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DAVID AND BEVERLEY A. ROSS AND ALAN J. GRUBB

v.

ASSESSOR OF AREA 10 - BURNABY/NEW WESTMINSTER

SUPREME COURT OF BRITISH COLUMBIA (A912647) Vancouver Registry

Before the HONOURABLE MR. JUSTICE HOOD (in chambers)

Vancouver, August 15, 1991

Beverley A. Ross for the Appellants
G. Holeksa for the Respondent

Reasons for Judgment September 26, 1991

This matter has come before me by way of a Stated Case and is in fact an appeal from a decision of the Assessment Appeal Board pursuant to s. 74 (2) of the Assessment Act R.S.B.C. 1979 Chap. 21 (the Act) at the requirement of the Appellants David and Beverley A. Ross and Alan J. Grubb.

The Appellants own lots at 529, 527 and 515 Carnarvon Street in New Westminster. The lots form a .396 acre parcel and are zoned C-4, which is central business district zoning. The lots, which are the subject of the appeal, are lots 529 and 527.

Adjacent to the lots referred to on Carnarvon Street are three lots numbered 513, 509 and 433. Together they form a .5 acre parcel. The lots have a common owner who is not a party to the appeal. These lots are zoned RM-6, which permits high density multiple residential dwelling. I will refer to them from time-to-time as the RM-6 lots.

Some time earlier the Assessor had appraised lot 515 mistakenly on the basis that it was an RM-6 lot. This was subsequently corrected by a Supplementary Assessment Notice for that lot which was issued in March, 1991. As a result, the Appellants could not appeal the assessment of that lot until the Fall of 1991, although the disposition of the present appeal should apply to that lot as well.

The Appellants' lots were assessed at $45 per square foot. The RM-6 lots were assessed at $35 per square foot. The Appellants contend that their lots are assessed too high relative to the assessment for the RM-6 lots. They, in effect, seek a reduction of the assessment to $35 per square foot based on a detailed comparison they make with the RM-6 lots on what I would call a "parcel" basis. They lump their three lots into one parcel (parcel A) and the other three lots, which I refer to as the RM-6 lots, into another parcel (parcel B) and then compare the parcels.

I will refer to the main points raised or argued by Mrs. Ross in her well-presented written and oral arguments before turning to the questions posed by the Board. Mrs. Ross, as I have already indicated, seeks to deal with the lots as if composed in the two parcels and not on an individual basis. She compares the two parcels and emphasizes their differences in size and area, permitted building density, maximum gross building area, height restrictions and the number of

comparable units that might be built on them. These differences she says, clearly show that their lots have been assessed at too high a value.

Mrs. Ross questions the sampling used by the Assessor of sales of both C-4 and RM-6 lots in the neighbourhood. She argues that historically the C-4 and RM-6 lots have been assessed the same dollar value per square foot and that this should continue. The premium paid for different lots should not be considered when comparisons are made. Mrs. Ross also compared the 1989 purchase prices of lots 529 and 527 to lots 509 and 433 in relation to their assessment, emphasizing that the assessments of the Appellants' lots were substantially more than their purchase prices, while the situation was the reverse as regard lots 509 and 433.

It would seem that in the main, the arguments raised by Mrs. Ross before me were made before, and considered by, the Board. The appeal before it failed and the values found by the Court of Revision were confirmed. In its brief reasons, the Board emphasized that it was its duty to determine the actual value of the lots, and that in their opinion the best evidence thereof was the market evidence adduced by the Assessor.

My jurisdiction in this matter, sitting as a appellant body, is a limited one. It is confined to questions of law only. In Crown Forest Industries Ltd. v. Assessor of Area 6 - Courtenay (1985), B.C. Stated Cases, Case 210, Southin J., then of this Court, set out at page 1191 the duty of the Court in such circumstances. The Court has no power to intervene unless the assessment of the Appeal Board has (1) misinterpreted or misapplied legislation; (2) misapplied principles of general law, or; (3) acted without any evidence or upon a view of the facts which could not reasonably be entertained. I turn to the first question:

> 1. Did the Board err in law when it failed to take into consideration the question of equity as required by s. 69(1)(e) of the Assessment Act when it confirmed the value of the subject land on the 1991 assessment roll?

The question is a bit misleading in that the Board did take into consideration the question of equity, and in fact refers to it in its decision in relation to its analysis of the sales of other nearby plots. In fact, the Board commences its decision by stating that the issue on the appeal before them was equity.

Under s. 69(1) of the Act the Board has, and may exercise, all the powers of the Court of Revision and may determine and make an order accordingly,

> ...(e) Whether or not the value at which an individual parcel under consideration is assessed bears a fair and just relation to the value at which similar land and improvements are assessed in the municipality or rural area in which it is situated; ...

In effect, the Appellants say that the Board has misinterpreted or misapplied the section, and this of course is a question of law. They base their argument in the main on the fact that historically all of the lots in parcels A and B have been assessed at the same value and, more importantly, that recent sales of lots in parcel B establish a higher value for those lots. They say that their two lots in question should be assessed at a value similar to the adjoining RM-6 zoned lots. They say that there is no equity between their three lots, i.e., parcel A and the adjacent three lots, i.e., parcel B.

The Board's task was to establish the actual or market value of each of the Appellants' lots. Historical assessed values alone do not determine current value.

The Assessor led market evidence contained in an appraisal report consisting of an analysis of seven sales of property, including lots 515 and 529 and for (sic) nearby lots. The analysis suggests the values of the lots had increased since the Appellants had bought the two lots

referred to. All of the lots were C-4 zoned, in similar locations within three blocks of the Appellants' lots, and assessed at a similar rate of $45 per square foot.

The Board also had before them a letter containing particulars of all sales used by the Authority in valuing C-4 and RM-6 lands in New Westminster. The sales included nine C-4 sales, three RM-4 sales and three RM-6 sales all occurring in or near the 1989/90 period. The sales indicated an average selling price of $52.70 per square foot for C-4 land, and $41.36 per square foot for RM-6 lands. The Board notes in its decision that it was the Assessor's conclusion that there was a justifiable difference in value based on zoning.

The Board accepted this evidence as establishing a $45 per square foot value of the Appellants' lots. I find no error in law in their doing so. The Appellants' lots were in fact compared to similar lots and premises in order to arrive at the value, and it follows that the value would bear a fair and just relation to the value of the compared lots. The comparison with those lots would be more reflective of actual value than a comparison with the RM-6 lots on which the Appellants base their appeal. The latter lots are not as comparable because they are closer to development and because of "value to owner" considerations which cannot be taken into consideration for evaluation purposes. These matters are reflected in the higher sale prices for the RM-6 lots which the Appellants argue are inconsistent with their assessments being lower than those for the Appellants' lots. I will have more to say about this in a moment.

It is argued, and I accept, that in reaching its conclusion that the Appellants' lots should be assessed higher than the adjacent RM-6 lots, even though the sales evidence relating to the RM-6 lots is to the contrary, the Board had to apply three fundamental principles of assessment. These principles are set out in the cases. Firstly, the value to be assessed is the actual or market value. Secondly, in determining the value of a lot, the Board does not consider a group of lots as a parcel, i.e., as one, as the Appellants have done. The Assessor must treat each lot or parcel as an individual lot or parcel, and assess it on that basis. The importance of this principal in the case at bar will be immediately evident. The RM-6 lots have a greater value as a group as a development site. However, the Assessor is not allowed to consider this and as a result the assessed value of each individual lot is lower than its selling price.

Thirdly, in determining the value of a lot, the Board does not consider the additional value that is ascribed to the lot by the owner. For example, the fact that one owner owns an adjacent lot upon which development may be permitted, does not permit additional value to be added to the lot.

Counsel for the Assessor argues:

> By applying these three principles, the appropriate technique for valuing these lots is to determine what value each lot would obtain in a sale on the valuation date between a willing purchaser and a willing vendor, and the willing purchaser is assumed not to own the adjacent lot or to be paying any additional value for the accumulation of any land for future development.
>
> In this case, the values paid for lots in parcel B reflect additional special value paid by that purchaser for reason which are peculiar to that owner. These considerations are more important to parcel B because parcel B is closer to development than parcel A. These are reasons which cannot be taken into account by either the Assessor or the Assessment Appeal Board.

He argues that accordingly the sale of a lot in Parcel B at a price equal to, or greater than, the price of the Appellants' lots does not mean that at law the two lots must be assessed at equal values. I agree.

> 2. Did the Board err in law when it considered the two lots under appeal to be separate and distinct entities for the purpose of determining market value instead of considering whether the Appellants' entire .396 acre parcel (consisting of 529, 527 and 515 Carnarvon Street) was assessed at a fair and just value compared to the .5 acre parcel that abuts their property on the East?

In my opinion the Board did not err. The Assessor is required to assess each individual parcel or lot. Under s. 4 of the Act he is only allowed to treat a number of parcels or lots as one, as the Appellants have done here, where a building or other improvement extends over more than one parcel or lot. Again, when the definition of the word parcel, i.e., "means a lot ..." and s. 69 (1) (e) of the Act are read together, it is clear that the Assessor must value individual parcels or lots.

> 3. Did the Board err in law when it accepted the Assessor's use of zoning as the sole basis for determining the market value without taking into consideration the many factors which more accurately reflect the market value of real property when it was determining whether the subject land was assessed at a fair and just value compared to the adjoining .5 acre parcel?

It is not clear that the Assessor used zoning as his sole consideration, in that he did compare the Appellants' lots to RM-6 and RM-4 zoned lots as well as C-4 zoned lots. However, it seems to have been a major factor. I see no error in its application, or in the Assessor failing to consider the "value to owner" factor emphasized by the Appellants with particular regard to the lots in Parcel B.

> 4. Did the Board err in law by failing to recognize the possibility that any value attributed to the Appellants' .396 acre parcel because of zoning (permitted usage) is offset by the value of advantages the adjoining .5 acre parcel has; namely, the greater size, higher permitted building density, more buildable square feet, a height variance to 153 feet, and approved building plans for a 74-unit condominium?

In my opinion the Board did not err in this regard and for a number of reasons. They include the fact that the lots must be assessed on an individual basis and "value to owner" factors cannot be taken into consideration in determining the value.

> 5. Did the Board err in law when it accepted statements made by the Assessor and/or his agent as fact, when presented with evidence to the contrary?

In my opinion, the Board did not err in law. The Court should not weigh evidence or question findings of fact unless it appears that the Board has acted without any evidence, or upon a view of the facts which could not reasonably be entertained. Such has not been established in the case at bar.

I have not considered at any length whether each of the questions submitted for the Court's opinion poses a question of law, although questions 1. and 2. clearly do since they involve the interpretation of the Act. However, in the circumstances, I see no need to deal with the question further. I also may have dealt with some matters of fact which I have no power to deal with, save in the narrow perspective to which I have already referred. However, Mrs. Ross is a layperson, and counsel for the Assessor did not take any position on these matters, and my dealing with the case is in keeping with their conduct and submissions.

I am satisfied that the Board did not commit any error in law as alleged in reaching their decision. The simple fact is that it was not appropriate to compare the Appellants' lots to the RM-6 lots, or to put much weight to such comparison, given the different circumstances of the RM-6 lots, and in particular that they were in the process of being developed for a sixteen-storey, 74-unit

condominium project, and the "value to owner" considerations which, while reflected in the sale prices, could not be taken into consideration in valuing the Appellants' lots.

The appeal is dismissed with costs.