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PACIFIC WESTERN AIRLINES LIMITED

v.

THE CORPORATION OF THE TOWNSHIP OF RICHMOND

Supreme Court of British Columbia (No. X672/63)

Before: MR. JUSTICE H.W. MCINNES

Vancouver, October 29, 1963

D.S.D. Hossie for the Appellant company
W.T. Lane for the Respondent

Case Stated by Assessment Appeal Board

1. The improvements, the assessment of which was the subject of the said appeal, were property occupied by the appellant within the Township of Richmond. The questions to be answered by this Court arise from the decision of the Appeal Board regarding the assessment of improvements used by the appellant airline as its aircraft maintenance headquarters in British Columbia. The details of the legal parcels on which the improvements are situated and the assessment are set forth in Annexure I, which is attached hereto.

2. The improvements consisted of an aircraft hangar and offices built in the year 1940, and included the main hangar building 118' x 394'; shops and offices, two stories, 60' x 264'; shops, one story, 90' x 338' (less 32' x 32'); outbuildings, 18' x 28'; oil-shed, 40' x 100'; 954 lineal feet of chain link fence; 266,096 square feet of black-top; and three fuel storage tanks. The hangar was of wooden construction with steel frame.

3. The improvements were situated on Sea Island, in the Municipality of Richmond, on a parcel of land more particularly known and described as Section 36, Block 5 north, Range 7 west, New Westminster District, title to which vested, at the relevant times, in Her Majesty the Queen in right of Canada. The land serving as a site for the improvements in question was at least 3,500 feet distant from the nearest privately owned land on Sea Island and formed an integral part of the licensed airport known as the "Vancouver International Airport."

4. Title to the improvements at the relevant time was held by the Trans-Canada Air Lines, which granted the respondent in 1961 a purchaser's interest in a conditional sale agreement to the said improvements. Terms of the agreement were as follows: Purchase price, $300,000, with a down payment of $60,000, and the balance payable at $2500 per month at 6 per cent interest. The vendor stated that the sale price represented the fair market value.

5. At the proceedings before the Appeal Board the Assessor described the methods which he employed to assess the improvements, which methods are amplified in Exhibit 3 filed in the proceedings of the Board.

6. The appellant's expert witness described the methods which he employed in arriving at a valuation of the improvements, which methods are amplified in Exhibit 2 filed in the proceedings of the Board.

7. In its decision dated June 26, 1963, the Assessment Appeal Board indicated that the proper approach was to capitalize the net income attributable to the improvements in order to determine the value. The Board accordingly reduced the assessment of the improvements from $269,990 to $167,500 for general purposes.

8. The Corporation of the Township of Richmond was dissatisfied with the decision of the Board and has required the Board to submit this case for the opinion of the Supreme Court. Wherefore the following questions of law are humbly submitted for the opinion of this Honourable Court:

> "1. Was the Board correct in holding that the proper approach to determine 'actual value' within the meaning of section 37 (1) of the *Assessment Equalization Act*, in this case was to capitalize the net income attributable to the improvements?
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> "2. Was the Board correct in holding that evidence of a single sale-namely, the purchase price paid by the appellant-was capable of 'reinforcing' the value arrived at by the capitalization of rentals to arrive at 'actual value' within the meaning of section 37 (1) of the *Assessment Equalization Act*?
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> "3. If the answer to Question 1 or 2 is in the negative, was the Board correct in varying the amount of the assessment at all, considering section 46 (1) (a) and (b) of the said Act? "

Reasons for Judgment

This matter came before me in the form of a case stated by Mr. K. M. Beckett, Chairman of the Assessment Appeal Board for the Province of British Columbia.

At the outset of the hearing, Mr. Hossie, on behalf of the respondent, took the preliminary objection that no point of law was raised by the case stated and referred to section 51, subsections (1) and (2), of the *Assessment Equalization Act*, chapter 18, R.S.B.C. 1960, which reads as follows:-

> 51. (1) At any stage of the proceedings, the Board may submit in the form of a stated case for the opinion of the Supreme Court a question of law arising in connection with the appeal, and shall reserve its decision until the opinion of the Court has been given, when it shall decide the appeal in accordance with the opinion.
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> (2) Any person affected by the decision of the Board of Appeal, including a municipal corporation acting on the recommendation of the Assessor and on the resolution of its Council, including a Provincial Assessor acting with the consent of the Minister of Finance, and including the Commissioner, may, after he has served on all persons affected by the decision a written notice of his intention to require the Board to submit the case to the Supreme Court, by correspondence addressed to and received by the Board within twenty-one days of the receipt of the decision by such person, require the Board to submit the case for the opinion of the Supreme Court on a question of law only.

In the result, I heard argument on the preliminary objection and then reserved judgment. It appears that I am required to give judgment not later than November 15th next. I would have preferred to have given a summary of my reasons for upholding the preliminary objection, but it is impossible for me so to do because of the state of the trial list in this Court at the present time, and I must therefore content myself by simply stating that I am in complete agreement with Mr. Hossie's preliminary objection and find that no question of law has been raised by the case stated.

In the result, the appeal by way of stated case does not lie, and accordingly the finding of the Assessment Appeal Board stands.