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ROBERT D. ROSS AND 361536 B.C. LTD.

v.

ASSESSOR OF AREA 09 - VANCOUVER

Supreme Court of British Columbia (A923539) Vancouver Registry

Before the HONOURABLE MR. JUSTICE STEWART (in chambers)

Vancouver, February 12, 1993

Robert D. Ross for the Appellants
Julian Greenwood for the Respondent

Reasons for Judgment (Oral) February 12, 1993

THE COURT: This is a Stated Case brought before me pursuant to s. 74 of the Assessment Act R.S.B.C. 1975 c. 21. The hearing, within the meaning of s. 74 of the Act, took place yesterday.

The Stated Case must call for the opinion of the Supreme Court on a "question of law only". (section 74 Assessment Act.)

The Stated Case says in the statement of the "material facts" that the appeal to the Assessment Appeal Board which resulted in a decision being handed down by the Assessment Appeal Board on July 31, 1992, related to two properties described in paragraph 1 of the Stated Case as follows:

The appeal related to two properties in the Blenheim Flats area in the City of Vancouver as follows:

a) Lot 2 - 2.47 acres with level topography; a dwelling of 1,226 square feet., a 27 stall stable and 3 storage sheds,

b) Parcel 5 - 7.99 acres with a similar topography to Lot 2. There are several buildings on Parcel 5 which were previously used as a commercial venture. The present owner uses certain buildings for residential purposes with a balance unused and in poor condition. The Appellant informed the Board that 361536 B.C. Ltd. had purchased Parcel 5 in April, 1989 for $2,250,000.

The questions as stated on page 5 of the Stated Case on "which the Board is required to ask for the opinion of the Supreme Court" are:

1. Whether the Appeal Board in refusing to consider the property assessment of an identical property located at 7025 MacDonald Street and instead accepting the Assessor's assessments of the two properties under appeal has ignored Rule 8 of the Assessment Authority Act, Chapter 22.

2. Whether the Assessment Appeal Board having heard the matter twice is entitled during an 8 month delay in handing down its decision to refuse to consider sales of other adjacent properties on Celtic Avenue in February 1992.

Mr. Ross stated yesterday on behalf of both Appellants that the "demand" that the Board submit a case for the opinion of the Supreme Court on the second question set out above is, in effect, abandoned. I will say no more about Question 2.

I will now give my opinion "on" the first question set out above.

It is my opinion that the sheet anchor of the question formulated by the Appellants Robert D. Ross and 361536 B.C. Ltd. is an assumption that in this particular case the Assessment Appeal Board "refused to consider the property assessment" of a property located at 7025 MacDonald Street a piece of property which was (fact) "identical" to the subject properties.

It is my opinion that the only conclusion to be arrived at from the content of the Stated Case and the decision of the Assessment Appeal Board is that the fact of the matter is that the Board did consider the evidence and the submission that grounded a "proposal" before the Assessment Appeal Board by the Appellants that the land value for assessment purposes should be calculated by reference to the "property located at 7025 MacDonald Street" as it is described in Question 1 set out above. (The property was described in different ways in the Stated Case - for example as "a nearby 16 acre property" in paragraph 2 of the Stated Case - but Mr. Ross and Mr. Greenwood agreed that the language used in the Stated Case was just a different way of referring to "property located at 7025 MacDonald Street".)

Some of the passages in the Stated Case and the decision of the Assessment Appeal Board attached to the Stated Case as Schedule A that support my conclusion that the "property assessment" as it is referred to in Question 1, supra, was considered by the Board are as follows:

A. Stated Case, paragraph 2.

The Appellant proposed that the land value (for assessment purposes) for the two lots should be calculated by multiplying the 1991 land assessed value per acre of a nearby 16 acre property, namely, $153,412.50 per acre by the respective acreages of the two lots under appeal.

B. Stated Case, paragraph 6.

The Board found the evidence of the Appellants to be of little assistance in determining the actual value of the subject lots. No sufficient market based evidence to produce a value for assessment purposes was provided.

C. Stated Case, paragraph 7.

The Board found that the Appellants' calculation of values for the subject based on comparison of assessed values of non- comparable properties could not be accepted by the Board.

D. Stated Case, Schedule A, page 7 (Board Decision)

The Board finds the evidence of the Appellants to be of little assistance in determining the actual value of the subject lots. Mr. Ross has not provided sufficient market-based evidence to produce a value for assessment purposes. His calculation of values for the subjects based on comparison of assessed values of non-comparable properties cannot be accepted by the Board.

It is my opinion that the second part of the assumption contained in Question 1, i.e. that the property at 7025 MacDonald Street is "identical" with one or both of the properties that are the subject of this Stated Case is an assumption of fact that is not only not based on the content of the Stated Case but flies directly in the face of what is contained in the Stated Case. Here I refer

to Stated Case, paragraph 7 and that portion of Stated Case, Schedule A, Board Decision set out above and note that the language employed is "non-comparable properties". And I note here that Mr. Ross told me yesterday that the reference there was to a "riding club" which is he says also what is meant by "7025 MacDonald Street" in Question 1.

It is my opinion that s. 75 of the Assessment Act which deals with what the Assessment Appeal Board is to do with my opinion once it is received by the Board makes it clear - if there be any doubt on the point - that I have no jurisdiction to offer an opinion on a question that is divorced from the reality of what went on before the Board. That being so and in light of the opinion I have expressed, above, about the assumptions that bottom Question 1 I do not propose to consider, in a vacuum, the meaning and effect of s. 8 of the Assessment Authority Act, the statutory provision referred to in Question 1.

I have, as above, "heard and determined" the question adversely to the Appellants and given my opinion as above. As per a discussion which went on at the end of yesterday's proceedings the "remitting" required by s. 74(6) of the Assessment Act will be completed by counsel obtaining a copy of these reasons for judgment as filed in the registry.

The next step as I understand it engages s. 75 of the Assessment Act and I note here simply for the purposes of clarity that in my opinion I have said nothing which is "at variance" with the conclusion at which the Assessment Appeal Board had arrived.

Costs may be spoken to at a later date if necessary.

I pause here to note that neither Mr. Ross nor Mr. Greenwood appeared this morning. I may have been mistaken but I took it from the discussion that was had yesterday afternoon that Mr. Greenwood intended to be here if possible and I don't believe Mr. Ross said anything about whether he would be here or not. So I think I simply assumed that he would be here. In any event, as neither of them is here -- and in noting what I just noted, I am not criticizing anyone -- so to return to my thought, in light of the fact that neither of them is here, there is no opportunity for me to do now what I had hoped to do, which is to deal with costs. So I will simply have to leave it that counsel can arrange to get back before me at a later date in connection with the issue of costs if necessary.

A NOTE:

I am going to ask Mr. Greenwood to forward a letter, when appropriate, to the registry to be placed on file A923539 (with copies to Mr. Ross and to me) confirming the fact that the Board has received a copy of the reasons set out above and the date it was received by the Board.