

Bleeman Holdings Ltd. v. Municipal Property Assessment Corp., Region 9,
[2017] O.A.R.B.D. No. 5

Ontario Assessment Review Board Decisions

Ontario Assessment Review Board

Panel: Joseph M. Wyger, Member

Heard: December 6, 2016 by teleconference.

Decision: January 12, 2017.

File No.: DM 144494

Appeal Numbers: 2946149, 3035902, 3012062,

3074491, 3179677, 3150068 and

3179677

Hearing Event No.: 649466

[2017] O.A.R.B.D. No. 5 | 2017 CarswellOnt 543 | 93 O.M.B.R. 342

Moving Party(ies): Bleeman Holdings Limited and Grossman Holdings Limited Respondent(s):
Municipal Property Assessment Corporation ("MPAC") Region 09 Property Location(s): 7-9-11
Crescent Place Municipality(ies): City of Toronto Roll Number(s): 1906-012-010-00550-0000
Taxation Year(s): 2013, 2014, 2015 and 2016

(9 paras.)

Statutes, regulations and rules cited:

Legislative Authority:

Section 53 of the *Assessment Act*, R.S.O. 1990, c. A.31, as amended.

Appearances

Bleeman Holdings Ltd., Grossman Holdings Ltd.: B. Schubert, counsel.

MPAC: M. McLaren-Caux, counsel.

City of Toronto: No one appeared.

DISPOSITION

DISPOSITION OF MOTION

Introduction

1 The owners of a large multi-residential building in Toronto brought this motion for production of confidential information on other apartment buildings, which is in the possession of MPAC, pursuant to s. 53 of the Act. They also requested an order granting leave to amend their Statement of Issues to include two schedules containing seventy properties that "the Appellants may plead and rely on...". The valuator for the Appellants affirmed that this "information is necessary and essential to my expert opinions as to the correct and equitable values and assessments".

2 MPAC consented to the amendment of the Appellants' pleadings, but opposed the release of so much detailed confidential information on so many properties, on such vague grounds. In particular, MPAC does not agree that detailed income and expense information, leases, rent rolls and operating statements are required for the equity comparables.

3 The agents or owners of three of the third party apartment buildings attended the motion to oppose the release of sensitive, confidential financial information for fear of it winding up in the hands of their competitors.

Legislation

4 Section 53 of the Act states:

Disclosure of information

53. (1) A person employed by the assessment corporation, a municipality or a school board is guilty of an offence and on conviction is liable to a fine of not more than \$2,000, or to imprisonment for a term of not more than six months, or to both if,
- (a) in the course of the person's duties, he or she acquires or has access to information collected under this Act or to information collected pursuant to an assessment appeal or a proceeding in court involving an assessment matter;
 - (b) the information is,
 - (i) proprietary information of a commercial nature prescribed by the Minister relating to an individual property, or
 - (ii) actual income and expense information on an individual property; and
 - (c) the person wilfully discloses the information or permits it to be disclosed to any person who is not entitled in the course of their duties to acquire or have access to the information.

Exception

- (2) This section does not prevent disclosure of that information,
 - (a) to the assessment corporation or any authorized employee of the corporation; or
 - (b) by any person being examined as a witness in an assessment appeal or in a proceeding in court involving an assessment matter.

Information

(3) Subject to subsection (1), the assessment corporation shall make available to the following entities the information sufficient to meet their planning requirements:

1. Every municipality.
2. Every school board.
3. Every board of a local roads area established under the Local Roads Boards Act.
4. Every local services board established under the Northern Services Boards Act.

Purpose

(4) The information provided under subsection (3) shall not be used by the entities set out in that subsection for any other purpose.

Information for tenants

(4.1) Upon request, a tenant is entitled to receive the information maintained by the assessment corporation in respect of a property, or the portion of a property, leased by the tenant and to receive any other information about the property; the tenant is not entitled to receive the information referred to in subsection (1).

Disclosure

(5) Subject to subsection (1) and to any requirement of the Assessment Review Board concerning the disclosure of evidence, the assessment corporation may disclose any information acquired by it and may do so on such terms as it determines.

Analysis and Decision

5 Belinda Schubert, counsel for the Appellants argued that the detailed information on all the properties on both schedules was necessary so her valuator could "de-construct" the gross income multiplier ("GIM") in order to isolate the market capitalization rate, infer an expense ratio and work back to an "inferred" GIM that reflects actual market conditions, useful for both current value and equity. She asserted that counsel for MPAC were aware of the Appellants' reliance on these properties for some time, even though they were not included in the initial Statement of Issues.

6 Mark McLaren-Caux, counsel for MPAC, argued proportionality, vicinity, and lack of specificity, but mainly countered the idea that such detailed information was required for an equity analysis. I agree with him that the Board's equity reference requires only a reasonable sample of overall assessed values, and sale values if available, in order to determine whether similar lands are assessed at a wholly different level of assessment than the level of sales. Detailed income information, expense ratios and GIMs (even inferred), are not necessary for this Board to determine whether a correct current value is inequitable, but are better left to the current value determination.

7 I have reviewed the lists of properties provided and have designated 19 properties marked CV on the Schedules "A" and "B", for which full financials will be disclosed and which should be a sufficient sample of comparable properties for the Appellants' valuator to form an opinion on correct current value. The Appellants removed many properties from their original Schedule "A" in the interests of proportionality and MPAC accepted the validity of the 15 current value

comparables found on Schedule "B". I added the four current value properties from Schedule "A" due to their vicinity and comparability. Assessment data from MPAC's standard Guidelines for Release of Assessment Data ("GRAD") as well as sales information will be provided on all of the properties on Schedules "A" and "B", which will be sufficient for this Board to reference in any equity analysis.

8 Some of the property information approved for release is from properties owned or represented by the third parties attending the motion. As an alternative to denying the release of the information, they requested that in addition to executing the undertakings of non-disclosure attached, that counsel and valuers be required to provide copies of valid driver's licenses to provide addresses for service in the event confidentiality is breached. I agree with that proposition, but only for anyone receiving confidential information who is not a solicitor or paralegal licensed by the Law Society of Upper Canada ("LSUC").

9 For these reasons, I order as follows:

1. The Appellants' are granted leave to amend their Statement of Issues in accordance with Tab 3 of their Motion Record.
2. MPAC shall produce to legal counsel for the Moving Parties/Appellants, within 90 days of the date of the issuance of this Disposition, with respect to all the Properties set out in Schedules "A" and "B" hereto:
 - i. GRADs for all properties listed, without conceding relevance;
 - ii. Any revised GRADs, and if the revised GRAD does not pertain to all years in the cycle, clarification as to the quantum of the assessment in each year; and
 - iii. Sales investigation questionnaires and agreements of purchase and sale; and
 - iv. MTCVs, if any, where they contain no additional s. 53 information that does not pertain to the persons served on this motion.
3. MPAC shall produce to legal counsel for the Moving Parties/Appellants, within 90 days of the date of the issuance of this Disposition, with respect to the 19 properties marked "CV" on Schedules "A" and "B" hereto:
 - i. All income and expense information from the years 2011-2013 that has been provided to MPAC in order to determine the 2012 base year current value assessment for 2013-2016 taxation of each of the properties;
 - ii. All leases, rent rolls and operating statements from the years 2011-2013 that have been provided to MPAC in order to determine the 2012 base year current value assessment for 2013-2016 taxation of each of the properties;
 - iii. Any information related to those properties in Schedules "A" or "B" relied upon by MPAC for the determination of the GIM.
4. For greater certainty, MPAC shall produce the information set out in paragraph [8], points 2 and 3 of this Disposition, together with an accompanying electronic document index, all in searchable electronic format, on two identical USB sticks (the "USB Sticks"). Counsel for MPAC shall notify counsel for the Moving Parties/Appellants when the USB Sticks are ready for retrieval from the offices of counsel for MPAC. Counsel for the Moving Parties/Appellants shall provide one of the USB Sticks

to each of the consultants from whom an undertaking of confidentiality has been provided.

5. Legal counsel retained by the Moving Parties/ Appellants shall execute and deliver Undertakings of Confidentiality and Non-Disclosure in the forms set out in Schedule "C" hereto, to legal counsel for MPAC, prior to production of documents noted in paragraph [8] point 3 hereof.
6. Consultants and expert witnesses retained by the Moving Parties/Appellants shall execute and deliver Undertakings of Confidentiality and Non-Disclosure in the forms set out in Schedule "D" hereto, to legal counsel for MPAC, together with photocopies of valid driver's licenses of any who are not LSUC licensees, prior to production of documents noted in paragraph [8] point 3 hereof. MPAC counsel shall retain the photocopies of driver's licenses, which may only be released to the third parties upon further Order of this Board.

JOSEPH M. WYGER
MEMBER

* * * * *

SCHEDULE "A"

| | Number | Street | | Municipality | Roll Number |
|-----|-----------|----------------------|----|--------------|---------------------|
| 1. | 739 | Birchmount Road | CV | Scarborough | 1901041140006000000 |
| 2. | 750 | Morningside Avenue | CV | Scarborough | 1901084300012500000 |
| 3. | 125 | Bamburgh Circle | | Scarborough | 1901104625100000000 |
| 4. | 3875 | Sheppard Avenue East | | Scarborough | 1901111170014000000 |
| 5. | 5600 | Sheppard Avenue East | | Scarborough | 1901125025008000000 |
| 6. | 200 | Dufferin Street | | Toronto | 1904021090026000000 |
| 7. | 100 | Gowan Avenue | CV | East York | 1906032250059000000 |
| 8. | 2850 | Jane Street | | North York | 1908011301171000000 |
| 9. | 45 | Driftwood Avenue | | North York | 1908011380055000000 |
| 10. | 50 | Driftwood Avenue | | North York | 1908011401221000000 |
| 11. | 2397 | Finch Avenue West | | North York | 1908012130005000000 |
| 12. | 35 | Tobermory Drive | | North York | 1908013010002000000 |
| 13. | 2050 | Keele Street | | North York | 1908021010001000000 |
| 14. | 1745-1755 | Jane Street | | North York | 1908022300050000000 |
| 15. | 2500 | Keele Street | | North York | 1908022500099000000 |
| 16. | 2460 | Keele Street | | North York | 1908022500100000000 |
| 17. | 1307 | Wilson Avenue | | North York | 1908032130014000000 |
| 18. | 1303 | Wilson Avenue | | North York | 1908032130016000000 |
| 19. | 5 | Agate Road | | North York | 1908032310001000000 |
| 20. | 470 | Sentinel Road | | North York | 1908033331001000000 |
| 21. | 40 | Fountainhead Road | | North York | 1908033331002000000 |
| 22. | 35 | Fountainhead Road | | North York | 1908033331004000000 |
| 23. | 1 | Fountainhead Road | | North York | 1908033331005000000 |
| 24. | 6030 | Bathurst Street | | North York | 1908053600022020000 |
| 25. | 6020 | Bathurst Street | | North York | 1908053600023050000 |
| 26. | 765 | Steeles Avenue West | | North York | 1908073910003000000 |
| 27. | 5 | Dufresne Court | | North York | 1908101170005000000 |
| 28. | 225 | Van Horne Avenue | CV | North York | 1908112440001500000 |
| 29. | 12 - 24 | Leith Hill Road | | North York | 1908112720019000000 |
| 30. | 30 | Godstone Road | | North York | 1908112750003000000 |
| 31. | 120 | Raglan Avenue | | Toronto | 1914012010026000000 |
| 32. | 2450-2460 | Weston Road | | York | 1914064090006000000 |
| 33. | 31-35 | King Street East | | York | 1914064220029000000 |

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SCHEDULE "B"

| | Number | Street | | Municipality | Roll Number |
|-----|--------|----------------------|----|--------------|---------------------|
| 1. | 50 | Burnhill Road | CV | Scarborough | 1901021480002500000 |
| 2. | 821 | Birchmount Road | | Scarborough | 1901041200001000000 |
| 3. | 829 | Birchmount Road | | Scarborough | 1901041200002000000 |
| 4. | 2323 | Eglinton Avenue East | | Scarborough | 1901041210027000000 |
| 5. | 1 | Rosemount Drive | CV | Scarborough | 1901042020001000000 |
| 6. | 1255 | Birchmount Road | | Scarborough | 1901042400057000000 |
| 7. | 859 | Kennedy Road | | Scarborough | 1901042430012000000 |
| 8. | 126 | Bellamy Road | | Scarborough | 1901063130020000000 |
| 9. | 3131 | Eglinton Avenue East | | Scarborough | 1901072240038000000 |
| 10. | 225 | Markham Road | CV | Scarborough | 1901072380004000000 |
| 11. | 399 | Markham Road | | Scarborough | 1901081010002000000 |
| 12. | 263 | Russell Hill Road | CV | Toronto | 1904054290015000000 |
| 13. | 265 | Russell Hill Road | CV | Toronto | 1904054290016000000 |
| 14. | 48 | Isabella Street | CV | Toronto | 1904068460032000000 |
| 15. | 100 | Cosburn Avenue | CV | East York | 1906032260017500000 |
| 16. | 17 | Farmstead Road | | North York | 1908082012057000000 |
| 17. | 750 | York Mills Road | | North York | 1908082012058000000 |
| 18. | 740 | York Mills Road | | North York | 1908082012059000000 |
| 19. | 2 | Biggin Court | CV | North York | 1908121180085000000 |
| 20. | 7 | Biggin Court | CV | North York | 1908121180086000000 |
| 21. | 5 | Biggin Court | CV | North York | 1908121180087000000 |
| 22. | 3 | Biggin Court | CV | North York | 1908121180088000000 |
| 23. | 1 | Biggin Court | CV | North York | 1908121180089000000 |
| 24. | 1264 | York Mills Road | | North York | 1908123020048000000 |
| 25. | 224 | St. George Street | CV | Toronto | 1904052170029000000 |
| 26. | 445 | Eglinton Avenue East | CV | Toronto | 1904103740025000000 |
| 27. | 411 | Eglinton Avenue East | CV | Toronto | 1904103730025000000 |

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SCHEDULE "C"**ASSESSMENT REVIEW BOARD**

Region Number: 9

Municipality: City of Toronto

IN THE MATTER of the *Assessment Act*, [*R.S.O. 1990, c. A.31, Section 40*](#), as amended;

AND IN THE MATTER OF appeals by Bleeman Holdings Limited and Grossman Holdings Limited for taxation years 2013-2016, with respect to a property municipally known as 7-9-11 Crescent Place, in the City of Toronto, being roll number 19 06 012 010 005 50 0000 (the "Property").

BETWEEN:

BLEEMAN HOLDINGS LTD., GROSSMAN HOLDINGS

LTD., AND 3636 BATHURST STREET
LIMITED

Moving Parties / Appellants

- and -

MUNICIPAL PROPERTY ASSESSMENT CORPORATION,
REGION NO. 9 and THE CITY OF
TORONTO

Respondents

UNDERTAKING OF NON-DISCLOSURE

To The Municipal Property Assessment Corporation and its Counsel:

I, _____, of the City of _____, at the law firm of Nixon Fleet & Poole LLP, legal counsel for the Moving Parties/Appellants in these proceedings, undertake that I will not disclose to any person, except as expressly permitted by the terms of this Undertaking, information provided by the Municipal Property Assessment Corporation pursuant to the Order of the Assessment Review Board dated December 6, 2016 (the "Confidential Information").

Subject to the rights and qualifications set out below, the Confidential Information may be disclosed only to lawyers, expert witnesses, paralegals and consultants retained by the Moving Party/Appellant in connection with the appeals herein, who have signed an Undertaking in substantially the same form as this undertaking and delivered either an original signed copy or an electronically transmitted signed copy thereof to counsel for MPAC. No Confidential Information can be disclosed to any person, including a lawyer, expert witness, paralegal or consultant, who is an owner of, or an employee of, the Moving Parties/Appellants in these proceedings. The Confidential Information will not be used for the purposes of any other proceeding or for any other purpose but the assessment appeal relating to the Moving Parties/Appellants.

This undertaking does not extend to disclosure of Confidential Information or part thereof, if prior to its disclosure by MPAC, such information was in my possession, custody, or control as a result of my own independent investigations. This Undertaking does not preclude me from disclosing opinions and conclusions so long as Confidential Information is not disclosed in so doing.

Except as expressly permitted in this Undertaking, I will not make copies of any of the Confidential Information. The Confidential Information may be entered on a computer disk or a memory stick. Any Confidential Information entered on the computer disk or memory stick is not to be transferred or copied in any way except as expressly permitted herein. The computer disk or memory stick is to be kept in a secure location and is to remain in the exclusive possession of persons who have signed this Undertaking, or an undertaking in substantially the same form as this undertaking and delivered either an original signed copy or an electronically transmitted signed copy thereof to counsel for MPAC.

The computer disk or memory stick will be erased at the conclusion of the proceedings and I will provide written confirmation of the erasure to counsel for MPAC.

Confidential Information may be included in reports and other Exhibits to be submitted to the Board. If that happens, I will take all reasonable and necessary steps to assist in ensuring that there is no disclosure of the documents except as permitted in this Undertaking.

I acknowledge that, subject to any Order of the Assessment Review Board or a Court, it is the intention of the parties to these proceedings that reference to or disclosure or production of the Confidential Information in the course of these proceedings, or any application for leave to appeal or appeal proceedings, will be done in such a manner that will preclude disclosure of the Confidential Information to any person, other than legal counsel, expert witnesses, paralegals and consultants acting for the parties and the presiding members of the Assessment Review Board or the Court.

At the conclusion of the proceeding, including any appeals from a decision of the Board, I undertake to either return all of the Confidential Information to MPAC, including any information supplied to another person through me, or to confirm that the Confidential Information has been appropriately destroyed. In either event, I will provide written confirmation of my actions to counsel for MPAC.

DATED at Toronto, this ____ day of _____, 201____.

Name:

* * * * *

SCHEDULE "D"

ASSESSMENT REVIEW BOARD

Region Number: 9

Municipality: City of Toronto

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BETWEEN:

BLEEMAN HOLDINGS LTD., GROSSMAN HOLDINGS
LTD., AND 3636 BATHURST STREET
LIMITED

Moving Parties / Appellants

- and -

MUNICIPAL PROPERTY ASSESSMENT CORPORATION,
REGION NO. 9 and THE CITY OF
TORONTO

Respondents

UNDERTAKING OF NON-DISCLOSURE

To The Municipal Property Assessment Corporation and its Counsel:

I, _____, of the City of _____, property tax consultant at Equitable Value Inc., valuation expert for the Moving Parties/Appellants in these proceedings, undertake that I will not disclose to any person, except as expressly permitted by the terms of this Undertaking, information provided by the Municipal Property Assessment Corporation pursuant to the Order of the Assessment Review Board dated December 6, 2016 (the "Confidential Information").

Subject to the rights and qualifications set out below, the Confidential Information may be disclosed only to lawyers, expert witnesses, paralegals and consultants retained by the Moving Parties/Appellants in connection with the appeals herein, who have signed an Undertaking in substantially the same form as this undertaking and delivered either an original signed copy or an electronically transmitted signed copy thereof to counsel for MPAC. No Confidential Information can be disclosed to any person, including a lawyer, expert witness, paralegal or consultant, who is an owner of, or an employee of, the Moving Parties/Appellants in these proceedings. The Confidential Information will not be used for the purposes of any other proceeding or for any other purpose but the assessment appeal relating to the Moving Parties/Appellants.

This undertaking does not extend to disclosure of Confidential Information or part thereof, if prior to its disclosure by MPAC, such information was in my possession, custody, or control as a result of my own independent investigations. This Undertaking does not preclude me from disclosing opinions and conclusions so long as Confidential Information is not disclosed in so doing.

Except as expressly permitted in this Undertaking, I will not make copies of any of the Confidential Information. The Confidential Information may be entered on a computer disk or a memory stick. Any Confidential Information entered on the computer disk or memory stick is not to be transferred or copied in any way except as expressly permitted herein. The computer disk or memory stick is to be kept in a secure location and is to remain in the exclusive possession of persons who have signed this Undertaking, or an undertaking in substantially the same form as this undertaking and delivered either an original signed copy or an electronically transmitted signed copy thereof to counsel for MPAC.

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I acknowledge that, subject to any Order of the Assessment Review Board or a Court, it is the intention of the parties to these proceedings that reference to or disclosure or production of the Confidential Information in the course of these proceedings, or any application for leave to appeal or appeal proceedings, will be done in such a manner that will preclude disclosure of the Confidential Information to any person, other than legal counsel, expert witnesses, paralegals and consultants acting for the parties and the presiding members of the Assessment Review Board or the Court.

At the conclusion of the proceeding, including any appeals from a decision of the Board, I undertake to either return all of the Confidential Information to MPAC, including any information supplied to another person through me, or to confirm that the Confidential Information has been appropriately destroyed. In either event, I will provide written confirmation of my actions to counsel for MPAC and counsel for the Moving Parties/Appellants.

DATED at Toronto, this ____ day of _____, 201____.