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COSTA VERDE HOLDINGS LTD.

v.

ASSESSOR OF AREA 01 - CAPITAL

Supreme Court of British Columbia (99-0284) Victoria Registry

Before the HONOURABLE MR. JUSTICE R.D. WILSON

Victoria, March 30, 1999

B. Clarke for the Appellant
G. McDannold for the Respondent
J. Walters for Ministry of Attorney General

Reasons for Judgment (Oral) July 15, 1999

THE COURT: Costa Verde Holdings Ltd. received a Notice of Assessment from the Assessment Authority, in this province for the 1998 assessment year.

The assessment touched and concerned two property interests in the Municipality of Saanich. The first, as I understand, was a fee simple with improvements on the lands associated with that fee. The second was a leasehold interest.

And again, I digress to say that Mr. Wilkinson was the Assessor appearing at the hearing before the Assessment Appeal Board.

> ...acknowledged that in 1996 when the second folio first came on the roll, the Assessor may have erred. There may have been a double accounting for a portion of the value through the income approach.

In its decision the Board said, at page 5, among other things:

> Concerning the 1996 roll, it may be that there was double accounting. However, the Board has no authority to investigate the roll retroactively, or to make recommendations under Section 12(3).

Dissatisfied with the decision of the Assessment Appeal Board, the company requested the statement of a case by the Board, pursuant to the appeal provisions in the *Assessment Act*. That case was stated and filed 9 October, 1998.

In the statement of the case, the Board said at paragraph 4, among other things:

> The Appellant raised concerns going back to the 1996 roll. No appeal was filed in that year.

Subsequently the Board, in stating the case, said at paragraph 6:

> The Appellant asked the Board to consider using Section 12(3) of the *Assessment Act* to allow a supplementary roll for 1996.

The Board said in the statement of its case at paragraph 8:

> The Board found that it had no authority to investigate the roll retroactively or to make recommendations under Section 12(3) of the *Assessment Act*.

The questions the Board stated, at the request of the company, are these:

> 1) Did the Assessor of Area #01 fail to recognize the diminished value of my free title property as part of a site involving lease property, contrary to Section 15(1) of the *Charter of Rights and Freedoms*?
>
> 2) Was the Assessment Appeal Board decision to not cure the defect of the Assessor of Area #01's 1996 assessment of my free title property unfair treatment according to Section 15(1) of the *Charter of Rights and Freedoms*?
>
> 3) Does the *Assessment Act* R.S.B.C. (1996), Chapter 20 Section 12(3) fail Section 15(1) of the *Charter of Rights and Freedoms* for not providing the Assessment Appeal Board with the authority to cure the unfair treatment of administrative error in the 1996 assessment of my property?

As the hearing of the Stated Case developed, I understood from Mr. Clarke that the company's concern, essentially, is this: there was an admitted administrative error committed by the Assessment Authority in 1996. Because no appeal was taken in 1996 the Assessment Appeal Board found it had no power to correct, essentially, that error which was admitted by the Assessor.

That lack of power, or lack of authority, if you will, goes the argument, is contrary to the equal protection of the law's guarantees in the *Charter of Rights and Freedoms*.

In support of his position, Mr. Clarke has referred me to legislation in the western provinces of Alberta, Manitoba and Saskatchewan, in which, he says, there is not such a time-limited restriction on the rights of rate payers in those provinces.

Mr. McDannold, on behalf of the Assessor, has raised points which I find are fatal to the company's position on this Stated Case, and they are these:

First, each of the questions stated by the company raise a constitutional question. The Assessment Appeal Board has no authority to hear and determine *Charter* issues, that is to say, constitutional questions.

The Assessment Appeal Board is an administrative tribunal with a specialty in assessment matters, including valuations, among other things.

Second, the statute confers no authority on the Supreme Court of British Columbia to do otherwise than consider questions of law. And there is no power in the Supreme Court of British Columbia to consider matters which were not before the Board.

Clearly, there was no suggestion before the Board that it should launch into an inquiry into whether or not its interpretation of the statute ran contrary to the guarantee in Section 15(1) of the *Charter*.

That ground, too, is fatal to the company's application before me, today. Authority for that proposition is *Assessment Commissioner* v. *Woodward Stores Limited* and others, a case heard 22, 23 and 24 March, 1982 and decided 28 May, 1982, and reported as case 167 in the British Columbia Reports of Stated Cases.

There is additional authority, *York and the Committee of Progressive Electors* v. *Assessor of Area #09* (1992), 70 B.C.L.R. (2d) 135, a decision of the Supreme Court of British Columbia. (I should say that the Woodwards's Stores case was also a decision of the Supreme Court of British Columbia). And *Musqueam Holdings Ltd.* v. *Assessor of Area #09*, case 391A in the Reports of Stated Cases, Reasons for Judgment filed 12 November 1998.

Both of those decisions in the Supreme Court of British Columbia are authority for the proposition that the Assessment Appeal Board has no jurisdiction to inquire into the constitutional validity of the legislation.

The third ground Mr. McDannold advances, in support of his contention that the company's position is untenable, is that the legislation is clear in its wording: it does not provide any power in the Assessment Appeal Board to go beyond the current assessment year. See *Owen* v. *Assessor of Area #04*, British Columbia Stated Cases 411, Reasons dated 25 August 1998.

To the extent Question 1 in the case stated is directed to a question of valuation, by the interrogatory that, "The Assessor failed to recognize the diminished value of my free title property", the company's position is untenable. Valuation is a question of fact. Questions of fact are not reviewable by the Supreme Court of British Columbia on Stated Case.

And the authority for that proposition of law is *Winkler* v. *Assessor of Area #09*, in British Columbia Stated Cases, case 406, Reasons for Judgment dated 27 February 1998.

As has been mentioned in one or more of the authorities relied upon by Mr. McDannold, the remedy I understand the company seeks to achieve, may not be achieved, under the procedural law of this province through the guise of the Stated Case from the Assessment Appeal Board. The remedy is otherwise, in a different form.

The company did serve a Notice of a Constitutional Question on the Attorney General of the Province of British Columbia. Ms. Walters, on behalf of the Attorney General, has taken a number of points, in a written submission; the first of which is that the notice was not served in time. Ms. Walters also touched on the merits of the substantive position of the company on the appeal.

I do not think I need to hear from Ms. Walters, or deal with the questions she has raised with respect to the company's position.

I think Mr. McDannold's submission sets out the futility of the company's position on this application, and so I will not call upon Ms. Walters to address the Attorney General's position in response to the application for the hearing of the Stated Case.

My decision is that the application by the company for a determination of the questions is simply dismissed, because I have no jurisdiction to hear and determine those questions.

The dismissal of the application will be with costs to the Assessor and the Attorney General.