

## Property Tax

SEPTEMBER 18, 2003

### Do Separate Assessments Still Exist? How Relevant are the Assessor's Records?

Commentary on *Orlando Corp. v. Zellers Inc.* (2002), 62 O.R. (3d) 220 (Ont.S.C.J.); affirmed on appeal [2003] O.J. No.3328

### The Case

In *Orlando Corp. v. Zellers Inc.*, Zellers Inc. (the "Tenant") was a tenant pursuant to a lease signed in 1975 (the "Lease") with Orlando Realty Corporation Limited (the "Landlord"). The Lease provided, among other things, that the Tenant *pay the taxes levied in respect of and referable solely to the Tenant's building and, in the event that the entire shopping centre was assessed "en bloc" or the Tenant's building was not assessed and taxed as a separate and independent lot, the Tenant was to pay based upon a proportionate share methodology.*

Prior to 1998, the Tenant had been charged on the basis of the separate assessments issued for the Tenant as set out in the Landlord's notice of assessment. In 1998, separate tenant assessments were no longer issued or set out on the Landlord's notice of assessment. At issue in this application was whether the apportionment of value in the assessor's records constituted separate assessments.

The Court of Appeal, which agreed with the judge hearing the application, concluded that separate assessments no longer existed and that the tenant apportionments found in the assessor's records did not constitute separate assessments. The Court of Appeal made the following findings:

- the former separate tenant assessments which were set out on a landlord's notice of assessment and formed the basis of tenant business assessments provided the Landlord with the basis of allocating to the Tenant the "taxes levied in respect of and referable solely to the Tenant's building";
- as of 1998, separate assessments, which were set out in the annual notice of assessment and which formed the basis of business assessments, were abolished and one block assessment figure was provided for the property, thereby triggering the alternate provision in the Lease to allocate taxes based on a proportionate share methodology;
- the assessor's valuation record which provides an amount for the Tenant's premises, is an informal document and is not a separate assessment, as contemplated by the Lease and there is no basis for elevating such document to the status of an "assessment" as contemplated by the lease;
- the separate assessments which existed when the lease was signed were what the parties based the lease provision on and the parties clearly contemplated the possibility that separate assessments for each tenant might, in the future, no longer take place, and this is the eventuality that the lease anticipated; and

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- although entitled to do so under the Lease, Zellers took no steps to apply for a separate assessment from either the Taxing Authority or from the Minister who may, under the *Assessment Act*, pass a regulation providing for separate assessments for a property.

## Conclusion

While every case will be determined based on its own facts and particular lease language, it would appear that for now, the question of whether the apportionments found in the assessor's records constitute separate assessments has been answered. They are not.

If you have any questions, please do not hesitate to contact Melissa Muskat, 416.597.6297, [mmuskat@goodmans.ca](mailto:mmuskat@goodmans.ca) or Mark Blidner, 416.597.6294, [mblidner@goodmans.ca](mailto:mblidner@goodmans.ca).