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ASSESSOR OF AREA 04 - NANAIMO/COWICHAN

v.

HERMIT HOLDINGS LTD.

Supreme Court of British Columbia (A950307) Vancouver Registry

Before the HONOURABLE MR. JUSTICE FRASER (in chambers)

Vancouver, April 10, 1995

John H. Shevchuk for the Appellant
Anthony C. Abbott for the Respondent

Reasons for Judgment (Oral)

April 10, 1995

This is an appeal by way of Stated Case by the Assessor of Area 04 - Nanaimo/Cowichan, from a decision of the Assessment Appeal Board with respect to a certain property in Ladysmith. The Stated Case has been signed by the Chair of the Assessment Appeal Board, but it has been conceded by counsel for the Assessor that, while the Stated Case was prepared within the Assessment Appeal Board, the questions framed for the opinion of this Court were drafted by counsel on behalf of the Assessor.

The Stated Case is brought pursuant to s. 74 of the *Assessment Act*. It is understood that the only fit subject for this Court to deal with on an appeal of this kind is a question of law.

The question put before me is this:

Did the Assessment Appeal Board err in law when it held that the portion of the subject premises used as the manager's suite should be classified as Residential Premises in accordance with British Columbia Regulation 438/81?

The decision of the Board contains the following finding of fact: "The subject property is a 14-unit motel plus manager's suite, located in Ladysmith". The manager's suite referred to was occupied by a Mr. Rottacker who, so far as the Board knew and so far as the evidence before me goes, is the manager of the motel.

The question raises Regulation 438/81. Section 1, Part 1 of this regulation states that Class 1 property includes land or improvements, or both, used for residential purposes, including single-family residences and apartments. The regulation goes on to specifically exclude hotels or motels, "other than the portion of the hotel or motel building occupied by the owner as his residence". The contention of the Assessor is that Mr. Rottacker did not meet the description of owner and that, therefore, his occupation of the manager's suite did not bring that suite within the exemption. The contention of the Assessor is that only an individual registered as owner in fee simple of the premises could qualify under the regulation.

In its Reasons, the Board specifically referred to the regulation which I have just paraphrased. The Board went on to cite certain decisions of various courts, including some on the significance

of the use of incorporation. It is very much part of the Assessor's case that where an owner is a corporation, as here, it cannot take advantage of the exemption in the regulation. But although the Board referred to the regulation and referred to these corporate veil cases, my conclusion is that its decision was not based either on the regulation or on those cases. The Reasons of the Board conclude with the following paragraph:

"In the present case, the Board is concerned with an activity - the actual use of premises as a residence. The definition of "person" in the *Act* includes a corporation. In the Board's opinion the fact that the owner is a limited company does not alter the fact that a portion of the subject property is used as a residence. It appears that the intent of the legislation is to grant residential classification to the portion used as a residence, regardless of the form of ownership."

My conclusion is that the real meaning of the decision of the Board is that the manager's suite was not to be considered as a part of the motel at all. The implication of this is that the question posed to this Court was not decided by the Board at all, as a question of law.

What the Board appears to me to have done is to find as a fact that the manager's suite was being used as a residence. [Addendum: This finding does not appear to have been based on the owner/occupier exemption.] Thus, in my view, there is not a question of law before me, despite the fact that the Chair of the Board, by signing the Stated Case, seems to have thought that there was. In the result, I conclude that there is no question of law for me to decide. It follows that I will not discuss the corporate veil issue.

The appeal of the Assessor is dismissed.

(SUBMISSIONS)

The Respondent, Hermit Holdings Ltd., will have the costs of this appeal, assessed on scale 3.

(PROCEEDINGS ADJOURNED)