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CORPORATION OF THE DISTRICT OF WEST VANCOUVER

v.

ASSESSMENT COMMISSIONER

Supreme Court of British Columbia (1955)

Before: MR. JUSTICE A.M. MANSON

January 27, 1956

H.J. Sedgwick and A.B.B. Carrothers, for the Appellant
Paul B. Paine, for the Respondent

Case Stated by Assessment Appeal Board

1. By indenture dated the 3rd day of September, 1946, the Corporation of the District of West Vancouver entered into an Agreement (hereinafter referred to as the "Agreement") with British Pacific Properties Limited whereby the annual assessments for the purpose of municipal taxation for the period of 10 years commencing with the year 1947 and ending with the year 1956 on the lands therein more particularly described were fixed at the amounts respectively set opposite the individual parcels and aggregating the total sum of \$175,000, subject to the provisos set forth in paragraph 2 of the said Agreement.
2. This Agreement was, in accordance with the provisions of section 231 of the *Municipal Act*, being chapter 199 of the *Revised Statutes of British Columbia*, 1936 (now section 249 of the *Municipal Act*, being chapter 232 of the *Revised Statutes of British Columbia*, 1948), embodied in a by-law, cited for all purposes as "West Vancouver-British Pacific Properties Limited, By-law No. 1138, 1946," which was duly submitted to the electors of the Corporation of the District of West Vancouver and received their assent on the 28th day of September, 1946, and was passed by the Council of the said Corporation on the 30th day of September, 1946.
3. A copy of the said "West Vancouver-British Pacific Properties Limited, By-law No. 1138, 1946," incorporating the said Agreement and certified a true copy by the Clerk of the said Corporation, was filed with the Assessment Appeal Board at the hearing of the above-mentioned appeal.
4. The assessment roll prepared for the year 1955 for the lands remaining subject to the said Agreement shows assessments for general purposes in the amounts prescribed by the said Agreement, but assessments for school purposes, in each case appealed, at the actual value of the said lands, an amount larger than prescribed by the said Agreement for the purpose of municipal taxation.
5. British Pacific Properties Limited, pursuant to the provisions of the *Municipal Act*, appealed against those assessments.
6. The appeal was heard by H. W. Detwiller, J. P. Roberts, and H. P. Bell-Irving, sitting as a Court of Revision, which Court, on the 24th day of February, 1955, ordered that "the assessments be

reduced to the original fixed assessment figure to conform to the said fixed assessment agreement for both school and general taxation purposes."

7. The Assessment Commissioner, by an equalization order dated at Victoria, British Columbia, the 4th day of April, 1955, directed to J. Y. Gardner, Assessor for the Corporation of the District of West Vancouver, increased the net assessed value of land in the District of West Vancouver for school purposes for the year 1955 by the addition of \$837,281 to the net assessed value of land, confirmed the assessment so varied, and directed that the increase in land net assessed values be apportioned to individual British Pacific Properties Limited parcels as first reported by the said Assessor.

8. The Assessor for the Corporation of the District of West Vancouver and the Corporation of the District of West Vancouver took an appeal from the said equalization order to the Assessment Appeal Board aforesaid upon the following among other grounds:

- (1) That the order of the Assessment Commissioner is beyond his powers and is invalid and illegal.
- (2) That the order of the Assessment Commissioner is contrary to law.
- (3) That the order of the Assessment Commissioner is contrary to the decision of the Court of Revision made on the 24th day of February, 1955; that the assessments in respect to all lands still registered in the name of British Pacific Properties Limited and included in the fixed-assessment agreement between the said Company and the District of West Vancouver, entered into in 1931 and renewed in 1937 and 1946, be reduced to the original fixed-assessment figures.
- (4) That no power or authority exists under the provisions of the *Assessment Equalization Act* for the Assessment Commissioner to vary or alter the terms of the Agreement between the Corporation of the District of West Vancouver and British Pacific Properties Limited hereinbefore referred to.
- (5) That the said Agreement is not superseded by the *Assessment Equalization Act*.
- (6) Such further and other grounds as counsel may advise.

The Assessment Appeal Board, after hearing argument, dismissed the said appeal.

Pursuant to subsection (2) of section 51 of the *Assessment Equalization Act* aforesaid, and as required by British Pacific Properties Limited, being a person affected by the decision of the Assessment Appeal Board in the appeal, the said Assessment Appeal Board submits this stated case and humbly requests the opinion of this Honourable Court on the following questions of law:

"1. Do the provisions of the said Agreement, notwithstanding the provisions of section 37, subsections (1) and (6), of the *Assessment Equalization Act*, 1953, prevent the Commissioner from increasing the total assessment of land in the Municipality of West Vancouver for the purposes of real-property taxation under the *Public Schools Act* in accordance with section 8 of the said Act?

"2. If the answer to Question 1 is in the negative, do the lands in question constitute 'a special class of land or specified part thereof' within the meaning of subsection (3) of section 8 of the *Assessment Equalization Act*, permitting the Commissioner to give special directions binding the Assessor to allocate the increase in total assessment of land to 'individual British Pacific Properties parcels as first reported'?"

Reasons for Judgment

January 27, 1956.

By an indenture dated the 3rd day of September, 1946, the Corporation of the District of West Vancouver entered into an Agreement with British Pacific Properties Limited whereby the annual assessments for the purpose of municipal taxation for the period of 10 years, commencing with the year 1947 and ending with the year 1956, on the lands therein more particularly described were fixed in the amounts respectively set opposite the individual parcels and aggregating the total sum of \$175,000. This Agreement was entered into pursuant to the provisions of what is now section 249 of the *Municipal Act*, and it was subsequently ratified by the ratepayers of the Municipality of West Vancouver as required by that Statute.

The Legislature in 1953, Second Session, passed the *Assessment Equalization Act*. In my mind I have no doubt that when the Agreement was entered into the phrase "municipal taxation" was inclusive of taxes for both general purposes and for school purposes.

Purporting to act under the provisions of the *Assessment Equalization Act*, the Assessment Commissioner directed the Assessor of the Municipality of West Vancouver in effect to ignore the provisions of the contract referred to and for school purposes to assess on a much higher basis.

It is to be presumed that the legislatures of our country act in all honesty and that, excepting in very exceptional cases, such as arise in wartime, they refrain from passing confiscatory legislation.

I have no doubt that the Legislature may pass what legislation it will affecting contracts. But where it does pass legislation intended to affect contracts, it is to be expected that it will do so in clear and unequivocal language, making it certain that the Legislature intended to do only that which is done in times of emergency or in exceptional circumstances. In the case at Bar, I do not find such clear and explicit language. As pointed out by counsel, in Ontario there is very clear language used in similar circumstances. It cannot be said that there would be any difficulty in finding language that would put the matter beyond doubt. Presuming, as I do, that the Legislature was acting in all honesty and with no intention to disturb existing contracts solemnly entered into, I can only come to the conclusion that the first question should be answered in the affirmative.

Having answered the first question in the affirmative, I do not have to deal with the second question.