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GDP INVESTMENTS LTD.

v.

ASSESSOR OF AREA 05 - PORT ALBERNI

Supreme Court of British Columbia (A982380) Vancouver Registry

Before the HONOURABLE MADAM JUSTICE GILL (in chambers)

Vancouver, November 18, 1998

J. Lakes for the Appellant
G. McDannold for the Respondent

Reasons for Judgment (Oral) November 18, 1998

THE COURT: Application has been made by the Respondent Assessor for an order that the Stated Case filed September 11, 1998 be remitted to the Assessment Appeal Board for amendment. The application is brought pursuant to s. 63(7) of the *Assessment Act*. I will begin by referring to that statute. Section 63 of the *Act* deals with the procedure to be followed on an appeal to this court on a question of law. Section 63(3) provides that a "person affected" may require the Board to submit a case by delivering to the Board within 21 days of receiving the decision a written request to state a case. Section 63(7) which is relied upon by the applicant provides:

The Supreme Court must hear and determine the question and within 2 months give its opinion and cause it to be remitted to the board, but the court may send a case back to the board for amendment, in which event the board must amend and return the case accordingly for the opinion of the court.

Turning to the factual background, the Appellant is GDP Investments Ltd. Mr. Muggleston is the president of GDP and he has deposed that GDP appointed Edapho Consultants, a division of Edapho Investments Ltd., as its agent to appeal the 1993 decision of the Court of Revision to the Assessment Appeal Board and directed Edapho to act for and represent GDP on all matters relating to the appeal. Mr. Boden, who is the president of Edapho Consultants, attended the hearing in Nanaimo on the 24th and 25th of March 1998 as the representative of GDP. He gave evidence and made argument.

Mr. Boden has deposed that Edapho did not receive a copy of the decision of the Board until July 31, 1998. The Assessment Appeal Board received a request to state a case pursuant to s. 63 of the *Act* on August 20. Mr. Muggleston's affidavit does not state when GDP received a copy of the decision of the Board.

Mr. Church, an appraiser employed by the Port Alberni assessment office, has deposed that on July 3 he received a telephone call from Mr. Muggleston who advised him that he had received a copy of the Appeal Board decision and had taken it to the Port Alberni City Hall seeking a partial refund of the 1993 property taxes that had previously been made.

Counsel are seemingly agreed that unless the request to the Board to state a case is made within 21 days after receiving the decision, the court has no jurisdiction to hear the Stated Case. Reference has been made to the decision of this court in *Trizec Equities Ltd.* v. *British Columbia (Assessor of Area No. 9 - Vancouver*) (7 January 1986), Vancouver A852553 (S.C.B.C.). The issue that the Assessor seeks to raise in these proceedings is whether a request was made within 21 days and whether there has been compliance with s. 63(3) of the *Act.*

I am going to refer next to the notice of motion. The Assessor asks the court to remit the Stated Case to require an amendment which includes two facts and a question. The two facts are:

> 1. The appellant received the decision of the Assessment Appeal Board on or before July 3, 1998; and
>
> 2. The appellant delivered a written request to state a case on August 21, 1998.

The question sought to be included in the statement case was:

Does the Supreme Court have jurisdiction to hear the stated case when the appellant has failed to comply with the requirements of s. 63(3) of the *Assessment Act*.

During argument, counsel for the Assessor seemed to acknowledge that it is not for the court to determine what facts are to be stated. If it is appropriate to remit the Stated Case because, for example, it is necessary to have facts as to when something occurred then the order would be that the Stated Case include facts, if any, as to when the act in question occurred.

Notwithstanding the language of the notice of motion, it appears that what the Assessor actually seeks is to have the case sent back to the Board for amendment so that it will include facts relating to when the decision was rendered, although that is probably apparent from the decision itself, to whom the decision was sent, the address to which it was sent, the date on which it was sent, and the date that a written request to state a case was received by the Board.

Mr. Lakes, on behalf of the Appellant, has made three arguments. First, it was said that the court does not have the jurisdiction to now remit the case to the Board. Second, it was argued that the court should conclude that the request was made within 21 days. It was argued that Mr. Boden's evidence should be accepted, and that Edapho as the authorized agent of GDP is a "person" under the *Assessment Act* and thus is a "person affected" under s. 63(3). Third, Mr. Lakes argued that s. 63(7) is discretionary and it would be grossly unfair to make the order in circumstances such as the present.

Before I refer to any of these arguments, it is appropriate to deal with whether it is necessary for the Stated Case to include a question such as the one set out in the notice of motion. In my view, it is not. Section 63 of the *Act* sets out the procedure to be followed in respect of appeals to this court and it is not for the Board to decide whether there has been compliance with s. 63(3). The court is surely able to consider and decide whether there has been a failure to comply with s. 63(3) and whether jurisdiction is therefore lacking without the necessity of a specific question being included in the Stated Case.

Turning to Mr. Lakes' arguments, the first was directed to whether the court could now remit the matter to the Board for purposes of setting out an additional question of law. I have concluded that a question is unnecessary. Mr. Lakes appears to have conceded that a case may be remitted to seek clarification of the facts, which must necessarily include setting out further facts in an appropriate case.

As to the argument that it would be unfairly prejudicial to grant the requested relief, I emphasize that both the Appellant and the Board have been aware since late August of the Assessor's position regarding s. 63(3) and of the wish to have additional facts included in the Stated Case. In such circumstances, it cannot be concluded that the Appellant has been prejudiced.

Notwithstanding that I do not accept the arguments to which reference has been made, I decline to remit the matter to the Board as has been requested by the Assessor.

When the Board states a case, what it is doing is setting out the facts which are relevant to the questions posed for the opinion of this court. Where, as here, there are questions as to what occurred after the decision was rendered by the panel, in order to determine what has occurred the Board would have to embark upon a further inquiry, perhaps including making inquiries of staff, in order to make the amendments which are sought. To illustrate the point, I refer to the letter of Mr. Rogers, the Registrar/Administrator of the Assessment Appeal Board, which is appended to the Boden affidavit. Mr. Rogers' letter to Mr. Lakes responds to an inquiry about the matters which are of concern to the Assessor. The letter describes the Board's procedures with respect to the issuance of its decisions, and refers to information which is contained in the Board's files and directions given to office staff relating to address records and labels. I note that Mr. Rogers offered to provide an affidavit.

The issue before the Board in the present case was the value of the improvements to the property in question. The Board was required to ask for the opinion of this court on seven questions which relate to the issue which it decided. The Stated Case sets out facts relevant to those seven questions, which are alleged by the Appellant to be errors of law made by the Board in reaching its conclusion.

As was stated by Finch J. (as he then was) in *District of Tumbler Ridge* v. *British Columbia (Assessor of Area No. 27 - Peace River*) (2 December 1985), Vancouver A851790 (B.C.S.C.) at 3, the court may not look beyond the Stated Case to make inferences of fact, to find new facts or weigh or consider the sufficiency of the evidence. Findings of fact insofar as they relate to the substantive appeal are therefore entirely for the Board, but the Board has neither heard evidence nor made findings about events which occurred after its decision was rendered.

For the above reasons, it is my view that s. 63(7) does not contemplate remitting a case for purposes of the inclusion of facts relating to events which occurred after the decision was rendered. In view of that conclusion, I do not propose to comment on the second argument advanced by Mr. Lakes.

The application is therefore dismissed.

Gentlemen, reference was made yesterday to the issue of costs. If it is your wish, that issue may be dealt with in writing. If you wish to consider whether you can reach a resolution as between yourselves please feel free to do so. You can indicate to the registry whether you will make written submissions.