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S.S. MARINA LIMITED

v.

THE CITY OF NORTH VANCOUVER

BRITISH COLUMBIA COURT OF APPEAL

Before CHIEF JUSTICE J.L. FARRIS, MR. JUSTICE E.B. BULL, and MR. JUSTICE W.R. McINTYRE.

Vancouver, December 13, 1974.

Reasons for Judgment of Chief Justice Farris. *Per Curiam*:

This is an appeal from the judgment of Andrews, J. declaring that the vessel "S.S. Seven Seas S.R." is assessable as an improvement under the *Assessment Equalization Act*, 1960, R.S.B.C. Cap. 18 and amendments.

The agreed statement of facts shows the Seven Seas was originally the North Vancouver Ferry No. 5, which for many years operated between North Vancouver and Vancouver. In 1959 it was purchased by the appellant under a memorandum of agreement which required that it be operated and maintained as a restaurant at the foot of Lonsdale Avenue in North Vancouver. The vessel's name was changed to "Seven Seas S.R." It is moored on a water lot at the foot of Lonsdale Avenue which is leased by the appellant from the respondent City of North Vancouver. The vessel is secured to dolphins. There is a gangplank connecting it to the main float. It receives water from the City of North Vancouver's water system through a flexible pipe. Electrical and telephone services are supplied. The vessel is moved once a year to a shipyard for its annual overhaul. The main engines are still in place and in operating condition but in fact have not been operated for fifteen years. The vessel is used solely as a restaurant.

The assessment roll for the City of North Vancouver for the year 1973 showed the Seven Seas S.R. as an improvement at an assessed value of $50,000.

The issue in the appeal is whether or not it comes within the definition of "improvements" in Sec. 2 of the *Assessment Equalization Act*, 1960, R.S.B.C. Cap. 18, providing as follows:

> "2. In this Act, unless the context otherwise requires, . . .
>
> 'Improvements' includes. . .
>
> (d) rafts, floats, docks, and other such devices which are anchored or secured, whether the land or property to which they are anchored or secured belongs to the owner or not, and buildings, fixtures, machinery, structures, storage-tanks and similar things erected, affixed, or placed thereon, and also 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, except such as are exempted by regulations of the Lieutenant-Governor in Council."

It is the submission of the City that the words "other such devices" must be construed ejusdem generis with the words "rafts, floats, docks", and that so construed it includes the appellant's vessel.

In my opinion there is no room for the application of the ejusdem generis rule. For that rule to apply, the specific words must constitute a category, class or genus. See *United Towns Electric Co.* v. *Attorney-General for Newfoundland* [1939] 1 All E.R. 423 at 428. There is no genus that embraces "rafts, floats, docks". It was argued that the genus is "floating devices which are anchored or secured to land". I do not accept this argument because docks are not floating devices. There is no justification for limiting the word "docks" to "floating docks".

Under these circumstances, the words "other such devices which are anchored or secured" must be construed without the limiting effect of the ejusdem generis rule. Therefore, applying the ordinary appropriate rules of interpretation, I conclude a ship that is used as a restaurant cannot be construed as a "device". The dictionary definitions of "device" are:

Shorter Oxford Ed., Vol. 1
Device. The result of contriving; an invention, contrivance.

Black's Law Dictionary, 4th ed.
Device. An invention or contrivance; any result of design;

The American Heritage Dictionary of the English Language
Device. Something divised or constructed for a particular purpose; especially, a machine used to perform one or more relatively simple tasks.

These definitions demonstrate that "device" is not an apt word to describe the vessel in question and so it is not clearly brought within the meaning of "improvements". Accordingly, I would apply the words of Lord Reid in *Kirkness* v. *John Hudson & Co. Ltd.* [1955] A.C. 696, [1955] 2 W.L.R. 1135, [1955] 2 All E.R. 345, adopting the language of Lord Blackburn in *Coltness Iron Co.* v. *Black* [1881] 6 A.C. 315 that:

> ". . . no tax can be imposed on the subject without words in an Act of Parliament clearly showing an intention to lay a burden on him",

and the language of Lord Cairns in *Partington* v. *A.G.* [1869], L.R. 4 H.L. 100, that:

> ". . . if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be".

Accordingly, I would allow the appeal.