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**S.S. MARINA LIMITED**

**v.**

**THE CITY OF NORTH VANCOUVER**

Supreme Court of British Columbia (No. 26776)

Before: MR. JUSTICE D.E. ANDREWS

Vancouver, February 14, 1974

Mr. R. Baker for the appellant  
Mr. W.A. Esson for the respondent

**Reasons for Judgment**

In this action the plaintiff seeks a declaration that:

"The registered ship 'The Seven Seas S.R.' is not assessable pursuant to the provisions of the *Assessment Equalization Act*."

And for an order:

"Requiring the return to the plaintiff of all monies paid under protest in respect to the assessment and taxation of the registered ship 'The Seven Seas S.R.'"

Counsel agreed on a statement of facts as follows:

1. The 'Seven Seas' was originally the 'North Vancouver Ferry No. 5' and, as such, operated for many years in the vehicle and passenger ferry service which was operated by the defendant between North Vancouver and Vancouver.

2. 'North Vancouver Ferry No. 5' operated in that service until September, 1958 when the ferry service was discontinued and the assets disposed of by the defendant.

3. 'North Vancouver Ferry No. 5' was purchased by Seven Seas Seafood Restaurant Ltd. under the terms of a memorandum of agreement dated April 27, 1959, a copy of which is hereto annexed.

4. Seven Seas Seafood Restaurant Ltd. caused the vessel to be renamed 'The Seven Seas S.R.' and carried out the necessary work to make it suitable for operation as a restaurant. Since 1959, Seven Seas Seafood Restaurant Ltd. has operated and maintained a restaurant on the vessel in the location at the foot of Lonsdale Avenue.

5. 'The Seven Seas S.R.' is moored on a waterlot at the foot of Lonsdale Avenue which is leased by S.S. Marina Ltd. from the defendant. Hereto annexed is a true copy of the lease entered into in 1965 and a true copy of the renewal of lease entered in 1971.

6. The vessel is secured to dolphins. There is a gangplank connecting it to the main float. It receives water from the defendant's water system through a flexible pipe. Its electrical supply is furnished by B.C. Hydro and telephone service is provided by B.C. Telephone through a connection to the shore.

7. 'The Seven Seas S. R.' is, and has been throughout its life, registered as a ship under the *Canada Shipping Act*. Its registration number is ON173733.

8. 'The Seven Seas S.R.' is moved at least once each year from its location at the foot of Lonsdale when it is moved to a shipyard for annual overhaul. On those occasions the pedestrian access, water connection and hydro and telephone connections are disconnected to enable 'The Seven Seas S.R.' to be towed away by tugs. 'The Seven Seas S.R.' has not moved under her own power since 1958. The main engines are still in place and in operating condition although there has been no occasion to operate it. Apart from the overhauls there has been no occasion for the vessel to be moved since it commenced operation as a restaurant.

9. On the 1972 assessment roll of the defendant, the plaintiff was assessed in respect of 'The Seven Seas S.R.' which was shown on the roll as an improvement on the waterlot lease held by the plaintiff.

10. An appeal against that assessment was taken to the Court of Revision by the plaintiff. The appeal was, on February 21, 1972 allowed, the decision being set out as follows in the record of the court:

'In the case of. the Seven Seas appeal the chairman, Mr. E.W. Palmer, stepped down from the Court having recently made an appraisal of the property on behalf of the City of North Vancouver. The two remaining members, namely Mr. Donald Davis and Mr. E.J. Russell, have handed down the decision that in their opinion the ship is non-assessable, being able to move away under its own power and is not a permanent fixture. Evidence submitted stated that the Princess Louise in the City of Vancouver was not assessable. This assisted in the decision.'

11. The defendant appealed from that decision to the Assessment Appeal Board which on November 7, 1972 heard the evidence and submissions of the parties and reserved its decision. Before the Board could hand down its decision, the appointment of the members of the Board was revoked and they thus became *functus officio*.

12. The assessment roll for the City of North Vancouver for the year 1973 again showed 'The Seven Seas S.R.' as an improvement at an assessed value of \$50,000.00. No appeal was taken in respect of that assessment and on July 17, 1973, the taxes levied against the plaintiff for 1973, including taxes levied in respect of the assessment on 'The Seven Seas S.R.', were paid to the defendant. The plaintiff, in paying the taxes assessed on 'The Seven Seas S.R.' stated that such payment was made under protest and in order to prevent the possibility of the termination of the lease between the defendant, as lessor, and the plaintiff, as lessee, wherein the lessee covenants, *inter alia*, to pay all municipal taxes and default in performing the covenants in the lease gives the lessor the right to terminate."

Section 2 of the *Assessment Equalization Act*, R.S.B.C. 1960, Chap. 18 provides 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."

The problem here concerns the principles to be applied to interpreting a tax statute, namely section 2(d) of the *Assessment Equalization Act*, R.S.B.C. 1960, Chap. 18. In particular the defendant claims that "other such devices" in the context of ". . . rafts, floats, docks and other such devices. . ." includes the plaintiffs permanently moored ship, "The Seven Seas S.R.". In general, statutes imposing pecuniary burdens are construed strictly in favour of those on whom the burden is sought to be imposed: Maxwell On Interpretation of Statutes, 12th Ed. p. 256-258. However, as a general principle on construction, where it is reasonably possible, some significance and meaning should be attributed to every phrase in a statute: Craies on Statute Law, p. 103.

In determining the meaning of the phrase "and other such devices" the applicability of the "ejusdem generis" rule must first be examined. In general, words receive their full and natural meaning. However, Maxwell indicates that ". . . the general word which follows particular and specific words of the same nature as itself takes its meaning from them and is presumed to be restricted to the same genus as those words"; in the 12th edition at p. 297, cited from the 7th edition by Trueman, J.A. in *Would v. Herrington* (1932) 4 D.L.R. 308 @ 314. as the *Would* case indicates, the rule only applies to general words following less general words: Maxwell @ 298. There must be a genus or class or category to apply the doctrine: Maxwell p. 299. Here it would appear that "rafts, floats, docks" forms a category of related objects. As "other such devices" follows the class and "other such" indicates that it relates back to the class, the "ejusdem generis" rule would appear to be applicable.

Therefore the word "devices" must refer to objects within the same general class or category as "rafts, floats, docks". The rules of interpretation also require that the word "devices" in reference to that class be given some meaning, if possible. Romer, L.J. in *Brownsea Haven Properties Ltd. v. Poole Corporation* (1958) Ch. 574 @ 610 stated that:

"The doctrine of ejusdem generis is only part of a wider principle of construction, namely, that, where reasonably possible some significance and meaning should be attributed to each and every word and phrase in a written document. "

Therefore the category of "raft-like" devices must have some content other than the three objects set out, i.e. the legislature intended that the tax burden fall on other objects with properties similar to rafts, etc. but which could not accurately be called "rafts, floats, (or) docks". A permanently moored ship serving as a restaurant could be considered such a "raft-like" device.

In my opinion then the defendant's contention must prevail and the "S.S. Seven Seas S.R." is hereby declared assessable under the *Assessment Equalization Act* aforesaid.

In light of the above it is not necessary for me to deal with the second ground of relief sought by the plaintiff herein.

The plaintiffs action is accordingly dismissed with costs.