

IN THE COURT OF APPEAL

SAINT VINCENT

MAGISTERIAL CIVIL APPEAL NO. 9 of 1976

BETWEEN: TAX OFFICER - Appellant

and

SUNSET SHORES LIMITED - Respondent

Before: The Honourable the Chief Justice  
The Honourable Mr. Justice St. Bernard  
The Honourable Mr. Justice Peterkin

Appearances: M. Joseph for Appellant  
E. Layne for Respondent.

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1976, Sept. 24 and  
1977, January 12

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J U D G M E N T

PETERKIN, J.A:

On 30/1/76 the Bailiff, on behalf of the Tax Officer, the Appellant in the instant appeal, served on Sunset Shores Ltd., the Respondent, a notice of assessment by authority of Sec. 28 of the Land and House Tax Ordinance, Cap. 194 of the Laws of St. Vincent. The notice was in respect of an assessment made in 1976. It fixed the annual rental value of the Respondent's property at \$60,000, and stated the amount of tax due to be \$2,700 for the years 1973, 1974 and 1975.

On 4/2/76 Sunset Shores Ltd. wrote to the Magistrate, District 2, a letter giving notice of its intention to appeal from this assessment. The matter came on for hearing before the Magistrate sitting at Calliaqua on 10th and 24th March, 1976. Counsel for Sunset Shores Ltd. made a submission in limine, and, after hearing Counsel appearing on behalf of the Tax Officer, the learned Magistrate ruled that Sunset Shores Ltd. being an hotel is not subject to tax within the meaning of the Land and House Tax Ordinance, and also that Sec. 28 of the Land and House Tax Ordinance did not authorise the Tax Officer to make assess-

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ments retroactively in respect of property not included on the tax roll. Accordingly, the learned Magistrate ordered that the assessment of tax made against Sunset Shores Ltd. for the years 1973 to 1975 be annulled. It is against this order that the Tax Officer has appealed.

The grounds of appeal are:-

- (1) that the decision is erroneous in point of law in that the Learned Magistrate erred in ruling that -
  - (a) Section 28 of the Land and House Tax Ordinance Cap. 194 did not authorise the Tax Officer to make assessments retroactively in respect of property not included on Tax Roll;
  - (b) that the Land and House Tax Ordinance Cap. 194 did not make provision for the assessment of hotels.

In regard to ground (1), (b), Counsel for Respondent has admitted that an hotel would fall within the meaning of "House" as defined in Sec. 2 of the Land and House Tax Ordinance. I agree. This ground of appeal therefore calls for no further comment and is treated as having been conceded. What falls to be considered in this appeal is whether or not the Magistrate erred in ruling as is alleged at ground (1), (a) above.

Counsel for the Appellant has referred the Court to sec. 28 (1) of the Ordinance which reads as follows:-

28. (1) "If any person liable to pay taxes shall not have been included therefor in the Tax Rolls, the omission shall not exempt him from the payment of taxes which may be due by him. In such case it shall be awful for the Tax Officer to ascertain, determine, and assess what amount of taxes may be due by such person and to serve a notice on such person ordering payment of the same to be made to the Treasurer within ten days from the date of such service, and the Tax Officer shall thereupon send a signed note to the Treasurer, stating that such an assessment and order has been made and served."

She then submitted that the words, "which may be due by him" implied that there should be no limitation of time, and that the section authorised the Tax Officer to make assessments

/retroactively.....

retroactively in respect of property not included on the Tax Roll. She referred the court to sec. 10 of the Ordinance and submitted that it did not operate as a restriction on the Tax Officer. Counsel cited to the court Craies on Statute Law 6th Edition on the subject of fiscal cases. The learned author quotes from a judgment of Lord Cairns which reads in part as follows:-

"I am not at all sure that, in a case of this kind - a fiscal case - form is not amply sufficient; because, as I understand the Principle of all fiscal legislation, it is this: if the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the Judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be."

Counsel submitted finally that the Magistrate erred in law in ruling as she did.

Counsel for the Respondent on the other hand has argued that the ruling of the Magistrate should be sustained. He referred the court to Sections 10 and 20 (1), of the Ordinance which read as follows:-

10. "Every assessment shall be made as on the first day of January for the then current year."
20. (1) The Tax Officer shall, before the thirteenth day of June in each year, make out, for each district, a list in alphabetical order of every person assessed, adding a description of each property in respect of which such person is assessed and the amounts of such assessment and of the tax imposed thereon, which list shall be in such form as may be appointed by the Governor. Each of the said lists (hereinafter called a "Tax Roll") shall when completed be signed by the Tax Officer and certified by him to be correct."

Counsel also referred the court to Sec. 28 (1) already cited. He then submitted that it was the duty of the Tax Officer to make an assessment for every year; that assessments can vary from year to year, and that until an assessment is made there is no tax due. He further submitted that Sec. 28 (1) referred to persons not assessed; that its purpose was to cure an omission,

/and.....

and that it authorised the Tax Officer to assess in respect of one year only, i.e., what he omitted to do as set out in Sec. 20. I entirely agree. I think its purpose is to ensure that anyone omitted from the Tax Roll made out and certified to be correct by the Tax Officer under the authority of Sec. 20 (1) should not escape from the tax, but that it could not give to the Tax Officer any wider authority than is contemplated by Sec. 20 (1) of the Ordinance. As such I am of the view that Sec. 28 should not operate without restriction of time, and that it does not authorise the Tax Officer to make assessments retroactively in respect of property not included on the Tax Roll.

Accordingly, I would sustain the ruling of the learned Magistrate and dismiss this appeal. In view of the fact that the first ground of appeal has been conceded, I would order that the Respondent receive one half of the taxed costs.

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(N.A. Peterkin)  
JUSTICE OF APPEAL

I agree.

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(E.L. St. Bernard)  
JUSTICE OF APPEAL

DAVIS, C.J.

I agree with the conclusions reached in the judgment of Peterkin J.A.

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(Maurice Davis)  
CHIEF JUSTICE