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LYNN TERMINALS LIMITED

v.

DISTRICT OF NORTH VANCOUVER

Supreme Court of B.C. (X531/63)

Before: MR. JUSTICE F.K. COLLINS

Vancouver, June 27, 1963

J. Paul Reeke for the Appellant

A.B. Nash for the Respondent

Reasons for Judgment

This is a submission in the form of a stated case by the Assessment Appeal Board made pursuant to the relevant provisions of the *Assessment Equalization Act*. Omitting the formal portions thereof, the stated case reads as follows:-

The facts are as follows:-

1. The lands and improvements which were the subject of appeal to the Board are zoned and used for heavy industrial purposes and are occupied by the appellant within the District of North Vancouver.
2. The appellant leases from Her Majesty the Queen as represented by the Minister of National Defence a portion of District Lot Two hundred and four (204) for a term of ten (10) years from April 12th, A.D. 1962, subject to earlier termination as therein provided. A copy of the said lease made between Her Majesty the Queen as represented by the Minister of National Defence and the appellant herein is annexed hereto and sets out the terms and conditions upon which the appellant agreed to lease the said lands and improvements.
3. The 1963 assessment upon the land is $158,340 and upon improvements is $188,590.
4. In determining the actual value of the lands and improvements under appeal, the Assessor proceeded under section 335(1) and (2) of the *Municipal Act* and did not give consideration to the terms and conditions of the existing lease between the appellant and the Minister of National Defence and assessed the lands and improvements in the same manner as if they were held in fee by the appellant, and did not give consideration to section 338 (1) of the *Municipal Act* in conjunction with section 330(1) of the *Municipal Act*.
5. The appellant appealed from a decision of the Court of Revision to the Board on these grounds, and the appeal was dismissed.
6. The Board's decision, the relevant exhibits, and the evidence before it are filed herewith.

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

"1. Was the Board right in holding that the provisions of section 335 of the *Municipal Act* apply to the exclusion of section 338 in determining the assessment of land and improvements on land owned by the Crown and held under lease by the appellant?

"2. Was the Board right in failing to allow a reduction on the assessment of the improvements and in particular that portion erected by the appellant at its own expense?"

I have read and considered the reasons for judgment in the two British Columbia cases which were referred to by counsel - namely, *In re Mercer* (1961) 36 W.W.R. (N.S.) 199 and *In re Desautel's Appeal* (1959) 29 W.W.R. (N.S.) 665.

Subsections (1), (2), and (5) of section 335 of the *Municipal Act*, chapter 255, R.S.B.C. 1960, are here reproduced:-

> 335. (1) Lands the fee of which is in the Crown, or in some person or organization on behalf of the Crown, but which are held or occupied otherwise than by or on behalf of the Crown are, with the improvements thereon, liable to assessment and taxation in accordance with this section, but this section does not apply to make liable to taxation lands or improvements which would otherwise be exempt from taxation under clauses (b) to (l), inclusive, of subsection (1) of section 327, or under a by-law adopted under section 328, or a highway occupied by a company mentioned in Part XIV.
>
> (2) The lands referred to in subsection (1) with the improvements thereon shall be entered in the assessment roll in the name of the holder or occupier thereof, whose interest shall be assessed at the actual value of the lands and improvements.
>
> (5) This section applies, *mutatis mutandis*, to improvements owned by, leased to, held, or occupied by some person other than the Crown, situate on lands the fee of which is in the Crown, or in some person or organization on behalf of the Crown.

Subsection (1) of section 338 of the *Municipal Act (supra)* is also reproduced:-

338. (1) Where any interest in land or improvements other than the ownership of the fee-simple can be assessed within the municipality under the provisions of this or any other Act, the assessed value of the interest shall be the sum which a willing purchaser would be expected to pay to a willing vendor for such interest without including the value of the goodwill of any business connected with such interest.

Counsel for the appellant, who is an occupier of Crown lands, argued that the provisions of section 338(1) qualified the provisions of section 335(1), (2), and (5), and relied on the Mercer case *(supra)*.

The provisions of section 338(1) are general provisions and apply generally to all assessments of interest in land or improvements other than the ownership of fee-simple. The provisions of section 335(1), (2), and (5) are specifically made to apply to a particular class of cases - namely, those in which the fee-simple "is in the Crown, or in some person or organization on behalf of the Crown, but which are held or occupied otherwise than by or on behalf of the Crown."

A relevant principle relating to the interpretation of Statutes is discussed in Maxwell on Interpretation of Statutes (10th edition), commencing at page 176. A passage from page 177 is here reproduced:-

> Having already given its attention to the particular subject and provided for it, the legislature is reasonably presumed not to intend to alter that special provision by a subsequent general enactment unless that intention be manifested in explicit language, or there be something which shows that the attention of the legislature had been turned to the special Act and that the general one was intended to embrace the special cases provided for by the previous one, or there be something in the nature of the general one making it unlikely that an exception was intended as regards the special Act. In the absence of these conditions, the general statute is read as silently excluding from its operation the cases which have been provided for by the special one.

This is a well-settled principle. Although in the quoted passage from Maxwell it is stated with reference to separate Statutes, nevertheless I am satisfied that the principle applies with at least equal force to general and special enactments in the same Statute.

In my view both questions asked in the stated case should be answered in the affirmative. The respondent shall be entitled to recover from the appellant the costs of the appeal to be taxed.