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SC 543 Golden Win Investments Ltd. v AA15 and PAAB

No PAAB Decision

GOLDEN WIN INVESTMENTS LTD.
v.
ASSESSOR OF AREA 15 – FRASER VALLEY and
PROPERTY ASSESSMENT APPEAL BOARD

SUPREME COURT OF BRITISH COLUMBIA (S106296) Vancouver Registry

Before the HONOURABLE MR. JUSTICE EHRCKE

Date and Place of Hearing: December 6, 2010, Vancouver, B.C.

P. Sun (a company representative) for the Applicant
J.A. McLachlan for the Respondent (Assessor of Area 15)
V.L. Jackson for the Respondent (Property Assessment Appeal Board)

Board deemed appeal to be withdrawn – Communication via email

The Applicant filed an appeal to the Property Assessment Appeal Board ("the Board") on April 30, 2010, from a decision of the 2010 Property Assessment Review Panel. On May 9, 2010, the Applicant received the Board's email which included attachments. On June 10, 2010, the Board sent the Applicant (at its email address) and the Assessor a notice of appeal management conference (AMC). The Applicant did not attend the AMC on July 12, 2010, at 10:00 a.m. The Board sent a letter dated July 12, 2010 to the Applicant via email advising that if the Board did not receive written confirmation from the Applicant of an intention to proceed with the appeal by July 19, 2010, the Board would deem the appeal to be withdrawn. The Board did not hear from the Applicant and by order dated August 6, 2010 the Board deemed the appeal to be withdrawn and a copy of the order was sent to the Applicant by email.

The Applicant advised the Board that it did not receive the Board's emails dated June 18, 2010 or July 12, 2010, as they had been automatically forwarded to a spam folder which was automatically deleted after 30 days. The Board responded on August 10, 2010 that from its perspective the letters had been delivered to the address provided. The Applicant filed an appeal to this Court asking four questions, which this Court modified to two questions as follows:

- 1. Can the Board deem an appeal to be withdrawn as a result of the non-attendance of the Appellant at a settlement conference unilaterally scheduled by the Board, notice of which was never received by the Appellant; and*
- 2. Can the Board deem an appeal to be withdrawn as a result of the non-attendance of the Appellant at a settlement conference unilaterally scheduled by the Board whether or not notice was received by the Appellant?*

HELD: Appeal Dismissed.

This Court found that the procedures of the Board are set out very clearly in the Assessment Act, the Administrative Tribunals Act and the Board's Rules of Practice and Procedure. This Court noted that the Board performs an inquisitorial function where time is of the essence. This Court found that the Board did not breach its duty of fairness to the Applicant by deeming his appeal to be withdrawn notwithstanding that he did not actually see the notice of conference because the emails were in his spam folder. This Court answered both questions "yes".

Reasons for Judgment (Oral)

December 6, 2010

[1] **THE COURT:** This is a Stated Case by the Property Assessment Appeal Board under s. 65 of the *Assessment Act*, R.S.B.C. 1996, c. 20, brought at the request of the Applicant, Golden Win Investments Ltd., seeking determination of certain questions of law. The relevant facts are set out in the Stated Case as follows:

1. The Applicant filed an appeal to the Property Assessment Appeal Board (the Board) on April 30, 2010, from the decision of the 2010 Property Assessment Review Panel. By letter dated May 9, 2010, sent to the Applicant by email to the email address provided by the application (the Applicant's email address), the Board acknowledged receipt of the appeal and appeal fee and enclosed an appeal information report. The Applicant received the Board's email of May 9, 2010, with attachments.
2. On June 10, 2010, the Board scheduled a telephone appeal management conference (AMC) for July 12, 2010, at 10:00 a.m. and sent the Applicant via the Applicant's email address and the Assessor a notice of appeal management conference.
3. The Applicant did not attend the AMC on July 12, 2010, at 10:00 a.m. The Board sent a letter dated July 12, 2010, to the Applicant via the Applicant's email address and to the Assessor advising that if the Board did not receive written confirmation from the Applicant of an intention to proceed with the appeal by Monday, July 19, 2010, the Board would deem the appeal to be withdrawn. The Board did not receive written confirmation from the Applicant of an intention to proceed with the appeal.
4. By order dated August 6, 2010, the Board deemed the appeal to be withdrawn. A copy of the Board's order was sent to the Applicant via the Applicant's email address and was received on the same date.
5. The Applicant wrote to the Board on August 6, 2010, from the Applicant's email address advising that it had not received the Board's letter of July 12, 2010, and questioning the method of delivery. The Board responded by email to the Applicant's email address on the same date and attached copies of the notice of AMC dated June 18, 2010, and letter of July 12, 2010. The Applicant emailed the Board a second time on August 6, 2010, from the Applicant's email address advising it had not received emails from the Board on June 18, 2010, or July 12, 2010. The Board responded on August 10, 2010, via the Applicant's email address advising that from its perspective, the letters had been delivered to the address provided.
6. By letter dated August 26, 2010, sent from the Applicant's email address, the Applicant advised that the Board's email of July 12, 2010, was received by the Applicant's email server that stores emails before forwarding them to the client's software. The Applicant further advised that the email was forwarded to a spam folder on the email server so that it would not be forwarded. The Applicant further advised that it was not aware of the Board's letter of July 12, 2010, or of the ability to access its email web interface of its email server to check the spam folder. The Applicant further advised that emails in the spam folder were automatically deleted after 30 days. The Applicant requested the Board refer the questions of law set out below to the Supreme Court.

[2] The questions of law in the Stated Case are as follows:

1. Can the Board of Appeal dismiss an appeal as a result of the non-attendance of the Appellant at a settlement conference unilaterally scheduled by the Board of Appeal, notice of which was never received by the Appellant?
2. Can the Board of Appeal dismiss an appeal as a result of the non-attendance of the Appellant at a settlement conference unilaterally scheduled by the Board of Appeal whether or not notice of which was received by the Appellant?

3. Can the Board of Appeal dismiss an appeal if it has not considered the merits of the appeal?
4. Can the Board of Appeal dismiss an appeal without conducting a hearing and/or giving the Appellant notice of the hearing?

[3] The questions as stated do not correspond precisely with the facts as stated. The questions all refer to an appeal being dismissed, whereas the facts of this case are that the Applicant's appeal was deemed to be withdrawn on August 6, 2010. The real questions to be decided here are variants of questions 1 and 2, namely:

1. Can the Board of Appeal deem an appeal to be withdrawn as a result of the non-attendance of the Appellant at a settlement conference unilaterally scheduled by the Board of Appeal, notice of which was never received by the Appellant; and
2. Can the Board of Appeal deem an appeal to be withdrawn as a result of the non-attendance of the Appellant at a settlement conference unilaterally scheduled by the Board of Appeal whether or not notice was received by the Appellant?

[4] The procedures of the Appeal Board are set out in the *Assessment Act*, the *Administrative Tribunals Act*, S.B.C. 2004, c. 45, and the Board's *Rules of Practice and Procedure*. The *Rules of Practice and Procedure* provide that delivery may be by email to a residence or place of business. Rule 4 provides:

4. If a party refuses or fails without reasonable excuse to comply with these rules, to attend any proceeding under these rules, or to comply with an order, direction, or ruling of the Board, the Board may make any decision, order, or direction it considers appropriate in the circumstances including one or more of the following ...
 - (b) where the non-compliant party is the appellant, an order dismissing the appeal or deeming the appeal to be withdrawn ...

[5] Rule 5 provides:

5. The Board may provide notice of any proceeding under these rules to any person who may be affected by any means including mail, facsimile, transmission, or email.

[6] Rule 13 provides:

13. At any time after receiving a notice of appeal on the written application of a party or on the Board's own initiative, the Board may require the parties to ...
 - (c) attend an appeal management conference ...

[7] As is clear, the Board may require an Appellant to attend an appeal management conference, and the Board may deem an appeal to be withdrawn where a party without reasonable excuse fails to comply with an order, direction, or ruling of the Board. Moreover, the Board is permitted to correspond with an Appellant and to deliver notices via email. In this case, the Board gave the Applicant the option of modes of correspondence, and it was the Applicant who elected to receive notices by email. The Board sent the notices of June 18 and July 12, 2010, to the Applicant by email to the address he himself provided. Those emails were delivered to the server of the Applicant's email account. It was through no fault of the Board that the Applicant did not see the emails that wound up in the spam folder of his email account.

[8] In *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, the Supreme Court of Canada observed that what is required by the duty of fairness varies with the context. The court set out six factors to be considered. Those factors were analysed in the context of the Property Assessment Appeal Board in *Allard v. Assessor of Area 10 – North Fraser Region*, 2010 BCCA 437.

[9] In the context of the present case, I note that the Appeal Board performs an inquisitorial function. Time is of the essence. The issue involved is a strictly financial one. Moreover, the assessment is performed each year, so the Applicant will have a renewed opportunity to challenge his assessment next year notwithstanding that his appeal was deemed withdrawn in August of this year.

[10] In all of the circumstances, I do not find that the Appeal Board breached its duty of fairness to the Applicant by deeming his appeal to be withdrawn notwithstanding that he did not actually see the notice of the conference because the emails were in his spam folder.

[11] Accordingly, I would answer the modified versions of questions 1 and 2 in the following way:

1. Can the Board of Appeal deem an appeal to be withdrawn as a result of the non-attendance of the Appellant at a settlement conference unilaterally scheduled by the Board of Appeal, notice of which was never received by the Appellant?

The answer is yes in the circumstances of this case.

2. Can the Board of Appeal deem an appeal to be withdrawn as a result of the non-attendance of the Appellant at a settlement conference unilaterally scheduled by the Board of Appeal whether or not notice was received by the Appellant?

The answer is yes in the circumstances of this case. Questions 3 and 4 in their original form refer to the power of a Board of Appeal to dismiss an appeal, a matter that is not in issue on the facts of this case, and so it is unnecessary to provide an answer to questions 3 and 4.

[12] MS. JACKSON: Thank you, My Lord.

[13] MR. MCLACHLAN: Approval as to form, My Lord?

[14] MS. JACKSON: I wonder, My Lord – the Board will draft the order. I wonder if it would be acceptable if it can simply be submitted to the court for signature? I take it there is no order as to costs?

[15] THE COURT: No.

[16] MS. JACKSON: The Board certainly is not seeking costs.

[17] THE COURT: You are not seeking it.

[18] Mr. Sun, after the court has given judgment, it is necessary for someone to draft a formal order. Ms. Jackson has volunteered to do that. So she will have her office type up the formal order for entry and she has asked that the order may be presented to the registry for entry without requiring your signature on it first. That is the usual practice where a party is unrepresented. The order will reflect what I have said in my judgment today. Mr. Registrar has taken notes of what I have said, and the registry will ensure that the order as presented for entry corresponds with the judgment that I have just given. So it will not be necessary for you to sign the order before it is presented for entry.

The Honourable Mr. Justice W.F. Ehrcke