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WELDWOOD OF CANADA LTD.

v.

DISTRICT OF SURREY

Supreme Court of British Columbia

Before: MR. JUSTICE V.L. DRYER

New Westminster, August 21, 1970

W.A.O. McQuarrie for the appellant
M.H. Thomas for the respondent

Case Stated by Assessment Appeal Board

1. The lands and premises which are the subject of this appeal are situate in the Municipality of Surrey and are registered in the name of Her Majesty the Queen in right of Canada for the use and benefit of the Fraser River Harbour Commission, and consist of 28.55 acres, more or less.
2. Pursuant to an agreement dated July 30, 1968, made between Her Majesty the Queen in right of Canada, and Fraser River Harbour Commission, and Weldwood of Canada Limited (a copy of which is annexed hereto), the appellant conveyed the said lands and premises by deed of land to Her Majesty the Queen in right of Canada for the use and benefit of the Fraser River Harbour Commission.
3. Pursuant to the terms of the said agreement, Her Majesty the Queen in right of Canada by lease dated July 1, 1968, leased back to the appellant an 8.8-acre portion of the said lands and premises. All improvements are located on the said 8.8-acre portion and the appellant admits it is responsible for all municipal assessments levied in respect to the said portion.
4. On the 31st day of December 1968, application was made in the New Westminster Land Registry Office to register title to the said lands and premises in the name of Her Majesty the Queen in right of Canada for the use and benefit of the Fraser River Harbour Commission.
5. On the 23rd day of January 1969, registration was completed under section 50 of the Land Registry Act, being chapter 208, R.S.B.C. 1960, and amending Acts.
6. The appellant was placed on the 1969 assessment roll and assessed in respect of all of the said lands and premises.
7. The appellant appealed to the Court of Revision in respect to the assessment of the said lands and premises on the ground that at the time of the closing of the roll for the 1969 taxation-year it was not the owner of the said lands and premises.
8. The appellant was notified by letter under date February 26, 1969, that the Court of Revision had confirmed the assessment.

9. By letter under date February 28, 1969, the appellant notified the respondent of its intention to appeal the decision of the Court of Revision and set out therein the grounds for its appeal.

10. The said notice was sent by ordinary mail within the time limited by the *Assessment Equalization Act* and was received by the respondent.

11. The respondent, by notice in writing under date March 21, 1969, notified the appellant of the date, time, and place of the hearing of the appeal.

12. At the hearing of the appeal before the Assessment Appeal Board, the respondent took a preliminary objection to the hearing on the grounds that the appellant's notice had not been forwarded by registered mail.

13. After consideration, the Board directed, on August 26, 1969, that a case be stated for the opinion of this Honourable Court.

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

"1. Are the lands (other than those leased by the appellant) assessable in the name of the appellant for the 1969 assessment roll?"

"2. If the answer to question 1 is 'no,' does the Board have power to amend the roll in the circumstances in this case where the appellant's notice of appeal to the Board was not sent by registered mail?"

Reasons for Judgment

This stated case, having come on for hearing on the 20th day of February 1970 and the 26th day of February 1970; and upon hearing Mr. W. A. Owen McQuarrie, of Counsel for Weldwood of Canada Ltd., and Mr. M. Howard Thomas, of Counsel for The Corporation of the District of Surrey; and by consent;

This Honourable Court doth order and adjudge that Weldwood of Canada Ltd. is not assessable on The Corporation of the District of Surrey 1969 assessment roll nor taxable for the year 1969 in respect to the following lands and premises situate, lying, and being in the Municipality of Surrey, in the Province of British Columbia, and more particularly known as: Parcel F (Reference Plan 1016) of Sections 34 and 35, Block 5 north, Range 3 west, except part shown on Plan 4272, and that parcel of land (formerly part of the foreshore and bed of the Fraser River) of Section 34, Block 5 north, Range 3 west, adjoining Parcel F (Reference Plan 1016), and shown outlined green on Plan With Crown Grant Deposited 323962E, New Westminster District, with the exception of a certain 8.88-acre portion of the said Parcel F leased to Weldwood of Canada Ltd., pursuant to the terms of a certain indenture of lease dated the 1st day of July 1968, and made between Fraser River Harbour Commission, as lessor, and Weldwood of Canada Ltd., as lessee:

And this Honourable Court doth further order and adjudge that there be no costs payable to either of the parties hereto.

ASSESSMENT APPEAL BOARD

IN THE MATTER OF THE APPEAL OF WELDWOOD OF CANADA LIMITED, APPELLANT, AND THE ASSESSOR, THE MUNICIPALITY OF SURREY, RESPONDENT

Kenneth M. Beckett, Q.C., *Chairman.*

Fred M. Philips, A.A.C.I., R.I.(B.C.), *Member.*

Russell J. G. Richards, *Member.*

April 10, 1969

Pursuant to the provisions of section 51 (1) of the *Assessment Equalization Act*, the Board submitted a stated case to the Supreme Court of British Columbia for its decision on the question of law raised at the hearing.

The facts are that, during 1968, the appellant company was in negotiations with the Fraser River Harbour Commission, which is an agency of the Crown in the right of Canada, for the sale of their lands within the municipality. It was part of the negotiations that an 8.88-acre parcel would be leased back by the Harbour Commission to the appellant. These negotiations were satisfactorily completed prior to July 1, 1968. However, some problems arose with respect to the exact areas involved. In the result the application to register was not made until December 31, 1968.

By that date the respondent, having no knowledge of the negotiations for the sale and the lease back, assessed the appellant as if it were the owner. The question submitted to the Court was whether the company was assessable and taxable for the land in the ownership of the Harbour Commission after the transaction referred to. The application to register was made within the assessment year. After argument before the Court, the parties agreed to an order dated August 21, 1970, which has now been received by the Board.

The Court has declared the appellant company is not assessable on the 1969 assessment roll of the Municipality of Surrey nor is it taxable with respect to those certain lands and premises situate, lying, and being within the said municipality and more particularly known as: Parcel F (Reference Plan 1016) of Sections 34 and 35, Block 5 north, Range 3 west, except part shown on Plan 4272, and that parcel of land (formerly part of the foreshore and bed of the Fraser River) of Section 34, Block 5 north, Range 3 west, adjoining Parcel F (Reference Plan 1016), and shown outlined green on Plan With Crown Grant Deposited 323962E, New Westminster District.

The Board accordingly directs that the respondent Assessor amend his 1969 assessment roll in accordance with the order of the Honourable Mr. Justice Dryer.

In view of the particular circumstances in which this appeal was heard and the order of the learned Judge, the Board makes no order with respect to costs.