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CORPORATION OF THE DISTRICT OF MAPLE RIDGE

v.

BRITISH COLUMBIA FOREST PRODUCTS LIMITED

Supreme Court of British Columbia (X504/61)

Before: MR. JUSTICE HARRY J. SULLIVAN

Vancouver, June 26 and July 10, 1961

John R. Lakes for the Appellant
H.P. Legg for the Respondent

Reasons for Judgment

The appellant Assessor seeks the opinion of the Court upon Question 1, and respondent company seeks the Court's opinion upon Questions 2, 3, 4, and 5 of the case stated by the Assessment Appeal Board, which it may be helpful to reproduce in *extenso* hereunder.

It will be noted that the issue raised by Question 1 was decided by the Assessment Appeal Board against the contention of appellant Assessor in 1960, but the Assessor ignored and flouted the Board's decision for the bluntly stated reason that he did not agree with it. By its decision in 1961 (here under appeal) the Board reaffirmed its 1960 adjudication and displayed remarkable restraint by merely observing that members of the Board would refrain "from making the obvious comment applicable" to the Assessor's expressed contempt. One can recall sundry occasions upon which members of an appellant tribunal have exercised less restraint in circumstances less provocative.

The case stated by the Board was submitted to the Court on June 20, 1961, in the following form:

> 1. The property which is the subject of this appeal consists of improvements and machinery owned by British Columbia Forest Products Limited and constituting a cedar saw and shingle mill in the Municipality of Maple Ridge known generally as the Hammond Mill.
>
> 2. The assessments which were the subject of this appeal and which were enumerated in the notice of appeal sent by the appellant to the Municipal Assessor of the Corporation of the District of Maple Ridge were as follows:-

Roll Folio No.	Legal Description	Assessment Subject to Appeal
728.....	Lot 3 of "A" of D.L. 278/281, Plan 6095, Group One	Improvements (buildings and machinery).
729.....	Lot F of D.L. 278/281, Plan 6261, Group One.....	Improvements (buildings and machinery).
731.....	Warehouse lease, D.L. 278, Group One.....	Improvements (buildings and machinery).

The assessment of lands is not in question.

3. The grounds for appeal stated in the notice of appeal delivered by the appellant to the Municipal Assessor were, *inter alia,* as follows:

(a) The Assessor has not interpreted the provisions of the *Municipal Act,* the *Public Schools Act*, and the *Assessment Equalization Act* according to law in making the above assessments.

(b) The improvements of the appellant have not been valued as the property of a going concern as required by the provisions of the aforementioned Acts.

(c) The Assessor has failed to make any allowance or sufficient allowance, or any reduction or sufficient reduction, on account of economic or functional obsolescence of the said improvements.

4. Prior to the Assessment Appeal Board's ruling, the assessments had been calculated as follows:-

Folio No.	1960 Assessment Prior to Assessment Appeal Board Decision, 1960		1960 Assessments as a Result of the Assessment Appeal Board Decision, 1960		1961 Assessment Appealed to the Assessment Appeal Board Having Been Confirmed by the Court of Revision	
	Improve-ments	Machinery	Improve-ments	Machinery	Improve-ments	Machinery
728.....	$2,598	.....	$2,598	.....	$2,598	.....
729.....	876,983	$868,273	734,736	$727,682	819,486	$881,543
731.....	21,144	29,275	17,715	24,770	15,710	18,575

5. In 1960 British Columbia Forest Products Limited (hereinafter called the "Company") appealed its assessments on improvements (structures and machinery) to the Assessment Appeal Board, which determined that the assessments for the year 1960 should be as set out in the foregoing paragraph. The Board found that the original plant of the mill was constructed in 1912 and is designed entirely for the production of cedar products and that the market, both nationally and internationally, for cedar products had diminished over the past five years. The Board further found as a fact on the hearing of that appeal that the operation was subject to both functional and economic obsolescence, and further found that it was mandatory to base the assessment on the integrated operation of a going concern, that for this purpose no distinction could be made between the value of improvements and the value of machinery, and that despite the substantial allowances made for physical depreciation by the Assessor in calculating his 1960 assessment some account must be taken into the going-concern value of the existing obsolescent conditions and accordingly directed an additional allowance of 16.22 per cent on improvements and machinery in respect of Folios 729 and 731. The Board suggested that in the event that the economic obsolescence should diminish or disappear, it must be taken into account by the Assessor in future valuations on the going-concern basis. A copy of the reasons of the Assessment Appeal Board giving its decision in 1960 is attached hereto.

6. After the decision of the Assessment Appeal Board in 1960, the Assessor prepared an assessment for the 1961 Assessment Roll, wherein he added some additions, removed some items that had been removed or destroyed by fire, adjusted allowances on certain items for physical depreciation, and arrived at an assessment as follows:-

Folio No.	Improvements	Machinery
728	$2,598	
729	819,486	$881,543
731	15,710	18,575

The Assessor calculated the assessment for 1961 on the basis of replacement costs less depreciation, which in the main was 45 per cent. The Assessor paid no attention to the reduction allowed for economic obsolescence by the Board in the year 1960 for the reason that he did not agree with it.

7. In 1961 the Assessment Appeal Board heard evidence presented by the appellant which was substantially the same as the evidence presented in 1960, the principal difference being that the Board had available the financial statement of the Company for the period 1959-60, which showed a loss of $91,325 as against a profit in 1959 of $47,181. The Board gave full consideration to the fact that these statements of profit and loss were made up for income-tax purposes and included certain deductions not permissible for assessment purposes.

8. The Board considered that the principle involved in the allowance made by the Board in 1960 had the approval of the Courts even in the case of new operations just commencing and, further, that the principle applies where an operation almost 50 years old is the subject of economic as well as functional obsolescence, and that accordingly an allowance must be made for it as long as the property is valued as a going concern. The Board found that the Assessor did not consider the assessment of improvements and machinery as a going concern.

9. At the hearing before the Appeal Board in 1961 the Company adduced evidence to show that market conditions for the cedar products produced by the Company at its Hammond Mill had seriously declined and supported this with evidence of the deterioration in the profit and loss position of the Hammond Mill for the period 1955 to 1961, inclusive. The Company further adduced evidence to show that there had been a marked decline in the value of the improvements and machinery at the Hammond Mill by reason of the adverse market conditions for cedar products generally and those cedar products manufactured at the mill, and that the calculation of the value of improvements and machinery on the basis of replacement cost less depreciation did not accurately reflect the value of the improvements and machinery at the mill, having regard to the effect that the poor market for cedar products has had upon the cedar sawmill structures and machinery at Hammond.

10. The Board decided that the assessment upon improvements should be $763,786 and on machinery should be $766,206 for Parcel F (Folio 729) only and confirmed the 1961 assessment on other parcels. A copy of the reasons of the Assessment Appeal Board giving its decision for the year 1961 and relating to this appeal is attached hereto.

11. The municipality being affected by the decision of the Board requires the Board to submit a case for the opinion of this Honourable Court on the basis of establishing the reduction on the ground of economic obsolescence although not on the question of functional obsolescence.

12. The Company being affected by the decision of the Board requires the Board to submit a case for the opinion of this Honourable Court on the basis of establishing the correctness in law of the assessments upon improvements and machinery in respect of Parcel or Lot F as calculated by the Board, and, further, on the basis of establishing whether the reduction for economic and functional obsolescence should apply not only to

the improvements and machinery on Parcel or Lot F, but whether the reduction should also apply to the improvements and machinery on Lot 3 of A, D.L. 278/281, Plan 6095, and on the warehouse lease, D.L. 278.

Wherefore the following questions are humbly submitted for the opinion of this Honourable Court:-

"1. Was the Board right in law in allowing a reduction in part on the basis of economic obsolescence and was this decision consistent with the decision of the Honourable the Chief Justice *In re Assessment Equalization Act re Royalite Oil Company Ltd.*?

"2. Was the Board correct in law in restricting a reduction for economic and functional obsolescence of the sawmill operation of the appellant to a part of the improvements and machinery comprising the said sawmill operation in the absence of any evidence to support such restriction?

"3. Alternatively, if the answer to the foregoing question is in the negative [affirmative], did the Board err in law or exceed its jurisdiction in deciding that there was no dispute about the assessments in respect of machinery and improvements located on Lot 3 of Block A, District Lot 278, and on the warehouse lease, District Lot 278?

"4. Was there any evidence before the Board to enable the Board to calculate the assessments upon improvements and machinery on Parcel or Lot F, District Lots 278/281, Plan 6261. to be $763,786 on improvements and $766,206 on machinery?

"5. If the answer to the question in the foregoing paragraph is in the negative [affirmative], does the Board have jurisdiction to re-examine its calculation of the said assessments of $763,786 and $766,206 respectively and correct any error or errors in such calculations? "

Dated at Vancouver, British Columbia, this 20th day of June, A.D. 1961.

For the Board,
K. M. BECKE'IT, *Chairman*.

The 1960 and 1961 reasons for decision of the Board, attached to and forming part of the case submitted, were respectively as follows:-

Thursday, the 10th day of March, 1960.

This appeal was heard in the presence of Mr. Hugh Legg, of counsel for the appellant, and the respondent appeared in person.

The appeal relates to the assessment upon improvements and machinery owned by the appellant and generally known as the Hammond Cedar Division of the appellant company. The improvements are assessed for 1960 at $876,983, and the machinery at $866,773, for the portion which is taxable.

Little change has been made in the assessment in the three years since the same property was last before the Board. The appellant's principal contention was that the operation had been the subject of both functional and economic obsolescence, on the grounds that, firstly, the original plant was constructed in 1912, and is designed entirely for the production of cedar products; secondly, that the market, both nationally and internationally, for cedar products has diminished over the past five years. It was

contended by the appellant that the cost of conversion to a more diversified and flexible operation could not be justified on an economic basis. Some evidence was given as to the actual cost of replacement of a plant of similar productive capacity with greater flexibility, and it was estimated that an equivalent modem plant would cost $1,800,000, give or take 10 per cent. The cost, in fact, could reach $2,000,000.

It must be found as a fact that the operation is subject to both functional and economic obsolescence. To what extent the economic obsolescence will continue is a matter of conjecture. Nevertheless, it must be conceded that a plant which originally was constructed in 1912 with various additions cannot, in the light of modern technological development, be considered as efficient as a modem plant. It is mandatory to base the assessment on the integrated operation of a going concern. For this purpose no distinction can be made between the value of improvements and the value of the machinery. After very careful consideration, the Board is of the opinion that despite the substantial allowances already made for physical depreciation, some account must be taken in the going-concern value of the existing obsolescent conditions. The valuation has been reviewed from all approved approaches. The resulting figure must, by reason of the approach adopted, to some extent be arbitrary. An additional allowance of 16.22 per cent on improvements and machinery is directed.

It is noted that the conversion factor used when the assessment was originally made is not correct. The Board suggests that for the 1961 roll these be adjusted and that the improvements and machinery be reassessed accordingly. It is also suggested that in the event that the economic obsolescence should diminish or disappear, it must be taken into account by the Assessor in future valuations on the going concern basis.

The Assessor will amend his assessment roll to reflect this adjustment.

The appellant is entitled to costs to include three witness fees in the amount of $18.

For the Board,
K. M. BECKEIT, *Chairman*.

Tuesday, April 4, 1961.

This appeal was heard in the presence of Mr. H. P. Legg, of counsel for the appellant, and Mr. J. R. Lakes, of counsel for the respondent.

The appeal relates to the assessment of improvements and machinery being a sawmill operation owned by the appellant and set out in particular on Form 1 supplied to the Board. There is no dispute about the assessments located on Lot 3 of Block A, District Lots 278/281, nor with respect to the improvements and machinery on the warehouse lease, District Lot 278. The entire hearing was devoted to the assessment upon improvements and machinery located on Lot F of District Lots 278/261. In 1960. by virtue of this Board's decision, the assessment upon improvements was fixed at $734,736. Upon machinery it was fixed at $726,182. For 1961 these assessments were increased to $819,486 and $880,043 respectively. During the course of the last year some additions were made to the sawmill, partly as a result of a fire, which required the appellant to rebuild a kiln, and the Assessor transferred some piping assessments from improvements to machinery. In addition, there were some additions to machinery and the Assessor made some deletions, respecting certain shingle machines, which had been "cannibalized" and were not in service.

The evidence presented by the appellant was substantially the same as in 1960, the principal difference being that the Board had available the financial statement for 1959-60, which showed a loss of $91,325. as against a profit in 1959 of $47,181. As in the

1960 decision, the Board has given full consideration to the fact that these statements of profit and loss are made up for income tax purposes and include certain deductions which are not permissible for assessment purposes. It is not considered necessary to review the evidence in detail since it substantially duplicates that given by the appellant last year through the same witness.

The respondent frankly stated that the assessment was made on a basis of replacement cost less depreciation, which in the main was at 45 per cent. He further stated that he paid no attention to the reduction allowed for economic obsolescence by the Board last year for the reason that he did not agree with it. The Board refrains from making the obvious comment applicable to this admission. The principle involved in the allowance made by the Board in 1960 has the approval of the Courts, even in the case of a new operation just commencing, and there are innumerable assessment and valuation authorities to support the principle that where an operation almost 50 years old is the subject of economic as well as functional obsolescence, an allowance must be made for it, as long as the property concerned is valued as a going concern. The respondent admitted that he did not consider the assessment of the improvements and machinery as a going concern. This is mandatory under the provisions of both the *Assessment Equalization Act* and the *Municipal Act*.

In the result, the Board finds that no evidence was submitted to justify any interference with the Board's order of last year. On the other hand that the evidence submitted by the appellant is insufficient to justify any alteration in the reduction allowed for economic and functional obsolescence that was fixed last year at 16.22 per cent. The additional improvements which were assessed for the first time this year were not questioned, and have been added to the improvement assessment less those improvements transferred by the Assessor from improvements to machinery. The additions and deletions relating to machinery have been taken into account.

The Board therefore directs that the assessment upon improvements for 1961 will be $763,786 and on machinery $766,206. This relates exclusively to the assessments upon Parcel F. The assessments on other parcels are confirmed.

The respondent will amend his assessment roll accordingly and the appellant is entitled to its costs to include two witness fees.

For the Board,
Chairman.

In my opinion the answer to Question I, namely:-

1. Was the Board right in law in allowing a reduction in part on the basis of economic obsolescence and was this decision consistent with the decision of the Honourable the Chief Justice *In re Assessment Equalization Act re Royalite Oil Company Ltd.*?"

should be "yes" in respect of both parts of the double-jointed question submitted.

In the Royalite case referred to (23 W.W.R. 328) Chief Justice Lett was dealing with the case of a newly constructed oil refinery which was designed and constructed to meet the anticipated market demands of retail sales outlets which at that time remained to be developed by the appellant company. He was not dealing, as I am, with the case of a 49-year-old cedar sawmill which, at the time of its construction in 1912, had a ready market for its products-a market which has declined with the passage of time and introduction of new materials and would seem to be diminishing each year notwithstanding the best efforts of the lumber industry to counteract the appeal of substitute materials for wood in the building industry. For example, respondent's operation of the sawmill involved in this appeal resulted in a loss of $91,325 in 1960 as against a

profit of $47,181 in the preceding year. I agree that profit and loss statements compiled for income-tax purposes may include sundry deductions not relevant to the assessment of plant and machinery for purposes of municipal taxation, but such statements suffice to indicate a presently existing condition of economic obsolescence in respect of respondent company's Haney mill; and as I read and understand the Royalite case it is implicit in the reasoning of the learned Chief Justice that economic obsolescence where it exists must be taken to be as real and as vital a factor in the determination of assessment value of an industrial plant as a "going concern" as would be functional obsolescence and other factors that no Assessor may jettison for purpose of advocating his own pet theories regarding proper principles of assessment, or those of his solicitor. As previously indicated, therefore, the main issue involved in this appeal should be resolved by affirmative answer to Question 1.

I was at first inclined to think that Questions 2, 3, 4, and 5 submitted at the instance of respondent company, and reflecting its contention that the Assessment Appeal Board ought to have allowed a greater reduction in assessment that it did, involved only questions of quantum and methods of assessment with which the Court has no jurisdiction to deal, and that, therefore, the preliminary objection of learned counsel for Assessor-appellant was possessed of merit. However, upon reflection and study of the case submitted along with the transcript of proceedings before the Board of Assessment Appeal, I feel obliged to hold that such questions do involve matters of law and are properly before me. I, therefore, rule against said preliminary objection, and proceed to a brief discussion of such questions in numerical order.

Question 2-

> "2. Was the Board correct in law in restricting a reduction for economic and functional obsolescence of the sawmill operation of the appellant to a part of the improvements and machinery comprising the said sawmill operation in the absence of any evidence to support such restriction?"

is similar to Question 3 of the case stated in the Royalite reference-namely, "Was the Assessment Appeal Board right in failing to make any deduction for the alleged economic obsolescence claimed by the appellant?" At page 336 of his judgment (23 W.W.R. 328) Lett, C.J., said, "Question 3 I take to be a question of law." I am in respectful agreement with that conclusion, and upon the merits I express the opinion that Question 2 in the case before me should be answered in the affirmative.

Question 3 of the instant case.

> 3. Alternatively, if the answer to the foregoing question is in the negative [affirmative], did the Board err in law or exceed its jurisdiction in deciding that there was no dispute about the assessments in respect of machinery and improvements located on Lot 3 of Block A, District Lot 278, and on the warehouse lease, District Lot 278?"

is also a question of law and in my opinion should be answered" yes."

Applicable to both Questions 2 and 3 herein, I find that there was no evidence adduced at the hearing before the Board to support the finding stated in the first paragraph of its 1961 reasons for decision that "there is no dispute about the assessments located on Lot 3 of Block A, District Lots 278/281, nor with respect to the improvements and machinery on the warehouse lease, District Lot 278." Both of these properties, as paragraph 2 of the case stated relates, were "enumerated in the notice of appeal," by which respondent company invoked the appellate jurisdiction of the Board in 1961 to reaffirm its 1960 decision whereby both of these assessments were reduced, but which order of the Board the Assessor-appellant refused to recognize as valid. In short, these assessments have been in dispute at all material times. In my opinion the Board's patent error in stating that they were not in dispute should be corrected in its final decision following receipt of this Court's opinion. That will be necessary in order to give effect to its 1960

ruling and to conform to its 1961 finding that "no evidence was submitted to justify any interference with the Board's order of last year."

I also give effect to respondent company's contention that Question 4-

> "4. Was there any evidence before the Board to enable the Board to calculate the assessments upon improvements and machinery on Parcel or Lot F, District Lots 278/281, Plan 6261, to be $763,786 on improvements and $766,206 011 machinery?"

is a question of law.

Counsel for respondent company here relied upon the dicta of Manson, J., in *Rex* v. *Arthur* (1946) 1 W.W.R. 580 at 586, "The question whether there was any evidence is a question of law," and of Clyne, J., in *Vancouver* v. *Brandram-Henderson of B.C. Ltd.* (1957) 10 D.L.R. (2d) 533 at 536, which latter dictum includes an opinion of Coady, J. (as he then was), upon this subject. I set out a portion of the judgment of Clyne, J., as follows:

> The City does not dispute the award of the arbitrators for $12,500 for injurious affection or diminution of property values, but it now applies to set aside the award of $40,000 on the ground that there was no evidence before the arbitrators to support such award, and that the majority members of the Board in acting without evidence were guilty of misconduct in the legal sense. In *Ramage et al.* v. *Vancouver* (1957) 6 D.L.R. (2d) 236 at p. 241, 74 C.R.T.C. 272 at p. 277, Coady, J.A., said: "Where then it is submitted that there is no evidence to support the award, then if that can be established, it seems to me, it would be clear the arbitrators had acted in excess of jurisdiction. Under such circumstances the Court would have a right to look at the evidence for the purpose of determining whether or not there was any evidence to justify an award." It therefore becomes necessary for me to consider the voluminous evidence before the arbitrators, which was quoted at length by both counsel at the hearing before me, to ascertain if there was any evidence given at the arbitration hearings which will support the award.

The judgment of Clyne, J., in the Brandram-Henderson case was reversed in the Court of Appeal (18 D.L.R. 700), and such reversal was confirmed by the Supreme Court of Canada (23 D.L.R. 161), but his dictum embracing the opinion of Coady, J., regarding the point immediately at issue was not questioned by either higher Court.

In my opinion the answer to said Question 4 should be in the affirmative, subject to deletion of the final phrase, "to be $763,786 on improvements and $766,206 on machinery." The Board had before it Exhibit 1, showing the Assessor's valuations of structural improvements and machinery located on said Parcel F at $819,486 and $880,043 respectively and calculation of the deduction of 16.22 per cent which it directed to be made involved nothing more than elementary arithmetic. In the absence of any explanation it would seem to me that the members of the Board have forgotten their lessons and could afford little help to Junior with his homework. Certainly there was no evidence before them (and no rule of arithmetic that I know of) which could have enabled them to arrive at their valuation of $763,786 for improvements and $766,206 for machinery located on Parcel F.

Question 5

> "5. If the answer to the question in the foregoing paragraph is in the negative [affirmative], does the Board have jurisdiction to re-examine its calculation of the said assessments of $763,786 and $766,206 respectively and correct any error or errors in such calculations?"

is also a question of law involving interpretation of the Statute and in my opinion should be answered "yes." The Board is not *functus* as counsel for Assessor appellant argues. Sections 47 and 51 of the Act indicate that the decision of the Board is reserved and does not become final

until the opinion of the Court upon a case stated has been expressed. By letter of its Chairman to solicitors for respondent company dated June 23, 1961, the Board acknowledged its error in calculation of the result of its ruling that a deduction of 16.22 per cent should apply to the assessment of structural improvements and machinery located on said Parcel F. I feel that common sense and justice should permit the Board by its final order to correct its mathematical error in respect of assessment of improvements and machinery located on said Parcel F and also to remedy its patent oversight regarding the two assessments referred to by Question 3 of the case stated. I further feel that the provisions of the Statute enable the Board of Assessment Appeal to do so following this expression of the Court's opinion.

If it should be deemed necessary to amend the original case stated in respect of Questions 3 and 5, where the word "negative" should have been "affirmative" in each case, and by deleting the final phrase of Question 4, the Board may do so pursuant to the provisions of section 51 (6) of the Statute.

Respondent company is entitled to its costs of appeal, and it is so ordered.