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EVANS, COLEMAN & EVANS LIMITED

v.

THE CORPORATION OF THE CITY OF PORT COQUITLAM
and
GILLEY BROTHERS LIMITED

v.

THE CORPORATION OF THE DISTRICT OF COQUITLAM

Supreme Court of British Columbia (No. 542/57)

Before: MR. JUSTICE N.W. WHITTAKER

Vancouver, November 15, 1957

A.B.B. Carrothers for the Appellants
John R. Lakes for the City of Port Coquitlam and for The Corporation of the District of Coquitlam

Case Stated by Assessment Appeal Board

1. The first-mentioned appeal relates to the assessment of land of a total acreage of 325 acres legally described as District Lot 344 and Block B of the west part of District Lot 340, Plan 4093, a portion of which is presently being worked as a gravel pit. These lands are hereinafter referred to as the "Mary Hill gravel pit."

2. The Mary Hill gravel pit has been worked since 1925, during which time some 32 acres have been exhausted, producing approximately 7,250,000 cubic yards of sand and gravel. In the past five years the average annual production has been approximately 450,000 cubic yards.

3. It was agreed that it was proper to assess land of this nature on a capitalized royalty basis, and that an appropriate royalty to be used for this purpose is 5 cents per cubic yard.

4. The respondent, the Assessor, City of Port Coquitlam, had the Mary Hill gravel pit appraised by Mr. R. R. Sampson, a Provincial Government appraiser, who took the average production from the said gravel pit for the past five years and applied a rate of 5 cents per yard to produce an annual royalty value of an 80-acre portion of the Mary Hill gravel pit, which he considered would be the area worked in the next 40 years. This annual royalty value was capitalized at 10 per cent and the result reduced to 60 per cent to obtain an assessed value of the 80-acre portion.

5. Mr. R. R. Sampson also valued the area outside of the 80-acre portion at $200 per acre, which he reduced to 60 per cent to obtain an assessed value of $120 per acre.

6. The assessed value of the 80-acre portion based on the annual royalty value was then added to the assessed value of $120 per acre for the balance, to arrive at the total assessed value of the lands comprising the Mary Hill gravel pit.

7. The appellant contended that Mr. Sampson erred in his calculation of the area of the Mary Hill gravel pit which would be worked in the next 40 years, assuming a level of production equal to that of the last five-year average, and argued that the value arrived at by capitalizing royalty should be applied to the whole of the area of the Mary Hill gravel pit.

8. The appellant also contended that the capitalization rate of 10 per cent used by Mr. Sampson was not appropriate, and that the annual royalty value should be capitalized using dual rates of capitalization at between 17½ and 20 per cent, with provision for amortization of the investment in a wasting asset at 4 per cent interest. The basic royalty of 5 cents per yard and the 40-year projected production were adopted by the appellant.

The Board, after hearing the evidence and after reading the written argument submitted on behalf of the respondent and the appellant, decided that the entire acreage of the Mary Hill gravel pit should be assessed basically at $200 per acre, and that added to this basic assessment should be the annual income (based on the average production for the last five years at 5 cents per yard) capitalized in perpetuity at 15 per cent and the resulting value reduced for assessment purposes to 60 per cent thereof.

9. The second-mentioned appeal, which was heard together with the abovementioned appeal, relates to assessment of land of a total acreage of approximately 72 acres legally described as Legal Subdivisions 14, 15, and 16, Section 22, Township 40, a portion of which is presently being worked as a rock quarry.

10. The rock quarry has been worked sporadically for approximately 50 years, and approximately 10 acres have been exhausted. The average production for the last five years was 167,000 tons per year.

11. It was agreed that it was proper to assess land of this nature on a capitalized royalty basis, and that an appropriate royalty to be used for this purpose is 5 cents per ton.

12. The respondent, the Assessor, Municipality of Coquitlam, took the average production from the said rock quarry for the past five years and applied a rate of 5 cents per ton to produce an annual royalty value of a 3-acre portion. This annual royalty value was capitalized at 10 per cent and the result reduced to 60 per cent to obtain the assessed value of the 3-acre portion.

13. The respondent, the Assessor, Municipality of Coquitlam, also valued the area outside of the 3-acre portion, totalling 69 acres, at $5 per acre.

14. The assessed value of the 3-acre portion based on the annual royalty value was then added to the assessed value of $5 per acre for the balance, to arrive at the total assessed value of the land comprising the rock quarry.

15. The appellant contended that the area already exhausted was approximately 10 acres.

16. The appellant also contended that the capitalization rate of 10 per cent was not appropriate, and that the annual royalty value should be capitalized at 20 per cent in perpetuity, on the basis of a royalty of 5 cents per ton.

The Board, after hearing the evidence and reading the written submission of the appellant, decided that the entire acreage of the rock quarry should be assessed basically at $5 per acre, and that added to this basic assessment should be the annual income (based on the average production for the last five years at 5 cents per ton) capitalized in perpetuity at 17 per cent and the resulting value reduced for assessment purposes to 60 per cent thereof.

Pursuant to subsection (2) of section 51 of the *Assessment Equalization Act* aforesaid, and as required by Evans, Coleman & Evans Limited and Gilley Brothers Limited, the appellants in the

above-mentioned appeals and being persons affected by the decision of the Board in the said appeals, the said Board submits this stated case and humbly requests the opinion of this Honourable Court on the following questions of law:

> "1. Did the Board act in accordance with the law in deciding that the lands in question should be assessed on the basis of the valuation principle of capitalized royalty revenue, and that there should be added to the resulting assessment, in order to arrive at a total assessment, a basic assessment of all of the said lands, determined on some other basis?
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> "2. If the answer to Question 1 is in the affirmative, did the Board act in accordance with the law in determining the basic assessment on the full value of the said lands as opposed to 60 per cent of such value?
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> "3. In applying the valuation principle of capitalized royalty revenue, did the Board err in law by failing to use dual rates of capitalization, allowing for amortization at a given rate of interest of the original investment in cases where the property is a wasting asset? "

Reasons for Judgment

Of the three questions submitted for the opinion of the Court, the third has been abandoned by the appellant.

The first part of the first question is as follows: "Did the Board act in accordance with the law in deciding that the lands in question should be assessed on the basis of the valuation principle of capitalized royalty revenue. . .?"

The correctness of this method was not questioned in the argument before me.

Question 1 goes on, ". . . and that there should be added to the resulting assessment, in order to arrive at a total assessment, a basic assessment of all of the said lands, determined on some other basis."

If the allocation of 80 acres for gravel-pit purposes made by Mr. Sampson had been adopted by the Board, I would have answered this question in the negative so far as the 80-acre parcel is concerned. An area in use as a gravel pit can have no other concurrent use. To assess such an area on the basis of its value for, say, subdivision purposes would be incompatible with its use as a gravel pit. But the Board, I think properly, rejected the idea of setting aside any specific acreage as an area likely to be used in the future for gravel-pit purposes. The assessment is for one year, and the Board was concerned only with the present revenue derived from the pit itself, and with the assessment of the lands not presently in use as a gravel pit. I do not think it can be said that the lands outside the pit have no value apart from their value as a future source of gravel for commercial purposes. The pit does not encroach upon them. There is nothing to prevent the owner subdividing and selling them. No doubt, in that event, the gravel operation would have to be limited or abandoned. A revision in the assessment might then be necessary, but it is impossible for me to say that the Board erred in principle in attributing some value to the acreage outside of the area immediately in use as a pit. The latter area ought not in strictness to have been included in the basic assessment, but the Board probably considered it so small as to be of no importance. Question 1 is answered in the affirmative.

Question 2.- There does not appear to be any provision having the force of law requiring the assessment to be 60 per cent of the value instead of the full value, yet that appears to be the practice. This practice was followed by the Board in assessing the gravel operation as a commercial undertaking. It was followed by the Assessor in assessing the acreage outside of the assumed gravel-pit area. The Assessor fixed the assessment at $120 per acre, being 60 per cent of $200. The city did not appeal against this, and no one complained about it on the hearing of

the appeal to the Board. The Board, in assessing the acreage, purported to do so by comparison with the assessment of the worked-out area of approximately 30 acres and other adjoining lands held by appellant. The Board, in its decision, said:-

> First, the Board holds that if the worked-out area is fairly assessed at $200 per acre, as admitted by the appellant's witnesses, and if the balance of the lands held by the appellant, excepting those considered as part of the gravel operation, are fairly assessed at $200 per acre, there is no sound reason why the entire acreage should not first be assessed, basically, at $200 per acre.

The Board appears to have overlooked the fact that the worked-out area and the balance of the appellant's lands were assessed at $120 per acre, being 60 per cent of $200. It was no doubt through an oversight that the Board fixed the basic assessment at $200. This was the opinion of both counsel, expressed in the argument before me, counsel for the city contending, however, that there is nothing in the record to show it was a mistake and that the Board had power to do as it did.

The Board apparently refuses to acknowledge the error, if it was one, otherwise Question 2 would not have been submitted in its present form.

I think the basic assessment of $200 an acre cannot stand, for two reasons:

First, I think the effect of section 46 (1) (a) and (b) of the *Assessment Equalization Act,* 1953, is to deprive the Board of jurisdiction to vary the amount of the assessment in cases where (a) the value of the parcel bears a fair and just relation to the value at which other land in the area is assessed, and (b) when the assessed value is not in excess of actual value as determined under section 37. Here the Board has expressly found that the value of $200 per acre bears a fair and just relation to the value at which other lands in the area have been assessed. The Board had therefore no jurisdiction to vary the amount of the assessment, being $120 per acre.

Secondly, the Board having expressly found that the value of the lands in question was comparable to the value of other lands owned by the appellant, there was no evidence before the Board which would justify a higher assessment than that borne by those other lands.

The answer to Question 2 is in the negative.

In the appeal of Gilley Brothers Limited, the amount in dispute is so small as to be inconsequential. I do not intend to deal with this appeal separately. The opinion I have given in the other appeal will apply, where applicable.