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JOHN & ANNETTE ZWARYCH

v.

ASSESSOR OF AREA 10 - BURNABY/NEW WESTMINSTER

Supreme Court of British Columbia (A950972) Vancouver Registry

Before the HONOURABLE MR. JUSTICE SMITH (in chambers)

Vancouver, April 20, 1995

John Zwarych acting on his own behalf
John Shevchuk for the Respondent

Reasons for Judgment (Oral)

April 20, 1995

This is an appeal by John and Annette Zwarych, the owners of two properties on Gravely Street in Vancouver, British Columbia, from a decision of the Assessment Appeal Board which confirmed decisions of the Court of Revision with respect to the assessments of the two properties in question.

The appeal is brought by way of Stated Case pursuant to s. 74(2) of the *Assessment Act* which permits the stating of a case for the opinion of the Supreme Court on a question of law. The Stated Case poses five questions which are as follows:

1. Did the Appeal Board err in law by using misinformation in making their decision.
2. Did the Appeal Board err in law by using inaccurate data provided by the Assessment Authority in their sales information.
3. Did the Appeal Board err in law by using inaccurate data provided by the Assessment Authority on the selling prices of properties on sale no. 1 and sale no. 2 as shown in Exhibits "4" and "5".

I digress for a moment to say Exhibits "4" and "5" are expert appraisals provided by a qualified real estate appraiser retained by the Assessor.

4. Did the Appeal Board err by using data provided by the Assessment Authority only and not using, or even considering, the Appellant's data.
5. Did the Board err in law by using sale data provided by the Assessment Authority of a land sale which has no resemblance to the properties under appeal.

In *Canadian National Railway Company v. Assessor of Area 9 - Vancouver*, Case No. 273, the B.C. Court of Appeal set out the limited powers of review available to this court on an appeal from the Assessment Appeal Board. This court cannot conduct a re-hearing. The provincial legislature has delegated the power to determine appeals with respect to assessed values to the

Assessment Appeal Board. All this court can do is review the decision of the Board to ensure that it acted within its jurisdiction and committed no error of law.

At pgs. 1572-2 and -3 of the *Canadian National Railway Company* case, the Court of Appeal dealt with the limited review powers available to this court where they adopted with approval the reasons in that case of Mr. Justice Lander of this court. There, Mr. Justice Lander stated that the power of the Supreme Court to intervene is limited to where 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.

The Stated Case here does not suggest that the Assessment Appeal Board misinterpreted or misapplied legislation or that it misapplied principles of general law. The case is founded on the third ground set out in the *Canadian Railway Company* case, that is that the Board "acted without any evidence or upon a view of the facts which could not reasonably be entertained".

So far as that ground is concerned, Mr. Justice Lander went on in that decision, again as approved by the Court of Appeal, to state that this court has no power to intervene unless the Board has been found to have:

1. acted without any evidence; or
2. acted upon a view of the facts which could not reasonably be entertained.

Here, Mr. Zwarych challenges the decision of the Board for the following reasons, as I understand his position:

1. The Board found that the properties have an unrestricted view to the south, when in fact, he says, there is a 10 foot high hedge, on the edge of the adjoining cemetery property, that restricts the view.
2. The Board did not consider evidence that the underground railroad tunnel causes noise and vibration which adversely affects the properties.
3. There was a ground raised with respect to an error in the built area - the square footage of the home - but I understand Mr. Zwarych is not relying on that.

The Board accepted appraisal evidence based on comparables with respect to which the appraiser provided inaccurate information, namely:

- (a) several of the comparables included Goods and Services Tax in the sale price relied upon by the appraiser, and Mr. Zwarych says an adjustment should have been made for that fact; and
- (b) the appraiser made no adjustment to comparable #6 for the facts that it was vacant land in a more desirable area, had a back lane, and did not abut upon a cemetery.

I am entitled to look at the reasons for the Board's decision and the exhibits before them for the purpose of determining whether the Board acted without any evidence or whether the Board took an unreasonable view of the evidence. Authority for that proposition can be found in *Caldwell v.*

Director, Human Rights Court of British Columbia, [1984] 2 S.C.R. 603 at 614. That is a decision of course of the Supreme Court of Canada.

I have read the reasons of the Appeal Board and I have looked at the exhibits filed before them, including the appraisals upon which they apparently relied. I have also paid close attention to the submission capably made before me by Mr. Zwarych. It is clear to me that there was evidence before the Assessment Appeal Board on which they could have relied to reach the conclusions they reached with respect to each of Mr. Zwarych's objections. It is not a case of whether I would agree or not agree with their findings. It is not a question of whether they should or should not have accepted one view of the evidence or the other. My power is limited to determining whether it could be said they acted upon a view of the facts which could not reasonably be entertained and I cannot reach that conclusion.

What this Stated Case boils down to is Mr. Zwarych's contention that the Appeal Board reached a wrong decision. I have no power to decide that question. There was, in my view, evidence before the Board on which they could reasonably arrive at their decision. Each of the questions posed by the Appellants on the Stated Case is therefore a question of fact.

This court has no power to decide questions of fact and I consequently have no power to answer the questions posed. Mr. Shevchuk has advised me that he was instructed to seek no order for costs, and accordingly, there will be no order for costs.