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AVALON MOTOR HOTEL LTD.

v.

ASSESSOR OF AREA 08 - NORTH SHORE/SQUAMISH VALLEY

Supreme Court of British Columbia (A972503) Vancouver Registry

Before the HONOURABLE MR. JUSTICE MACZKO (in chambers)

Vancouver, May 20, 1998

Kenneth Armstrong for the Appellant
John H. Shevchuk for the Respondent

Reasons for Judgment (Oral)

May 20, 1998

THE COURT: This is a Stated Case from the Assessment Appeal Board of British Columbia (the "Board") regarding the assessment of the Avalon Motor Hotel ("Avalon"). The Stated Case, although it was signed by the chair of the Appeal Board, was in fact prepared by someone acting on behalf of Avalon.

At the outset of this hearing, counsel agreed that all of the questions which were posed come down to one narrow question. Both counsel agreed that this Stated Case should resolve the following question:

Was it an error for the Board to find that although the business operations of the Avalon Motor Hotel had goodwill, it should give the goodwill no value?

Facts

The property is a two storey motor hotel of 38,000 square feet built in 1962. The hotel operation consists of 45 rooms, a coffee shop, bistro, lounge, tavern, banquet room, beer and wine outlet, and one office rental.

The matter of the assessment went to the Court of Revision which assessed the land and improvements at \$4,469,000. The Assessment Appeal Board reduced the assessment to \$3,399,000. The Stated Case is on the grounds that there should have been a further reduction because included in that value is goodwill and goodwill cannot be taxed as part of the land.

At the time of the hearing both the Appellant and the Assessor called expert evidence valuing the property by using the business income approach. The Board expressed the view that it would have preferred the real estate lease value approach but neither of the parties was willing to call evidence on that approach. The Board concluded that it had no option but to give its decision based on the evidence before it.

Mr. Shpak, an expert on behalf of the Appellant, gave evidence that the value of the goodwill was \$925,000. The evidence of the Assessor's expert was that there was no goodwill. Goodwill is not to be taken into account in evaluating the property. If it is found that a business has goodwill and

it is evaluated, it must be deducted from the assessed value. In this instance the Board concluded that there was no evidence on which it could make a determination of the value of the goodwill. The Board equated business value with goodwill.

In reaching its conclusion on this point, the Board made the following statement:

Given the Board's view that there probably is business value, it was attempting to adopt Mr. Shpak's analysis. However, the Panel has spent considerable time attempting to rationalize his analysis and finds that it is not reliable. ...

I skip to another paragraph where the Board says:

The Board finds that the parties have not provided evidence on which a realistic determination of business value could be calculated.

The essence of the Board's decision is that although there is probably goodwill in the business, the Board gave it no value because there was no reliable evidence on which to base a decision. This was because it rejected the evidence of Mr. Shpak.

The Appellant argued that the Board acted beyond its jurisdiction in ascribing no value to goodwill where the Appellant had lead evidence of value and there was no evidence to the contrary.

I do not think that this is the law. It is open to the Board to accept or reject evidence whether there is evidence to the contrary or not. The Board did not reject the Appellant's evidence out of hand. Indeed, it carefully explained its reasons for rejecting the evidence of Mr. Shpak.

The Appellant also argued that the evidence before the Board was based on the income method of evaluating the property. The Board said it did not like this method and would have preferred a different method of evaluation. The Appellant argued that the Board in essence rejected Mr. Shpak's evidence because of the method used and that I should draw an inference that it used the real estate lease method of evaluation. This means that its approach was internally inconsistent because it used one method to evaluate the business and used a different method to evaluate the goodwill. The Appellant argued that this was an error in law.

I do not agree with the Appellant's analysis of what the Board did. The Board said that it was using the income approach even though it did not like it. The Board has the power to accept or reject evidence. The Board said that although there was probably goodwill, it rejected Mr. Shpak's evidence of value. Having rejected his evidence there was no evidence of value. I think it would have been an error in law for the Board to arbitrarily ascribe a value to the goodwill once it had rejected the evidence of the Appellant. There is no obligation on the Board to requisition more evidence if the parties choose not to call evidence. It is open to the Board to make a decision on the evidence before it.

I conclude that the answer to the question as redrafted is that the Board made no error in law.

COUNSEL: Costs on scale 3, My Lord?

THE COURT: They will follow the event, yes.