SC 083 Panorama Place v. City of Vancouver

PANORAMA PLACE LIMITED

v.

CITY OF VANCOUVER

Supreme Court of British Columbia

Before: MR. JUSTICE S.M. TOY

Vancouver, January 30, 1975

G.V. Anderson for the Appellant
J. Mulberry for the Respondent

***Co-operative apartment building - replacement value - actual value - "other land and improvements" within Section 46(1) (a) of the* Assessment Equalization Act**

The Appellant is a co-operative apartment building providing residential accommodation to the owners of its common shares. Prior to 1974 the property was assessed at the same value as conventional apartments. In 1974 the City considered co-operative apartments comparable to strata title residential apartment blocks and increased the assessment accordingly. In determining the assessed value of strata title and co-operative apartments the assessor took into account the aggregate market values of the share lease units and individual strata titles. The Appellant argued co-operative apartments were assessable only on the basis of replacement value.
HELD:
Because individual shareholdings and leases in co-operative apartments can be sold as a bundle of rights in excess of the cost of the land and the physical structure, such a bundle of rights are properly assessed by taking their fair market value into account.

Reasons for Judgment

Counsel agreed before me that this was an appeal by way of stated case from a decision of the Assessment Appeal Board that was properly before me for determination. Owing to the lack of time, as my judgment must be filed with the Court Registry by February 3rd, 1975, I regret that I will not be able to make any comment, or direction, on the form of the proceedings. Suffice it to say that the parties conceded that the appeal was in order.

Time does not permit me to summarize the facts, and I will content myself with quoting in full the agreed statement of facts which illuminates the issue to be decided:

> 1. The Appellant, a body corporate, incorporated under the laws of the Province of British Columbia. is the registered owner of certain lands and premises situate at 2055 Pendrell Street, in the City of Vancouver, Province of British Columbia, being legally described as Lot Y, Block 70, District Lot 185, Plan 11514, Group 1, New Westminster Land Registry District, (the "Property").

2. The Property is comprised of a parcel of land together with a twenty-five storey residential apartment building (the "Improvements") containing 146 apartment suites.

3. The Respondent issued Assessment Notices for the years 1973 and 1974 wherein the Respondent assessed the Property as follows:

	School and Hospital Purposes		General Purposes	
	Land	Improvements	Land	Improvements
1974	259,044	976,415	647,611	3,300,000
1973	237,800	887,650	580,003	2,165,000
Increase	21,244	88,765	67,608	1,135,000

4. The Appellant appealed the aforesaid assessment for the year 1974 (the "1974 Assessment") to the Court of Revision which confirmed the 1974 Assessment. The Appellant appealed the decision of the Court of Revision to the Assessment Appeal Board and the said appeal was dismissed by a written decision of the Assessment Appeal Board dated December 14, 1974.

5. The Appellant acquired ownership of the land portion of the Property in 1962 and thereupon proceeded with construction of the Improvements. The Improvements were completed in 1965 and the Appellant operated the Property as a conventional residential apartment block from that date until November, 1972. In October, 1972, Dawson Developments Limited (Dawson) purchased all of the outstanding shares in the capital stock of the Appellant and thereupon caused the Appellant to grant to Dawson 199 year leases for each of the apartment suites (Proprietary leases). In November, 1972, Dawson caused the Appellant to be converted into a public company and increased the capitalization of the Appellant to Five Million (5,000,000) common shares. Dawson then divided the common shares into blocks and proceeded to offer the blocks of shares for sale to the public. Each purchaser of a block of shares received as well, the assignment or sub-lease of a Proprietary lease entitling the purchaser to the exclusive right to reside in one of the apartment suites for the term of the Proprietary lease, subject to compliance with the terms thereof. Under the terms of the Proprietary lease, the shareholder-tenant was required to pay to the Appellant, a proportionate share of the cash requirement of the Appellant for the operation and maintenance of the Property (including real property taxes). Prior to the year 1974, all of the common shares in the capital of the Appellant were sold by Dawson to the public in the above-mentioned manner and the Appellant has since that time operated the Property as what is commonly known as a "co-operative apartment building" providing residential accommodation to the owners of its common shares. Based upon declared values recorded in the Vancouver Land Registry Office, it would appear that Dawson sold the aforesaid common shares and Proprietary leases for approximately Four Million Nine Hundred Thirteen Dollars ($4,913,000.00).

6. Prior to 1974, the Respondent determined the assessed value of the Property on the same basis as the Respondent determined the assessed value of conventional rental apartment blocks. For 1974 assessment purposes, the Respondent changed his basis for determining the assessed value of the Property and other co-operative residential apartment blocks. For 1974 assessment purposes, the Respondent considered similar co-operative residential apartment blocks and strata title residential apartment blocks as comparable parcels of land and improvements and did not consider conventional rental apartment blocks as parcels of land and improvements comparable with co-operative and strata title residential apartment blocks. In determining the assessed value of the "Improvements" and the assessed value of other co-operative and strata title residential apartment blocks, the Respondent took into account the aggregate market values of the

share-lease units and individual strata titles relating to such residential apartment blocks. For 1974 assessment purposes, the Respondent determined the assessed value for all co-operative and strata title residential apartment properties on the same basis.

7. As a result of the aforesaid change in basis for determining the assessed value of the Improvements, in the 1974 Assessment, the assessed value for general purposes of the Property increased approximately 44% over the assessed value thereof for the year 1973 and the assessed value of the Improvements increased approximately 52% over the assessed value of the Improvements for the year 1973. The improvement portion of the 1974 assessed value of at least two conventional rental apartment blocks of similar physical characteristics located in the immediate vicinity of the Improvements remained identical to the 1973 assessed value. The assessed value of the Improvements in the 1974 Assessment would probably have remained identical to the 1973 assessed value thereof, if the Property had remained as a conventional residential rental apartment block.

8. It is agreed that the ratio of the assessment to sale prices of physically comparable residential rental properties is approximately the same as the ratio of the assessment to the aggregate sale prices of the share-lease units and individual strata titles of co-operative and strata title residential apartment properties. "

With respect to the grounds of appeal, the appellant's counsel has conceded that the third ground of appeal was repetitious of the first two and no argument was addressed to me on the fifth ground and consequently I consider it only necessary to refer to grounds of appeal numbered one, two and four, which are hereinafter reproduced:

"1. The Assessment Appeal Board erred in law in failing to hold that parcels of land and improvements comprising conventional residential rental apartment blocks are comparable parcels of land and improvements to the Property within the meaning of Section 37(2) of the *Assessment Equalization Act*.

2. The Assessment Appeal Board erred in law in failing to hold that 'other land and improvements' within the meaning of Section 46(1) (a) of the *Assessment Equalization Act* included for purposes of considering the assessment under appeal, conventional residential rental apartment blocks.

. . .

4. The Assessment Appeal Board erred in law by failing to hold that the Respondent incorrectly made a determination of the aggregate value of the 'bundle of property rights' held by the individual shareholder-tenants rather than a determination of the value of the Property."

It is the appellant's contention that the Assessor, the Court of Revision, and the Assessment Appeal Board have erred in law by assessing the appellant's high-rise cooperative apartment at an amount substantially in excess of the construction or replacement value of the physical structure. In effect, the appellant submits that the "bundle of rights" acquired by the shareholders of the appellant company as shareholders and lessees are not accessible except insofar as they relate to the value of the land and the physical structure built on the land.

The increase in the 1974 assessment for improvements over the 1973 assessment I concede to be gigantic. I have, however, with considerable reluctance, come to the conclusion that the assessment appealed against is not an erroneous one.

My reasons for so holding are as follows:

1. Section 37(1) of the *Assessment Equalization Act* R.S.B.C. 1960, Chapter 18 and amending acts and the corresponding section of the Vancouver City Charter which were in effect when the assessment was made, charged the assessor with the responsibility of determining "actual value" and the assessor may give consideration, amongst other things to:

> (*a*) "... present use. . . "
>
> (b) "... and any other circumstances affecting value"

In my view, the "bundle of rights" in addition to the bare land and the physical structure, are the proper subject of assessment within both of those considerations.

2. In case No. 33, *Wallis Walter Lefaux* v. *Corporation of the District of West Vancouver* reported in Volume 1 of the British Columbia Stated Cases, Page 149, it was held there that the assessor was entitled to consider in his assessment the benefit of a zoning by-law. Mr. Justice Hutcheson said at Page 151:

> "As I view the matter, the assessor has come to a decision as to the best potential use of the property and valued on it on the basis of the price that it can reasonably be expected a property having that potential would bring if offered for sale today."

3. In Case No. 24, reported Volume 1 of the British Columbia Stated Cases, *Shell Oil Company of Canada Limited and Standard Oil Company of British Columbia* v. *The Corporation of the District of North Vancouver* upheld assessments which attributed some value to service station permits that were held to run with the land. At Page 102, Wilson, J.A. (as he then was) speaking for the Court of Appeal of British Columbia said:

> "The attachment to a commercial site in the municipality of a permit for use as a service-station, or of a legal right to non-conforming use as a service-station, gives to the property assessed a special element of value as tangible and as permanent as would the physical advantage of a waterfront location, or of the appurtenance of a beneficial easement. Therefore the proper basis for comparison under section 46(1) (a) of the lots in question is not comparison with all property in the municipality, or with all commercial property in the municipality, but with commercial properties in the municipality enjoying the same advantage as the property assessed, the right to use them for service-stations. The evidence makes it abundently clear that, on the record of market sales, the properties assessed have, because of the permits, commanded higher prices than have other commercial properties, similarly located, in the municipality.
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> . . .
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> The special values of those properties are, since the permit run with the land, values to the landlord or owner of the land, who can always command a higher price or a higher rent for his land because of the appurtenance to his property of the permit. Again, if Standard Oil sold their lands, the new owner, to whom the permit would pass, could, on a resale, exact the special value which the permit commands."

4. In *Regina* v. *Penticton Sawmills Ltd.* (1953) 11 W.W.R. (NS) 351, the Court of Appeal for British Columbia considered a similarly-worded, although not identical section of the *Taxation Act*, R.S.B.C. 1948, Chapter 332. Chief Justice Sloan when considering what the assessor did, had this to say at Page 353:

> "In this instance he has now relied upon the weighted five-year average of the upset prices for Crown timber as a factor, or as a guide, in that determination. He did so, with of course, a full knowledge of the various evaluations, both real and intangible which enter into that price.

And at page 356, Chief Justice Sloan, in part, said:

> "If the upset price was a mere arbitrary figure with no relation to reality, some criticism might be directed against its use, even as a guide, but it is a price arrived at only after only a prolonged and careful study of all physical and other factors. . . "

It is my view that the aggregate price paid by the share-holder-tenants of the appellant company includes a substantial premium over and above the cost of the land and physical structure for the rights that these people consider of substantial value. Individually or collectively, these rights can be transferred to future purchasers and they are not values personal to the individual owners that would not form the proper subject for assessment.

Accordingly, I answer all questions posed by the appellant on this appeal in the negative and dismiss the appeal.

Because this case raises a point of principle which is of importance to many others, and it is the first time, to my knowledge, that the appellant or others have been assessed on this basis, I propose to make no order with respect to costs.