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DARRELL OWEN

v.

ASSESSOR OF AREA 04 - NANAIMO

Supreme Court of British Columbia (S20480) Nanaimo Registry

Before the HONOURABLE MR. JUSTICE SHABBITS (in chambers)

Nanaimo, August 25, 1998

Darrell Owen In Person
G.E. McDannold for the Respondent

Reasons for Judgment (Oral) August 25, 1998

THE COURT: The matter in front of the Court this morning is within proceeding number S20480 of the Nanaimo Registry. This matter is brought by way of a Stated Case to the Supreme Court under part 8 of the *Assessment Act*. The Appellant is Darrell Owen; the Respondent is Assessor of Area 04 - Nanaimo.

The Stated Case relates to a decision of the Assessment Appeal Board of British Columbia dated January 14, 1998, and numbered for reference, appeal number 97-04-00039. The appeal relates to the 1997 assessment roll insofar as it concerns the Appellant's property within the Cinnabar Valley. That property is legally known as Lot 50, Section 14, Range 4, Cranberry Land District, Plan 37164. It is identified in the land registry system under PID number 000-965-600.

The Stated Case before me includes two questions. They are: (1), did the Assessment Appeal Board err in law in allowing the B.C. Assessment to provide false information? and (2), can a property owner legally be taxed based upon false information?

The evidence in front of the Board was that from as early as 1992 and until 1997, the Appellant's property was assessed from year to year on information which was incorrect. The errors included such things as an error in the square footage of the dwelling situate on the property and owned by the Appellant; an error in improvements to the property, such as matters relating to fireplaces; and errors relating to matters affecting the value of the land on which the dwelling is situate.

It is clear to me -- and the Appellant conceded during his submissions this morning -- that when he first requested the Assessment Appeal Board to state a case under s. 63 of the *Assessment Act*, he had in mind that the result of the stated case might be of benefit to him in his efforts to deal with the amount of taxes that he paid from the years 1992 to 1996.

The Appellant's letter of May 11, 1998, received by the Assessment Appeal Board on May 13, 1998, includes within the paragraph numbered four this statement of the Appellant:

> I have been paying taxes on false information obtained by B.C. Assessment since 1992.

There are then further comments by the Appellant. He then makes a further statement under this section of that letter:

> I'm asking that my taxes be corrected back to 1992...

and the matter then continues with further statements.

The Appellant now recognizes that the procedure which he is pursuing in the matter in front of me and the Stated Case in front of me can relate only to the 1997 assessment roll.

The Respondent has referred to s. 11 of the *Assessment Act* which reads in part as follows:

> The completed assessment roll as confirmed and authenticated by the Court of Revision...

and then it goes on and, later, under paragraph (c):

> ... is valid and binding on all parties concerned despite any omission, defect, or error ...

and there are other parts of s. 11.

I make no comment as to whether the Appellant is without remedy in terms of matters arising under the 1992 to 1996 taxation years and assessment rolls. That matter is not in front of me. I do not, with the reasons I make this morning, express any view in respect of matters relating to those taxation years and those taxation rolls. It is not for me to make any comment this morning as to whether the Appellant has a remedy or is without remedy in terms of earlier years. It is sufficient for me this morning to recognize and find, as I do, that the Stated Case in front of me under the *Assessment Act* is one which is by law restricted to the 1997 Assessment Roll.

The material in front of me reflects that the Appellant identified the exceptions he took to the actions of the assessment authorities prior to the hearing of the Assessment Appeal Board which occurred in the fall of 1997. The Appellant made reference to a number of matters on which the Court of Revision had earlier acted and in respect of which he pointed out a number of errors. It appears clear to me, however, that aside from some new evidence which the Appellant referred me to this morning, that all of the submissions that he made to me in respect of the 1997 assessment were made to the Assessment Appeal Board.

Now, as it happens, the reasons of the Assessment Appeal Board reflect that the Appellant's submissions in front of it were that the assessed value of the property ought to be fixed at $150,000 and not at some greater amount. The argument which the Appellant advanced today is that his submission to the Assessment Appeal Board was that the assessing authorities had not appropriately compared the value of his property to neighbouring properties, and had not appropriately taken into account reductions over the years in respect of neighbouring properties. The Appellant submitted this morning that his submission to the Assessment Appeal Board was that if it appropriately recognized comparative values and comparative reductions in the neighbourhood, it would have arrived at a valuation of the lands and improvements at issue in the amount of $150,000 and not at some greater amount.

The Assessment Appeal Board, in fact, determined that the value of the lands and improvements at issue would be fixed at $150,000, the amount submitted by the Appellant as being the appropriate value. The reason, however, why the Assessment Appeal Board arrived at that assessment figure was not the reason submitted by the Appellant, but it was for a different

reason. The Assessment Appeal Board concluded that the value of the land improvements at issue as of July 1, 1996 was of $166,000 market value, but less an amount required to correct a deficiency in respect of a crack in the concrete slab of the garage and the slab of the garage pulling away from a neighbouring perimeter or retaining wall.

The submission of the Appellant in front of me today was that he accepted the reasons of the Assessment Appeal Board as to why it had reduced the value of the lands and improvements at issue, but that the Assessment Appeal Board, although having received the arguments that he made, did not pay heed to them, and that in the result, the value of the lands and improvements ought to have been fixed at an even lower amount than $150,000. In other words, the Appellant submits that there was now a reason why the value should be even further reduced than he had submitted in front of the Assessment Appeal Board, and given that the Board arrived at a value of $150,000 for reasons other than he submitted, there should now be a greater reduction.

When asked this morning by me as to what value he was submitting ought to be ascribed to the property for the 1997 roll, the Appellant suggested a figure of $140,000. In fairness to him, he was not, I think expecting the question and had not really formulated an exact figure that he had in mind but suggested that a $140,000 figure might be appropriate.

What has happened this morning then is that the matter in front of me has proceeded with the Appellant submitting that the value reached by the Assessment Appeal Board was too high, but it was not because the Assessment Appeal Board erred in law in acting on false information but because they did not, in the Appellant's submission, take sufficient account of the information which was provided to them which differed from the information which was in front of the Court of Revision.

The matter then in front of me rests on this: it rests on a submission by the Appellant that the value fixed by the Assessment Appeal Board was too high and that perhaps it should have been $140,000 rather than $150,000.

An appeal by way of Stated Case under s. 63 of the *Assessment Act* is restricted to an appeal on a question of law arising in the appeal. There is no jurisdiction in the Supreme Court to deal with a question of fact. The issue as to what the value of a property is is a question of fact, it is not a question of law. As with all other matters within the judicial system, there is at some point finality in respect of issues which are in front of tribunals or boards or courts. The provisions of the *Assessment Act*, in effect, provide that the appeals from the Court of Revision on matters of fact go to the Assessment Appeal Board and that, in effect, appeals on matters of fact end at the level of the Assessment Appeal Board. There are further appeals to the Supreme Court and to the Court of Appeal in respect of matters of law, but not in respect of matters in fact.

Now, I was referred by the Respondent to the decision of *Winkler* v. *Assessor of Area 9 - Vancouver* pronounced in proceeding number A973327 of the Vancouver Registry. That was a decision of Mr. Justice Owen-Flood given February 27, 1998. Mr. Justice Owen-Flood at pages 2530 and 2531, adopts the reasoning of Mr. Justice Macfarlane in *Stock Exchange Building Corporation Limited* v. *City of Vancouver*, and he quotes with approval this comment by Mr. Justice Macfarlane:

> However, it is clear that the determination of the question of what is a comparable property is a question of fact and not of law.

He then went on to say that he (Mr. Justice Owen-Flood) accepted and noted that insofar as appeals such as this one go, the choice of method of assessment and fixing of value, are questions of fact and consequently are not open to judicial review.

He concludes:

> That is a law that was enunciated by Lambert J. in *B.C. Hydro and Power Authority* v. *Assessor of Area 10 - Burnaby*.

that being a decision of our Court of Appeal.

I find that with that, the matter in front of me is determined in the sense that there is no issue in front of me for me to consider.

The two questions which were posed by the Stated Case would be of relevance to earlier taxation years, if they were relevant at all, but that is not in front of me. The matter which was pursued in front of me this morning is that the value fixed for 1997 was incorrect. That is a matter of fact for the Board to consider.

Now, I did during the break before reconvening for these reasons, read again with some care the reasons of the Assessment Appeal Board. I had read the file before starting this morning. I am satisfied from my reading of the reasons that the Assessment Appeal Board did have in front of it and did consider all of the submissions in respect of value which Mr. Owen placed in front of me today. They then came to the decision that they did, fixing the value at $150,000. Even though, as it happens, the value was as Mr. Owen thought it should be at that time, and even though as it happens it was not for the reasons that Mr. Owen expressed, the decision was theirs to make and it is not for me to make any comment as to the decision that was reached.

Now, Mr. Owen did make reference to evidence which he says exists and which arose subsequent to the hearing in front of the Assessment Appeal Board reflecting that the square footage of the property is even less than was thought to be the case at the time of the hearing and reasons involving the Assessment Appeal Board and as to other matters which further affect the property. This is new evidence and, as in the *Winkler* decision, it is not a matter which I can take into account. As with all of these matters, there is at some time a point at which there is finality and at which a decision rests, barring perhaps some other reason why the matter should be reopened. Suffice it for me to say that no one suggests that there was any reason for the matter to be opened at the outset.

The result then is that for the purposes of the record, I decline to answer the two questions posed by the Assessment Appeal Board. They are not the matters that were pursued, in effect, by Mr. Owen this morning, and they are not matters which in my view are appropriate to be answered, and they are not, either one of those matters, matters which could in any way possibly affect the 1997 roll insofar as Mr. Owen's property is concerned.

At the conclusion of his submissions this morning, counsel for the Respondent said that they would not be seeking any costs in respect of the matter. Accordingly, the Stated Case is dismissed without costs to any side.

The only other comment I could make, Mr. Owen, is that it does seem to me from my review of the correspondence that you entered into, and which has been filed in front of me, were to a very large extent concerned with matters in other taxation years, that is 1992 to 1996, your initial concerns with the 1997 assessment roll having been, in effect, addressed with the Assessment Appeal Board decision. I would suggest to you that if you have in mind pursuing earlier years that you seek legal advice in respect of that. It is clear to me that those matters are not in front of me in this appeal. That is the only comment that I will make.

Is there anything further, Mr. Owen, that arises from this proceeding here?

DARRELL OWEN: No. Like I say, I tried to ask a lot of questions, and I have sent a lot more letters than -- than I produced, you know, asking questions and gotten no response, and this was the only avenue for me to try to get a response, and I admit -- I'm sorry?

THE COURT: No, that's all right.

MR. OWEN: Okay. I do not know the law. What is law and what is fact, I look at the same thing. I'm a, I guess you could say, a common person where if somebody tells me I'm buying a BMW and they sell me a Honda Civic, and I buy that in good faith, maybe they can do that legally but it's not right. And these are the questions, I guess -- I'm not so concerned, and I think I expressed this at different times, about my house value as what the government is allowed to do. Like you say, they've got laws that protect them going back, you know, more than a year. It doesn't really matter if I don't catch them in time, they get away with it scott-free, and I guess I could maybe pursue it, but it's not worth it.

THE COURT: Mr. McDannold, is there anything further that I have overlooked?

MR. MCDANNOLD: Just one matter, My Lord. I wonder if the formal approval of the order by Mr. Owen can be dispensed with?

THE COURT: I think not. I think he has pursued the matter personally to this point. There is a very easy mechanism for settling the order, should any difficulty arise, and I think it would be an easy enough matter for you to mail the order to him for approval and receive it back.

You will get the order in the mail for initialling as to the -- it being signed, and the procedure normally is that you are requested to either approve the form of the order, that is to say whether or not the order as typed out reflects what I have said this morning, or to perhaps provide Mr. McDannold with some reason why you think it is not. Failing that, it will be settled by the Registrar.

MR. MCDANNOLD: Thank you, My Lord.