ATTORNEY GENERAL OF CANADA

v.

CITY OF VANCOUVER

Supreme Court of British Columbia (No. X4618)

Before: MR. JUSTICE D.R. VERCHERE

Vancouver, July 6, 1973

Mr. A. Smith for the Appellant
Mr. J.L. Mulberry for the Respondent

Reasons for Judgment

THE COURT: At the request of the Attorney-General of Canada a case has been stated for the opinion of the Court challenging the judgment of the Assessment Appeal Board in sustaining the assessment by the City of Vancouver against the owners of certain lands and premises in Vancouver leased by the Crown of the value of certain items of machinery and equipment placed thereon by or on behalf of her Majesty. It was common ground that the said premises comprised various offices of the Executive Government of Canada and that the activities carried on therein were those incidental to the performance of their functions by the several Government Departments concerned. Mr. Mulberry admitted that those activities were not those of a commercial or industrial business or undertaking and he frankly stated he did not intend to suggest, and did not suggest, that they were those of a "going-concern operation".

At its hearing the Board held that on the evidence before it and on the true interpretation of the definition of "Improvements" contained in Section 2 of the *Assessment Equalization Act*, the Assessment Commissioner had acted properly in including the values of the subject items in his assessments against the various owner-landlords. Accordingly, the question stated for the opinion of the Court was this:

> "On the evidence before it was the Board correct in law in holding that it was proper to include in the eleven assessments the values of the items placed in the said eleven premises by or on behalf of her Majesty the Queen in right of Canada?"

In my respectful opinion, that question must be answered in the negative. It seems to me that although the intention of the Legislature, when it re-enacted Clause (a) of the definition of "Improvements" as contained in Section 2 of the *Assessment Equalization Act*, was obviously to include in that term a wide array of any fixtures and machinery placed or erected upon the subject land, it did not intend to include therein any so placed by a tenant thereof excepting, and I quote from the clause, "fixtures, machinery and similar things of a commercial or industrial undertaking, business or going-concern operation."

I say that because in what I must, with respect, call an admirable judgment, Wilson, J., as he then was, said, *inter alia*, that while the Legislature can, by the use of appropriate language, impose on

the owner of land liability to pay taxes in respect of improvements on his land not owned by him, its intention to do so must be clear. See *Re Orr's Assessment* (1955) 16 W.W.R. 25, where the definition of "Improvements" under review antedated and differed from the present wording of the clause and hence the conclusion reached there, namely, that no intention to tax the landlord for the tenant's property was manifest, becomes inapplicable here. But the case does make clear, however, and I respectfully adopt the conclusion here, that the words of Clause (a) ending with "thereunder", which have remained unchanged in the clause as re-enacted, did not and hence do not disclose an intention "to tax A in respect of property belonging to B"; see the words commencing with the final paragraph on page 37 down to the end of the penultimate paragraph on page 38. In addition it contains statements regarding the object and purpose of the *Assessment Equalization Act* and the relation of that Statute to the *Public Schools Act* and the *Vancouver Charter*, which I likewise respectfully adopt, and by doing so avoid the necessity to re-state those general matters here. In this regard I refer particularly to pages 28 to 31 of the judgment ending with the words ". . . as co-ordinate with it".

The intention to tax the landlord in respect of his tenant's property is now manifested by the words of the clause which follow those unchanged words to which I have just referred, and they read as follows:

> ". . . and, without limiting the generality of the foregoing. . . includes fixtures, machinery and similar things of a commercial or industrial undertaking, business or going-concern operation so erected, affixed or placed by a tenant. .
>
> "

Clearly, however, it is not all the property of every tenant that is thereby constituted an improvement, and unless the words "of a commercial or industrial undertaking, business or going-concern operation" can be read separately from and without reference to the preceding recital of "fixtures, machinery and similar things" then those expressly named things, namely fixtures, machinery and similar things must be affected or restricted by them.

Despite Mr. Mulberry's able argument on this point, I do not think that such a separation can be effected. It seems to me that when the general expression "or similar things" is read, as I think it must be, as comprehending only things of the same kind as those designated by the preceding particular expressions, then a class of things is created to which the words "of a commercial or industrial undertaking, business or going-concern operation" must apply in their entirety.

In short, I am of the opinion that when the Assessment Commissioner seeks to assess against a landlord the value of the tenant's goods on the premises he must do more than merely ascertain that the things he is assessing are fixtures, machinery and similar things. He must, when he has found such things on the premises, then look at the nature or character of the tenant who is their owner and only if, as and when he has then ascertained that they are "of", that is to say, pertain to, a commercial or industrial undertaking, business or going-concern operation, can he properly assess their value against the owner of the land. Clearly, that ascertainment was not made here and, in consequence, I have had to conclude that the Board's judgment on this issue cannot be sustained.

Mr. Mulberry also argued, however, that as an owner-landlord carries on a rental business and as he is liable, by the Statute's definition of "Improvements", to be assessed the value of the "things" on his premises, those things are employed in a commercial undertaking vis-a-vis himself and the City. In support he cited the *Attorney-General of Canada* vs. *Vancouver* (1944) S.C.R. 23.

I find myself unable to accept that argument. Although the case cited supports the City's right to assess an owner-landlord for fixtures on his land even if owned by a tenant who is the Crown, it cannot, in my view, be read so as to make the qualifying words in Clause (a), to which I have just referred, mean and include the owner-landlord's undertaking, business or operation. It seems to me, as I have already said, that in determining whether the tenant's things situate on rented

premises come within the definition of "Improvements" regard must be had, as Mr. Smith contended, to the "character" of the tenant.

Accordingly, my answer to the question submitted is: "No" and I will hear from counsel on the question of costs pursuant to Section 51(4) of the Act.

MR. SMITH: Thank you, my lord. My instructions are to ask for costs.

MR. MULBERRY: I have no instructions at all, my lord.

THE COURT: Costs will follow the event.

MR. MULBERRY: Thank you very much, my lord, and thank you for your reasoned decision. It will be very helpful and certainly will be conveyed to the Board.