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SVEN, PETER F. and SVEN, GLORIA L.

v.

ASSESSOR OF AREA 09 - VANCOUVER

Supreme Court of British Columbia (L002725) Vancouver Registry

Before the HONOURABLE MR. JUSTICE J.S. SIGURDSON

Vancouver, November 21, 2000

P. Sven Appearing on his own behalf
G. Holeksa for the Respondent

Reasons for Judgment (Oral)

November 21, 2000

THE COURT: This is an appeal by way of Stated Case by Peter F. Sven and Gloria L. Sven, his wife, from the decision of the Assessment Appeal Board dated September 7th, 2000. The matter before the Board was the decision of the 2000 Property Assessment Review Panel which determined the actual value of the subject property, which is the Svens' home at 4011 West 39th Avenue, to be \$586,500, which actual value was said to be made up of land at \$546,000 and improvements at \$40,500.

Mr. Sven appeals from the decision of the Assessment Appeal Board. A Stated Case has been prepared, and although a number of questions were addressed, Mr. Sven and Mr. Holeksa have agreed that only question 2 is before me today. That question reads:

Did the board make an error in law when their 'decision and order' did not acknowledge, and in fact ignored, the salient arguments of our submission, namely, (a) the development potential on our larger-than-normal lot; (b) that the comparables submitted by the assessment authority were not reflective of the points of our appeal in that none had adjacent monster houses.

Mr. Sven appeared before me and argued question 2 in this fashion, and I quote briefly from his written submission, in which he says:

The main points of our appeal were, (a) the development potential of our larger-than-normal lot; (b) the pervasive over-shadowing of neighbouring monster houses; (c) that the properties presented by the assessment board were not comparable as they related to our appeal that the board ignore these arguments in their decision, an order we believe constitutes an error.

Mr. Sven went on to say, in his written argument:

To further argue my case on this point, I refer to the conclusion of the decision and order, and 'the board ... appreciates that it (our home) is situated between two monster houses.'

And these are the words that Mr. Sven finds in error:

However, the board finds no evidence, market or otherwise, as to what effect, if any, these conditions have on market value and is not persuaded that the buildings portion of the assessment is in error.

The complaint relates to the phrase containing these six words: "However, the Board finds no evidence."

The appeal to this court from a decision of the Assessment Appeal Board is by way of Stated Case, pursuant to Section 65 of the *Assessment Act*, R.S.B.C. 1996, c. 20, which reads:

Subject to Subsection (2), a person affected by a decision of the board on appeal ... may require the board to refer the decision to the Supreme Court for appeal on a question of law alone in the form of a stated case.

The question of what amounts to a question of law on an appeal such as this has been discussed in a number of cases that were referred to me by counsel, including *La Joie Lake Holdings Ltd. v. British Columbia (Assessor of Area No. 23 – Kamloops)* (31 October 1995), Vancouver Registry, A952587 (B.C.S.C.), *O’Keefe v. Assessor of Area 23 – Kamloops*, a decision of Madam Justice Baker, and *British Columbia (Assessor of Area No. 26 – Prince George) v. Cal Investments Ltd.* (19 January 1993), Vancouver Registry, A923378 (B.C.S.C.), a decision of Madam Justice Ryan.

In the first decision, the authority refers to the decision of Madam Justice Southin in *Crown Forest Industries Ltd. v. British Columbia (Assessor of Area 06 – Courtenay)* (8 August 1985), Vancouver Registry, A843031 (B.C.S.C.), where she describes an error of law this way:

So long as the Assessment Appeal Board which must, in deciding appeals to it, apply the *Act*, does not

- (1) misinterpret or misapply the section ...;
- (2) misapply any applicable principles of general law ..., or
- (3) act without any evidence or upon a view of the facts which could not reasonably be entertained, this court has no power to intervene.

Therefore, was this decision based upon acting without any evidence or upon a view of the facts which it could not reasonably entertain? I start my analysis by making reference to the phrase that Mr. Sven referred me to in his further argument, when he said, "However, the Board finds no evidence." I think that Mr. Holeksa’s argument is sound, that it is important not only to read that sentence as a whole, but to read it in the context of the whole of the reasons for judgment of the Assessment Appeal Board. The sentence reads:

However, the board finds no evidence, market or otherwise, as to what effect, if any, these conditions have on market value and is not persuaded that the buildings portion of the assessment is in error.

The suggestion, really, in this appeal, relates to the fact of the location of neighbouring so-called monster houses and the effect they have on the value of the property of the Svens, in particular their building. And those points, as I mentioned, were outlined at the beginning of Mr. Sven’s argument as question number 2.

I think the issue on this appeal comes down to whether the challenge by Mr. Sven is really a question of law or a question of fact. Even if the decision of the Board, as it was summarized in

that phrase that I have quoted from Mr. Sven's argument, the phrase that reads, "However, the Board finds no evidence," even if that were taken literally, I think the authorities indicate that what the Board must be taken to be saying, in substance, from a review of all of their decision, is what was said by Mr. Justice Seaton in *British Pacific Properties Ltd. v. Corporation of the District of West Vancouver*, (28 November 1968), Vancouver Registry, X977168, B.C. Stated Case 63 (B.C.S.C.), and that is, reading the reasons as a whole, the Board found that there was, in effect, insufficient evidence.

Mr. Justice Seaton put it this way:

It seems to me that what the board decided was that the evidence was insufficient on which to base a method of evaluation by comparing with sales elsewhere. This is a matter of sufficiency of evidence. Reading the reasons as a whole it is not a matter of the Board's mistakenly thinking there was no evidence, rather, it must mean that the evidence was inadequate upon which to base a market value. Of course, there is no error in law in that because sufficiency of evidence is for the Board.

The reasons for judgment of the Assessment Appeal Board, with which, no doubt, Mr. and Mrs. Sven disagree, nevertheless are not based upon no evidence, nor are they based upon an apparent failure to consider the submissions of Mr. and Mrs. Sven.

It is clear from the reasons that the Sven's position, and the evidence presented by the Respondent, there represented by Mr. Bruce Evans-Atkinson, were considered by the Assessment Appeal Board. I think this is apparent from a review of the reasons, and it is apparent from the phrase where the decision is summarized, where the Board says it "has examined and considered all available evidence in determining this appeal," although evidence may not be specifically referred to.

I think that what this appeal comes down to is a question of fact, and that is a matter solely within the purview of the Assessment Appeal Board. The reasons indicate to me that they considered the evidence, they weighed the evidence, and they reached the conclusion that they did reach. I am not persuaded that there is any error of law, and accordingly the appeal must be dismissed.

I will entertain submissions on costs if they are sought. I should observe that although Mr. Sven was unsuccessful on this appeal, he co-operated with counsel for the Board to narrow the issues, and, as a result, this matter was dealt with in an expeditious fashion this afternoon. Mr. Holeksa, are you seeking costs?

(SUBMISSIONS BY COUNSEL AND APPELLANT)

THE COURT: Mr. Sven, the cases that are decided limit my discretion in terms of awarding costs or not. The general rule is costs follow the event. The court has some discretion, particularly when people such as yourself take the trouble of making sure the appeal is held expeditiously and efficiently, which you've done in this case. I feel that I'm required to award costs, but I'm going to award them at \$250 in the circumstances.