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GEORGE E. MELLOR

v.

**HARBOUR PARK DEVELOPMENTS LTD.,
MARWEST HOTEL COMPANY LTD.,
MARWEST HOLDINGS LTD.,
and
CITY OF VANCOUVER**

Supreme Court of British Columbia (Nos. X111/70 and X112/70)

Before: MR. JUSTICE P.D. SEATON

Vancouver, April 27, 1970

S.R. Chamberlain for the Appellant
M.I. Catliff for the Board
J.E. Spencer and T.P. Warren for Marwest Hotel and Marwest Holdings
D.C. Paynter for Harbour Park Developments Ltd.
T.R. Bland for the City of Vancouver

Reasons for Judgment

I wish first to mention Mr. Warren's objection to my dealing with any point before May 5, when it is intended that the merits of this appeal be dealt with. I understand him to concede that the case has been filed in the Registry and that I would have jurisdiction to go ahead on the hearing on the merits.

In that event, I see no reason why I cannot start today, deal with the preliminary questions, and continue the hearing on May the 5th.

Indeed, it seems to me to be the most sensible way to deal with the matter. If there are preliminary questions, why wait until we are ready to go ahead and then have to send the case back for amendment? I am satisfied that I have jurisdiction today in so far as that question is concerned, and I propose to exercise it, particularly when doing so will avoid delay when the matter comes on again.

I turn to the question of the words "person affected" where they appear in section 51, subsection (2) of the *Assessment Equalization Act*, chapter 18, R.S.B.C. 1960. The Acts provide that any person can appeal to the Court of Revision, and section 44, subsection (1) of that Act provides that:

where a person is dissatisfied with the decision of a Court of Revision. . . he may appeal therefrom to the Board.

The appellant has exercised those rights and now purports to appeal the Board's decision. The first question is whether or not he is permitted to launch this appeal. Section 51, subsection (2), provides that:

any person affected by the decision of the Board may appeal.

The appellant does not claim any interest in the land. I gather that he is a resident of Vancouver, and I presume, for the purposes of these reasons, a taxpayer. That is no help. If every taxpayer is a person affected, the appellant fails because he has not given notice to every other taxpayer. The section provides that he may require the Board to submit the case only after he has served all *persons affected*.

The term must mean the same thing on each of the occasions it is used in the section. The Legislature did not intend an appellant to serve all taxpayers, and I conclude that the term "persons affected" must be somewhat narrower than that.

The appellant claims to be a person affected, because he exercised the right of any person to appeal to the Court of Revision and the Board. Can it be said that because he exercised those rights he is now a person affected? I think not.

Mr. Warren properly brought two cases to my attention. Firstly, *The Royal Star*, 1928, p. 48, which I find to be of little assistance except as an application of the term to a particular set of facts. Secondly, *Dickson v. Vail*, 1960, 33 W.W.R. 325, which affirmed the decision of the Appellate Division of the Alberta Supreme Court, reported in 1959, 30 W.W.R. 101. In the Appellate Division the history of the action was dealt with in somewhat more detail. That case decided that an informant in a private prosecution was a person affected. In my view, an informant in a private prosecution is in a wholly different position from that of this appellant. He is the one who commences the original proceedings. The history of private prosecutions establishes the position of the informant. I do not think that the position of this appellant is analogous. I have also read *R. v. Petrie* (1969) 2 C.C.C. 341, and *Scullion v. Canadian Breweries* (1956) S.C.R. 512, dealing not with the words "persons affected" but with the role of private prosecutors.

I have read, but do not now have before me, because it is not in this library, it is at the University Library, *M. W. Smith Lumber Co. v. Alabama Public Service*, 24 Southern 2nd, 409. I think it not unfair to summarize the decision there on the words "affected thereby" as used in the Act therein concerned respecting persons who may become a party to proceedings before the Commission as requiring that one have a personal interest in the subject-matter and not a mere public interest in common with the general public, and that the order challenged subjects him to actual or threatened legal injury.

Bayne v. Florida State, 212 Southern 2nd, 762, is not dissimilar. Counsel have referred to *National Trust v. Midlands*, (1952) 1 All E.R. 298, where Vaisey, J., held "affect" to mean "change or alter." This was not the focal point of the case but it is a further example of the breadth of the word "affect" in another context.

This is essentially a question of statutory interpretation. Considering the purpose of the Statute, the words used, and the context in which they are used, I would conclude that the appellant is not a person affected by the decision, as it does not subject him to actual or threatened injury or benefit, and does not alter or change his rights or his property.

The Legislature has seen fit to give others the rights to intervene in the Court of Revision and before the Board. The appeal from the Board is limited to questions of law and is available only to persons affected by the decision of the Board. It is for the Legislature to set out the available modes of appeal, and they have chosen to limit this appeal to persons affected. By exercising rights that any person can exercise, the appellant did not thereby become a person affected.

I am obliged to conclude that an appeal in this case is not open to the appellant. Whether or not I have any jurisdiction over costs, I don't know. Counsel may speak to that.