

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Homburg L. P. Management Inc. v. Nova Scotia (Director of Assessment), 2005 NSSC 270

Date: 20051011

Docket: S.H. 244692

Registry: Halifax

In the Matter of: *The Assessment Act*, R.S.N.S. 1989, c. 23, as amended

Between: Homburg L. P. Management Incorporated, as general partner for Homco Realty Fund (20) Limited Partnership and Homburg L. P. Management Incorporated as general partner for Homco Realty Fund (1) Limited Partnership

Applicants

and

The Director of Assessment, the Recorder, and the Regional Manager under the *Assessment Act*

Respondents

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Judge: The Honourable Justice C. Richard Coughlan

Heard: July 14, 2005 (in Chambers), at Halifax, Nova Scotia

Written Decision: October 11, 2005

Subject: Administrative Law - Judicial Review - *Certiorari* and *Mandamus*

Summary: The applicants own real property. Requests for financial information were made in connection with the valuation

of their properties for the 2004 Assessment Roll. The requested information was provided, but the issue arose whether the information was provided as required by the *Assessment Act*. Section 23 of the *Act* provides a property owner loses its right to appeal for the assessment year in which the owner neglects, refuses or fails to provide information reasonably required by the Assessor. The information was used by the Assessment Services in valuing the properties for the 2004 Assessment Roll. The applicants appealed their 2004 assessments. Assessment Services refused to process the appeals taking the position the Regional Assessment Appeal Court was without jurisdiction to determine whether there had been compliance with the request for financial information.

Issue:

Did Assessment Services err in not processing the applicants' appeals of their 2004 assessments?

What is the appropriate standard of review?

Result:

Orders for *certiorari* and *mandamus* granted. In *Nova Scotia (Director of Assessment) v. Springwell Properties Ltd.* (1993), 119 N.S.R. (2d) 227 (N.S.S.C. - A.D.) the Appeal Division held the Municipal Board and Regional Assessment Appeal Court had jurisdiction to determine whether a party had lost the right of appeal pursuant to s. 23 of the *Assessment Act*. In the face of such a clear statement from the Appeal Division, it is patently unreasonable for Assessment Services to take the position the Regional Assessment Appeal Court is without jurisdiction to hear the appeal as to whether the party had lost the right of appeal pursuant to s. 23 of the *Assessment Act*.