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CANYON AERIAL TRAMWAYS LTD.

v.

NEW WESTMINSTER ASSESSMENT DISTRICT

Supreme Court of British Columbia (X6495-74)

Before: MR. JUSTICE E.D. FULTON

Vancouver, September 26, 1974

Mr. Marshall Bray for the Appellant
Mr. Grant Sutherland for the Respondent

Statement of Facts

1. The facts are as follows:

(a) The assessed improvements in issue are situate upon Crown lands in the New Westminster Assessment District;

(b) The assessments on improvements for both General Roll and School Roll purposes relating to:

(i) Improvements to parking lots $77 ,838.00

(ii) Pedestrian overpass over Trans-Canada Highway $29,614.00

(iii) Fences $5,940.00

were appealed by the Appellant to the Court of Revision for the Assessment District which Court dismissed the said appeals and confirmed the disputed assessments and the Appellant appealed to the Board from the said Decision of the Court of Revision.

(c) As to the General Roll assessments and the School Roll Assessments the Appellant appealed on the grounds that the Crown lands upon which the said improvements were situate were not occupied by the Appellant within the meaning of the *Taxation Act*, R.S.B.C. 1960 and amendments thereto.

(d) There was no issue between the Appellant and the Provincial Assessor on the evidence presented to the Board by the Appellant which evidence was accepted by the Board and from which evidence the Board found the following facts:

(i) The Appellant operates an aerial tramway at Hells Gate transporting passengers from the Trans-Canada Highway to the Appellant's recreational development on the opposite side of the Fraser River;

(ii) The Appellant's upper terminal adjoins the Trans-Canada Highway;

(iii) The lands upon which the upper terminal is situate are leased from Her Majesty The Queen in right of the Province of British Columbia for a term of twenty-one (21) years from the 26th of May, 1970;

(iv) It was a term of the said lease that the Appellant was to "construct, pave and maintain at its own expense unto the satisfaction of the Lessor two parking areas one on each side of the Trans-Canada Highway. . ."

and

"to construct and maintain at its own expense and to the satisfaction of the Lessor a pedestrian overpass to connect the two parking areas."

(iv) Permission to construct works within Crown lands was granted to the Appellant by the Department of Highways on the 21 st of May, 1970 pursuant to Permit #K-145/69. The said Permit #K-145/69 provided inter alia:

> "The permittee shall arrange to pave the two parking areas at no cost to the Department.
>
> 6. The permittee shall maintain the area in a neat and tidy condition at all times;
>
> 7. The public are to have free access and parking privileges at all times.
>
> 9. The permission herein granted to use and maintain the works is only granted for such time as the land or public work in, upon or over which the said works are constructed is under the jurisdiction of the Minister of Highways. This permission is not to be construed as being granted for all time, and shall not be deemed to vest in the permittee any right, title, or interest whatsoever in or to the lands upon which the works are constructed. Should the lands affected at any time be included within that of an incorporated municipality or city, this permission shall become void, unless the works are on a highway duly classified as an arterial or primary highway pursuant to Part III of the *Highway Act*." (vi) The Appellant in fact does not exercise any control over the parking areas and overpass which are used by a number of persons who are not customers or patrons of the Appellant.

(vii) At the request of the Department of Highways the Appellant constructed a length of chain-link fence on part of the edge of one of the parking lots in issue.

(viii) The Appellant has no lease or licence relating to lands occupied by the parking lots, the chain-link fence or the lands over which the overpass is constructed other than Permit #K-145/69.

2. The Board by its decision of the 18th of July 1974 dismissed the Appeal.

Judgment October 15, 1974

THIS COURT DOTH ORDER, ADJUDGE AND DECLARE that the following is the opinion of the Court on the questions submitted to it:

> Question 1. "Was the Board correct in holding that the parking lots were situate upon lands occupied by the Appellant within the meaning of the *Taxation Act*, the *Public Schools Act* and the *Assessment Equalization Act*?"

Answer No.

Question 2. "Was the Board correct in holding that the pedestrian overpass was situate on lands occupied by the Appellant within the meaning of the *Taxation Act*, the *Public Schools Act* and the *Assessment Equalization Act*?"

Answer No.

Question 3. "Was the Board correct in holding that the fencing was situate on lands occupied by the Appellant within the meaning of the *Taxation Act*, the *Public Schools Act* and the *Assessment Equalization Act*?"

Answer No.

Question 4. "Was the Board correct when it found that the Appellant was properly assessed for the improvements to the parking lots?"

Answer No.

Question 5. "Was the Board correct when it found that the Appellant was properly assessed on the pedestrian overpass?"

Answer No.

Question 6. "Was the Board correct when it found that the Appellant was properly assessed for the fencing?"

Answer No.

AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that each party bears its own costs of the stated case.