The following version is for informational purposes only

ASSESSMENT COMMISSIONER

v.

H.D.L. MERCER

Supreme Court of British Columbia (No. X471/61)

Before: MR. JUSTICE HARRY J. SULLIVAN

Vancouver, July 3, 1961

C.B. Gray for the Appellant
John R. Lakes for the Respondent

Reasons for Judgment

The Assessment Commissioner appeals against a decision of the Assessment Appeal Board made on March 23, 1961. His notice of appeal was dated May 17, 1961, but seemingly was not served until some later date because the Board did not file its statement of case at the Vancouver Registry of this Court until June 12, 1961. Thereafter the appellant Assessment Commissioner seems to have been responsible for further delay in that he waited until June 30, 1961, to set the case down for hearing in long vacation. Contentious matters such as this have no valid place upon the calendar in long vacation, but I agreed to assist the parties in meeting a statutory deadline, which I was told was then only eight days distant.

The case as stated recites the facts and submits the question of law following:

The facts are as follows:

> (1) This case relates to the assessment upon improvements described as being "suburban residential" situate on Lot F of Blocks 4 and 9, Sections 1 and 2, Township 1, Semiamoo Indian Reserve, in the Municipality of Surrey, Province of British Columbia.
>
> (2) The land is leased by the appellant from the Department of Indian Affairs for a term of ten years from May, A.D. 1953, at an annual rental of thirty dollars ($30) per year, with options to renew for a further ten years, the rental to be renegotiated at the end of the ten-year term.
>
> (3) The 1960 assessment upon the improvements, which consist of a summer cottage, was fourteen hundred dollars ($1,400).
>
> (4) For 1961 the assessment was increased to nineteen hundred and ten dollars ($1,910).
>
> (5) In previous years an allowance of 40 per cent was made for the fact that these improvements were situate on leased lands.
>
> (6) As a result of some correspondence between the Assessor and the Assessment Commissioner, it was decided that these improvements should be assessed at the full

value as if the lands were held in fee. This decision was based upon the Commissioner's interpretation of a decision of Mr. Justice Verchere, in which he considered the assessment principles to be applied in the case of lands held under the *Veterans' Land Act*.

(7) One of the appellant's complaints was that the improvements lost value because they were on leased land and permission to remove the improvements was not a term of the lease.

(8) The Assessment Appeal Board considered the leasehold interest in reducing the assessment on the improvements from nineteen hundred and ten dollars ($1,910) to sixteen hundred and fifty dollars ($1,650).

Wherefore the following question is humbly submitted for the opinion of this Honourable Court: "Was the Board right in considering the appellant's leasehold interest as a factor in determining the actual value of the improvements?"

After careful consideration of the arguments of counsel and the reasons for judgment of the Assessment Appeal Board as filed by its Chairman, Mr. K. M. Beckett, I express the opinion that the question submitted should be answered affirmatively for the reasons stated by the Board. I agree with the Board's opinion that the judgment of my learned brother Verchere, J., in *Re Assessment Equalization Act, 1953*; *Re Desautel's Appeal*; *Re Assessment Appeal Board's Stated Case* (1959) 29 W.W.R., page 665, is "clearly distinguishable" from this case for the reasons stated by the Chairman of the Board.

Although common sense must not be permitted to play any part in the determination of a point of law, and admittedly no Judge of this Court has jurisdiction to go into the merits of assessments, it is of some gratification to note (after reading all of the evidence in the case) that the Assessor for the Municipality of Surrey, the members of the Assessment Appeal Board, and I would seem to be in concord regarding the result which should follow the application of common sense to the situation here. The excerpt from the evidence of the Assessor for Surrey Municipality, which I quote hereunder, is of sufficient interest to merit recording. I quote from pages 63 to 66 of the transcript of proceedings on appeal before the Board:

MR. BARNES: Now, I come to the most important part of this thing, as far as I am concerned and that is on the former assessment, and I took it up about two years ago with this Board, I made an allowance of 40 per cent when we figured these houses again at that time the same as we had the rest of the municipality, and then to allow for additional poor workmanship, materials and location and their leases, I allowed a 40-per-cent reduction. Now the leases at that time, I believe, most of them had about two years to run. There was no guarantee of any renewal and most of them could not even take the buildings off at the end of the lease term. There are other restrictions on the Indian reserve, as mentioned before, not supposed to have any liquor, etc., and all those restrictions to my mind, do reduce value. And I gave a 40-per-cent reduction on that basis.

CHAIRMAN: On the improvements?

MR. BARNES: On the improvements, yes. Now, when the Assessment Commissioner's office was here, as I mentioned before, and spent two months checking the sales and they ran into that 40 per cent and they wrote to me-Mr. Smith who was the Assessor at that time-and asked me why we had given it and this Board was our reply to them as to why we had given it. After that I received another letter from the Assessment Commissioner saying that it could not be done, that the houses had to be assessed as free and clear. Now, I don't agree with him. In his letter to me, the only reason that he

mentioned as to why they had to be free and clear, as I see it, was according to the Supreme Court case with the V.L.A.

CHAIRMAN: That was land though.

MR. BARNES: It could be, but nevertheless it's a different thing as I see it entirely anyway. The veteran can sell his property any time he likes, and as soon as he sells the title is clear. These people can never title, and they cannot get a proper sale, full price, for the houses. At the time I gave that 40 per cent, there were three sales then, and two of them came in almost exactly to the 40 per cent. I also used hypothetical rentals because there weren't any actual rentals and also arrived at the 40 per cent. I don't know whether it's coincidence or not, but Mr. Keenleyside came up with 43 per cent, which he rounded at 40, and I still think that a reduction should be made for restricted title on these properties. If I hadn't obeyed Mr. Wildman's letter and raised them, I would have got an order from him after the Court of Revision from which there would be no appeal, so it was better, I considered, that I raise them and just give this 20 per cent for these other restrictions that I could put my finger on and let the owners appeal and bring them to this Board for your consideration. That part I leave entirely to you. You have had evidence here today that that is my thinking on the matter.

CHAIRMAN: In other words, you go along with the idea that there should be-

MR. BARNES: -that there should be an allowance for restricted title.

MR. BEAMISH: I am wondering where Mr. Wildman's authority is to come in and start talking about particular type and classification.

MR. BARNES: Well, we don't have to obey his orders, but then if we don't he will give us an order unfortunately that we do have to obey.

MR. BEAMISH: I don't think any order from him would be valid touching on the properties of the Indian reserve alone.

CHAIRMAN: On individual or special classes. The only order he's entitled to make, it seems to me, is the over-all order, if my recollection is correct.

MR. BARNES: Well, he can order an increase to any area or any type, either land or improvements, as he wishes. This instruction from him, it doesn't say so here, but I understand it came from the Attorney-General's Department and

MR. BEAMISH: The Attorney-General's Department has been giving bad advice.

CHAIRMAN: Not only apparently the Department-

MR. BARNES: But on that basis, I definitely go along with them, instead of this 20 per cent that I have given, I would definitely consider that they should be given some reduction for their restricted type. As far as the other typing is concerned, I would not go along, of course, because it is taken the same as the rest of the school district.

As previously indicated, my answer to the question submitted is "yes."