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**WILLIAM L. & JEAN M. MARBACH**

**v.**

**ASSESSOR OF AREA 16 - CHILLIWACK**

Supreme Court of British Columbia (A921448) Vancouver Registry

Before the HONOURABLE MR. JUSTICE LOW (in chambers)

Vancouver, January 15, 1993

R. Monashan for the Appellants  
G. Holeksa for the Respondent

**Reasons for Judgment (Oral)**

January 15, 1993

THE COURT: This is an appeal from the decision of the Assessment Appeal Board in Chilliwack under s. 74 of the Assessment Act. There are really four questions to be answered on the appeal, although, the notice of appeal itself raises some twenty questions. The first question is, did the Appeal Board err in law by not requiring the records to be produced under s. 68(7) of the Assessment Act, and Rule 8 of the Board's Rules? I think that is covered by questions 8, 9 and 10 of the notice of appeal. In my view, the Board did not err in not requiring the records because Mr. Marbach, one of the Appellants who acted for both of the Appellants in person on the hearing before the Board, at page 70 of the transcript, specifically waived the opportunity to obtain the records in question, although the opportunity to get the records was clearly given to him.

The second question is, did the Board err in law in accepting the evidence of Mr. McRoberts about the size of the equipment shed on the Marbach property, Mr. McRoberts being the Assessor? As counsel for the Respondent points out, we are unable to find this question anywhere in the Stated Case and arguably it should not be dealt with.

In any event, the answer to it is complete. The only evidence before the Board about the size of the equipment shed came from Mr. McRoberts who specifically measured it, there having been some apparent error in its size in earlier records that he had. Mr. McRoberts was not cross-examined on this point. Mr. Marbach did not testify to the effect that Mr. McRoberts' measurements and calculation of the area of the shed was in any way incorrect. The conclusion that the Board could reasonably have reached on the evidence in the state in which it was presented is that the equipment shed was some forty-three hundred and sixty square feet as testified to by Mr. McRoberts.

The third question is, did the Board err in law by failing to accept the evidence of Mr. Denbowstead (phonetic), being evidence of value or appraisal submitted in a cryptic letter written by that gentleman and filed as exhibit 4? Mr. Denbowstead (phonetic) apparently is a Realtor or in some other way has connection with a company known as Wheeler Realty.

I have reviewed the record and have been taken through it by both counsel. I think the record clearly shows that Mr. Marbach was given every opportunity to accept an offer of an adjournment of the hearing to call Mr. Denbowstead (phonetic). He chose not to call him and chose instead to rely upon his own evidence as to the state and condition of the property and his opinion of the

value of it. The Board ultimately accepted the evidence of the Assessor with respect to these matters and clearly rejected the evidence of Mr. Marbach and in so doing properly performed its function of weighing the evidence to determine the facts. This court has no power to intervene in that process if it is properly followed, which I am fully satisfied it was in this situation.

The fourth question is, did the Board err in law by considering evidence gathered after the valuation date? I think that relates to question 11 in the Stated Case. I simply, quite frankly, do not understand this point. The Board is entitled to accept evidence as to value that is gathered after the assessment date of September 30, 1990. There is nothing wrong with the Board considering evidence gathered after that date, the purpose of the evidence, of course, being to go to proof of value as of September 30th.

I am unable on the record before me and in the reasons given by the Board to find that any error in this respect has been demonstrated. All of the questions are answered in favour of the Respondent, and the appeal is therefore dismissed.

(SUBMISSION)

THE COURT: All right, I see this to be a matter of ordinary difficulty and the costs will be on scale 3.