

2013 CarswellOnt 3062, 76 O.M.B.R. 160

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Taylor v. Municipal Property Assessment Corp., Region No. 15

In the Matter of Section 40 of the Assessment Act, R.S.O. 1990, c. A.31, as amended

In the Matter of an appeal with respect to taxation years 2009, 2010 and 2011 on premises known municipally as
1189 Queen Victoria Avenue

Scott Taylor, Caroline Maenz-Taylor, Moving Parties and The Municipal Property Assessment Corporation, Region No. 15 and the City of Mississauga, Respondents

Ontario Assessment Review Board

C.E. Roberts Member

Heard: September 12, 2012

Judgment: March 19, 2013

Docket: DM 116186

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Counsel: R. **Baranowski**, for Moving Parties

J. Fantetti, for Municipal Property Assessment Corporation

No one for Municipality

Subject: Public; Tax — Miscellaneous; Property

Municipal law --- Municipal tax assessment — Practice and procedure on assessment appeals and objections — Jurisdiction and power — Board or tribunal

Cases considered by C.E. Roberts Member:

Baker v. Canada (Minister of Citizenship & Immigration) (1999), 1 Imm. L.R. (3d) 1, [1999] 2 S.C.R. 817, 14 Admin. L.R. (3d) 173, 174 D.L.R. (4th) 193, 1999 CarswellNat 1124, 1999 CarswellNat 1125, 243 N.R. 22 (S.C.C.) — considered

Statutes considered:

Assessment Act, R.S.O. 1990, c. A.31

s. 44(3) — considered

s. 44(3)(b) — considered

Rules considered:

Assessment Review Board Rules of Practice and Procedure, April 1, 2009

R. 146 — considered

R. 149(b) — considered

R. 149(c) — considered

MOTION for review under the Board's rules.

C.E. Roberts Member:

1 This motion came before the Assessment Review Board ("Board") on September 12, 2012 in the City of Mississauga.

Issue

2 This motion, brought by the Appellants, is for a review of a Board decision for the 2009, 2010 and 2011 taxation years, for the property located at 1189 Queen Victoria Avenue, in the City of Mississauga (the "subject property"). The Board decision which is the subject of this motion was released on January 25, 2012 as WR 113427. The motion is for an order granting a rehearing of the appeals.

3 The grounds for the motion, as set out in the Appellants' Notice of Motion, are:

(i) The Board erred in determining the equity section of the Act. The Member of the Board made error of fact and law, confirming Current Value Assessment ("CVA") of the subject property at \$944,000, which if the error had not occurred, would likely have led the presiding Member to reach a different conclusion.

(ii) The Board committed an error in law by creating own evidence as well as making presumptions. The Board Member acted on his own speculation and presented his unsupported opinion.

(iii) Sections 146 and 149(b) of the Board's Rules of Practice and Procedure ("Rules").

Disposition of Motion

4 The motion for review is granted. The Board cancels the decision WR 113427 confirming the assessment of the subject property for the taxation years 2009, 2010 and 2011, and orders a rehearing before a different Member.

Reasons for Disposition of Motion

Background

5 These appeals concern the assessments of the subject property for taxation years 2009, 2010 and 2011.

The subject property is a detached, two-storey, single family dwelling constructed in 1952. It has a total building area of 2,876 square feet on a lot of 0.39 acres. It has a finished basement of 270 square feet, an attached garage and an outdoor pool. The property was assessed at \$944,000 for taxation years 2009, 2010 and 2011.

6 Following a hearing that commenced on November 7, 2011, in the City of Mississauga, the presiding Member of the Board confirmed the assessment of the subject property at \$944,000 for 2009, 2010 and 2011.

Jurisdiction of the Board

7 Section 146 states:

146. Board's Powers on Review

The Board may review all or part of a decision, and may confirm, vary, suspend or cancel the decision. It may order a re-hearing before a different Member.

8 The Board has the jurisdiction to order a rehearing if it finds that the Board in the original decision made one or more of the errors described in Rule 149, which provides in pertinent part:

149. Reasons for Review

The Board will hear a motion to review a decision or grant a rehearing without a motion only if the reasons provided in the request raise an arguable case that the Board,

(b) violated the rules of natural justice or procedural fairness, including allegations of bias;

(c) made an error of law or fact such that the Board would likely have reached a different decision;

The Legislation

9 In the decision under review, the presiding Member was required to have regard to s. 44.(3) of the *Assessment Act*, R.S.O. 1990, c. 31 (the "Act"), which states:

44.(3) Same, 2009 and subsequent years. — For 2009 and subsequent taxation years, in determining the value at which any land shall be assessed, the Board shall,

(a) determine the current value of the land; and

(b) have reference to the value at which similar lands in the vicinity are assessed and adjust the assessment of the land to make it equitable with that of similar lands in the vicinity if such an adjustment would result in a reduction of the assessment of the land. 2008, c. 7, Sched A, s. 13.

Analysis

10 Robert **Baranowski** appeared on behalf of the moving parties, the Appellants. He moves for a rehearing of these appeals, on the basis that the Board made four separate errors of law, and of mixed law and fact, in its original decision. Joseph Fantetti on behalf of the Municipal Property Assessment Corporation ("MPAC") asserts that the Board did not make any such errors, and in his submission the motion should be dismissed. Both

Mr. **Baranowski** and Mr. Fantetti argued the original hearing, as well as this review motion.

11 At the outset of the original hearing before the Board, MPAC submitted into evidence a document entitled "Current Value and Equity Analysis for 1189 Queen Victoria Avenue, Mississauga" (the "Current Value Study"), and the presiding Member marked this document as Exhibit 1.

12 However, when Mr. **Baranowski** rose to make his submissions at the original hearing, he took the position that the current value had been correctly returned in the assessment. Mr. **Baranowski** submitted that the Appellants agreed with the current value, and that his submissions would be confined to the question of equity in s. 44.(3)(b) of the Act; namely whether equity would require an adjustment to the assessment, in light of the value at which similar lands in the vicinity had been assessed.

13 Following that submission, the presiding Member handed back the Current Value Study exhibit to Mr. Fantetti, and indicated that only the equity evidence would be necessary. The parties are agreed that Mr. Fantetti then removed the single page containing the chart entitled "Appendix D — Equity Analysis — Study 2" and handed it back to the Member, who marked that page as an exhibit. Mr. Fantetti retained the remainder of the Current Value Study.

14 Mr. **Baranowski** proceeded with his case and commenced his cross-examination of Denise Declerc, the MPAC Property Valuation Analyst who had prepared the assessment of the subject property. In the course of his cross-examination, he sought to ask Ms. Declerc questions concerning the Current Value Study which she had prepared.

15 The presiding Member then ruled that the Current Value Study had been excluded from evidence at the request of Mr. **Baranowski** and he declined to permit Mr. **Baranowski** to cross-examine Ms. Declerc on the document. The Member stated at paragraph 18 of his reasons:

Mr. **Baranowski** commenced his evidence with a request to raise the issue of a correction to the assessed value as returned. Subsequently Mr. **Baranowski** sought to present as evidence MPAC's current value analysis. The Board reminded Mr. **Baranowski** that these items both related to the issue of the determination of current value and that he had specifically argued that the Board should accept his agreement that the assessment as returned be accepted as current value and no evidence related to the determination of current value should be presented to the Board. Since both items related to the issue of the determination of current value they were excluded.

16 Mr. **Baranowski** now argues, on this review motion, that the refusal of the Board to permit cross-examination on the Current Value Study constituted a violation of the rules of natural justice or procedural fairness, and that the Board should order a re-hearing of these appeals as a result. Mr. **Baranowski** argues that the Current Value Study was exchanged between the parties more than 21 days in advance of the hearing, in accordance with the Board's Rules. The Current Value Study was authored by the witness whom he was cross-examining, and it contained detailed evidence regarding five comparable properties to the subject property, each of which was also contained in the Appendix D Equity Analysis.

17 Mr. **Baranowski** acknowledges that he agreed the Current Value Study need not be submitted into evidence to establish current value. However, he asserts that the Current Value Study also contained evidence relevant to the equity section of the analysis under s. 44.(3)(b), and it was for that purpose that he later sought to rely upon it in cross-examination. Mr. **Baranowski** submits that evidence in the Current Value Study of each of the

"comparable" properties was relevant to the question of the assessment of "similar lands in the vicinity" for the purposes of s. 44.(3)(b) of the Act, and that by excluding that evidence the Board deprived him of the ability to challenge the similarity of the properties included in Appendix D. Mr. **Baranowski** also submits that the Current Value Study contained evidence relevant to the appropriate Assessment to Sale Ratio ("ASR") to be applied in the equity analysis, and by excluding the study he was unable to refer to that evidence in his submissions. In addition, pages 4 through 7 of the Current Value Study document contained MPAC's written equity analysis: "Section 4 — Equity Analysis for the Subject Property."

18 Finally, Mr. **Baranowski** argues that by excluding the Current Value Study, the Member deprived himself of the ability to weigh that evidence, and by implication, fettered his discretion. For all of these reasons, Mr. **Baranowski** states that the decision to exclude the Current Value Study document amounted to a violation of the principles of natural justice and procedural fairness.

19 In response, Mr. Fantetti argues that Mr. **Baranowski** consented to the CVA as returned, and Mr. **Baranowski** himself had advised the Board that the Current Value Study need not be submitted as evidence. Mr. Fantetti argued that since the Appellants had agreed the CVA was correct, by implication the Appellants had also agreed that MPAC's valuation model had operated correctly for both parts of the s. 44.(3) test. As he stated on this review motion: "You accept that the model is correct when you accept the assessment as returned."

20 While MPAC acknowledged that the Appellants were denied the opportunity to introduce the Current Value Study in cross-examination, Mr. Fantetti submits that the decision of the Board would not have been any different, even if the Current Value Study had been admitted, and thus the review motion should be dismissed.

21 With the greatest of respect to the presiding Member at the original hearing, the Board cannot agree.

22 Rule 149(c) of the Board's Rules provides that on review, the moving parties must establish not only that the Board made an error of law of fact, but that the Board would likely have reached a different decision, had the error not been made.

23 However, Mr. **Baranowski** relies upon Rule 149(b), pursuant to which the moving parties need only establish that the Board violated the rules of natural justice or procedural fairness. The Rule does not require the moving party to show that the Board likely would have reached a different decision, but for the error.

24 Mr. **Baranowski** also relies upon the decision of the Supreme Court of Canada in *Baker v. Canada (Minister of Citizenship & Immigration)*, [1999] 2 S.C.R. 817 (S.C.C.). In *Baker*, the Supreme Court considered the duty of procedural fairness in the administrative law context. As Madam Justice L'Heureux-Dubé stated for the majority, at paragraph 28:

The values underlying the duty of procedural fairness relate to the principle that the individual or individuals affected should have the opportunity to present their case fully and fairly.

25 In the present case, the presiding Board Member ruled that the document entitled "Current Value and Equity Analysis" could not be put to the MPAC assessor on cross-examination. The document had been exchanged between the parties 21 days in advance of the hearing, in accordance with the Board's Rules. The witness whom Mr. **Baranowski** sought to cross-examine was the author of the document. The document contained evidence regarding the appropriate ASR to be applied in the equity analysis under s. 44.(3)(b) of the Act, and it also contained the assessor's written report on the equity analysis. As such, the document was clearly relevant to

the equity analysis under s. 44.(3)(b). The refusal to permit the Appellants to cross-examine the assessor on the Current Value and Equity Analysis document thus restricted the ability of the Appellants to present their case fully and fairly. As such, it constituted a violation of the rules of procedural fairness, contrary to Rule 149(b) of the Board's Rules.

26 Accordingly, the Board grants the motion for review. The parties did not make detailed submissions as to the evidence contained in the Current Value document and how it should be applied to the equity analysis. Accordingly, the Board finds that the appropriate remedy for the violation of the rules of procedural fairness is to cancel the original decision and send the matter back for a re-hearing before a different Member of the Board.

27 The Appellants raised several other grounds for review in their motion, however, in light of my decision above, it is not necessary to address those additional grounds.

Order accordingly.

END OF DOCUMENT