an increase in the assessment, they have jurisdiction and a duty to increase it, just as they have jurisdiction, should they find that it is over-assessed, to reduce it. That is the scheme of the Act and I think that disposes of my obligation under the scheme of the Act, which is to interfere where clearly an error of law has occurred, and that has not been demonstrated here, unfortunately, as I have some sympathy for the Appellant.