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FRANK RYAN and SHEILA RYAN

v.

ASSESSOR OF AREA 01 - CAPITAL

SUPREME COURT OF BRITISH COLUMBIA (04-2254) Victoria Registry

Before the HONOURABLE MADAM JUSTICE SATANOVE
Date and Place of Hearing: June 18, 2004, Victoria, BC

F. Ryan for the Appellants
J.D. Houston for the Respondent

Reasons for Judgment (Oral) June 18, 2004

[1] THE COURT: Mr. Ryan and his wife are the owners of Ryan's Bed & Breakfast on Superior Street in Victoria, and Abbeymoore Bed & Breakfast on Rockland Avenue in Victoria.

[2] Prior to 2002, both these properties were assessed for property tax purposes as Class 1 Residential. In 2002, Ryan's Bed & Breakfast was initially classified as Class 1 Residential. But subsequent to the filings by the Ryans of a Notice of Appeal contesting a heritage designation, the Assessor was ordered to amend the assessment of Ryan's, based on a split designation between Class 1 Residential and Class 6 Business & Other. For the year 2003, both Ryan's Bed & Breakfast and Abbeymoore Bed & Breakfast were classified as split between Class 1 and Class 6.

[3] The Ryans appealed by way of Stated Case the decision of the Assessment Appeal Board, which applied the Class 1/Class 6 split designation to both Ryan's Bed & Breakfast and Abbeymoore Bed & Breakfast for 2003, and Ryan's Bed & Breakfast only for 2002.

[4] The questions on which judicial opinions are sought have been worded by Mr. Ryan, a layperson, without the help of legal counsel. Rather than reiterate them verbatim, I have taken the liberty of rewording them to express more clearly what I understand Mr. Ryan's complaints to be.

[5] Question 1 concerns whether the Appeal Board erred in treating bed and breakfasts differently than strata lots of 19 units or less. That difference apparently results in bed and breakfasts being taxed at a rate which is 2.6 times higher than strata lots with less than 19 units.

[6] Question 2 appears to seek an opinion on whether the Appeal Board erred by accepting the Assessor's position that bed and breakfasts can claim relief under the *Tourist Accommodation (Assessment Relief) Act*, R.S.B.C. 1996, c. 454 commonly referred to as *TAARA*, notwithstanding that bed and breakfasts are not classified as Class 6 properties which is the necessary designation to claim relief under that *Act*.

[7] Question 3 deals with whether the Appeal Board erred in refusing to allow the Ryans to withdraw their 2002 appeal, and allegedly raising their tax retroactively, while failing to reassess any other similar properties in the region. I will deal with each question in the order in which they were posed.

Question 1

[8] At the heart of question 1 is Mr. Ryan's complaint that bed and breakfasts are being treated inequitably. He says they have always been treated as Class 1 properties and taxed lower than

hotels or motels until a new policy of the Assessor came into existence in November 2000. He argues that this policy is not law, and can have no force and effect. He also argues that bed and breakfasts are more analogous to strata lots with less than 19 units than to hotels or motels. Strata lots with less than 19 units are treated as residential properties, even if they are offered for transient accommodation. The flaws in the Appellant's submissions are threefold:

1. The validity or otherwise of the bed and breakfast policy of the Assessor was only a secondary consideration of the Appeal Board. The Appeal Board's decision was based on a finding that in the case of Ryan's, 7/8s of the property and in the case of Abbeymoore, 9/10s of the property was being used for business purposes. The Appeal Board arrived at this decision on the basis of evidence that the entirety of the properties had been leased out as business ventures, and that with the exception of one room in each property, which was the residence of the operator-manager, all the rooms were offered for rent on a year-round basis.

2. The Court of Appeal in *Hennessy* v. *Assessor of Area 01 - Capital* (B.C. Stated Case 367, B.C.C.A.), determined that a finding that a bed and breakfast is, at least in part, a hotel or motel, is a finding of fact. And unless there is no evidence to support this finding, the weight and sufficiency of the evidence is for the Appeal Board alone to decide. This is consistent with the many decisions standing for the proposition that assessment appeals must be based on errors in law, and a finding of fact can only become an error in law if it is made without any evidence or upon a view of the facts which could not reasonably be entertained. (*Canadian National Railway* v. *Assessor of Area 09* (Vancouver, 1990, FC 273 B.C.C.A.)). In the case at bar, there was evidence before the Appeal Board of the business nature of the two properties.

3. There is a rationale in law why strata lots with less than 19 units, although belonging to a rental pool, do not qualify as hotels or motels. That rationale is explained in the decision of the Court of Appeal in *Assessor of Area 01* v. *Hart* (B.C. Stated Case 302, B.C.C.A.). Each strata unit is an individual title, and therefore must have a separate number on the assessment roll and must be separately assessed. The individual units by themselves cannot constitute a hotel or motel type of property.

Question 2

[9] Mr. Houston, for the Assessor, submits that I cannot deal with this question as the issue of the *Tourist Accommodation (Assessment Relief) Act*, as evidence of its application or otherwise to the subject properties was never before the Board. Mr. Ryan argues that the Assessor made submissions before the Appeal Board based on an earlier Appeal Board decision in *Sands* v. *Assessor of Area 01* (2003 PAABBC 20028320), wherein *TAARA* was discussed. I see nothing in the decision of the Appeal Board in the instant case or anything in the evidentiary record to suggest that the Board considered *TAARA* in coming to its conclusion. References to previous cases are references to law, not evidence. There is no evidence before the Appeal Board on this issue, and I decline to deal with it.

Question 3

[10] As a fundamental principle, one cannot be taxed retroactively. That is, taxation legislation is presumed to have prospective effect. However it does not appear that is what happened here. In 2002, these properties met the criteria to be classified and taxed in part as Class 6. When it became apparent during the appeal process that they had not been so classified, it was open to the Appeal Board to correct the designation.

[11] Section 57 states that in an appeal under that part, the Appeal Board may reopen the whole question of the property's assessment to ensure accuracy, and that assessments are an actual value applied in a consistent manner in the municipality or rural area. Section 57 is an extremely broad section. Some may even say draconian. It allows the Appeal Board to reopen the whole

question of the accuracy of the property's assessment, which was what was done here in the case of Ryan's Bed & Breakfast.

[12] In conclusion then, the answer to question 1 and 3 are that the Appeal Board did not err in law. I have declined to deal with question 2 for the reasons stated. The appeal must be dismissed.

The Honourable Madam Justice Satanove