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## BRITISH COLUMBIA FOREST PRODUCTS LIMITED

v.

## ASSESSMENT APPEAL BOARD

Supreme Court of British Columbia (NO. X5298)

Before: MR. JUSTICE V.L. DRYER

Vancouver, Nov. 23, 1973

G. Wilson for the Appellant  
L.M. Candido for the Respondent

*B.C.S.C.*

### Reasons for Judgment

The form in which the questions are stated creates some difficulties, so I will make some preliminary remarks in order that the reasons for my answers to the questions may be better understood.

The reasons for their decision given by the Assessment Appeal Board suggest that it was their view that valuing a property as that of a going concern could only add to what would otherwise be the actual value. In most cases that may be so. I am not satisfied that it is necessarily so in all cases ego economic conditions might be such that there was little hope of a plant ever operating at more than, say 50% of its capacity. However, any error on the Board's part in respect of this question did not, in the facts of this case, have any bearing on the result.

Their reasons also suggest that the Assessment Appeal Board may have felt that income stream and rate of production could have no effect on the value of a property being valued as that of a going concern. If that was their opinion, I feel they were wrong, i.e., I feel that, given appropriate facts, (such as the example given above) the income stream or rate of production of a going concern could have an effect on the actual value of its property. See *Royalite Oil Ltd. v. Kamloops Assessment District* B.C. Stated cases, case 10, Vol. 1 pp 38-9. In the instant case the Assessor did give consideration to productive capacity in arriving at the value which the Assessment Appeal Board subsequently approved.

The Assessor, however, did not base his assessment solely on production or productive capacity and in particular did not base it solely on the production during December of 1972, and in that I find he was right. See *Royalite Oil Co. Ltd. v. Kamloops Assessment District*, p. 39, and *Alkali Lake Ranch Ltd. v. Assessment Districts of Quesnel Forks and Lillooet* B.C. Stated Cases, Case 43, Vol 1 at pp 223 and 224.

It appears from the stated case and from the argument that the opinion is held in some quarters that assessing land and improvements at "their actual value" and valuing them "as the property of a going concern" are mutually exclusive processes. That is not so. Section 37(1) states quite

clearly that it is "the actual value" that is to be determined by the Assessor and that "in determining the actual value" he may give consideration to certain facts there set out and that "without limiting the application of the foregoing considerations, where any industry, commercial undertaking, public utility enterprise, or other operation is carried on, the land and improvements so used shall be valued as the property of a going concern." (underlining mine)

Question 1 reads as follows:

"1. Was the Assessment Appeal Board correct in law in holding that the Court of Revision erred in principle in that it attempted to ascertain a going concern value concept and supplanted this kind of a value instead of the actual value of the land and improvements required of the Assessor in accordance with Section 37(1) of the *Assessment Equalisation Act*?" I find this language confusing. I hold that the Court of Revision erred in principle, not "in that it attempted to ascertain a going concern value concept", but in that it based its assessment "solely on the daily output of the pulp mill from December 17th to December 31st, 1972." See stated case, para. 8.

With those qualifications, the answer to question 1 is "yes".

Question 2 reads as follows:

"2. Was the Assessment Appeal Board correct in law in interpreting Section 37(1) of the *Assessment Equalisation Act* to mean that the said sub-section does not require that consideration be given to the income stream or the rate of production of a going concern?" As pointed out above, I feel that in appropriate circumstances income stream and rate of production could be factors to consider, though not the only factors. In other circumstances, as in the instant case, Section 37(1) does not "require" them to be considered. In this sense, the answer to question 2 is "yes".

Question 3: The answer to question 3 is "yes".

This opinion is hereby remitted to the Assessment Appeal Board.