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**BERNHARDT BROS. HOLDING LIMITED**

**v.**

**CORPORATION OF THE DISTRICT OF BURNABY**

Supreme Court of British Columbia (NO. 86/75)

Before: MR. JUSTICE K. MEREDITH

New Westminster, June 13, 1975

P. Klassen for the Appellant  
T. Pearce for the Respondent

**Reasons for Judgment**

This is a stated case submitted on the initiative of the Assessment Appeal Board, pursuant to the *Assessment Act*, S.B.C. 1974, chapter 6, for the opinion of the Court.

The case was filed at the instance of the Chairman of the Assessment Appeal Board on May 6, 1975. The Chairman was apparently of the belief that the matter would come before the Court automatically as a matter of course and thus be determined within the mandatory period of one month prescribed by section 67 of the Act. As neither counsel involved in the appeal to the Assessment Appeal Board were aware that the case had been filed, the hearing was not brought on until after the expiration of the one month period. No certified copy of the evidence was filed with the case, as required by section 67(4) of the Act.

The four questions posed by the Board relate to general principles, not confined to the facts of this particular case. Counsel have agreed on the question that they think should be put. I hope that these reasons will serve to resolve all the issues posed.

The *Assessment Act*, a Statute of British Columbia passed as recently as 1974, provides that: "Land and improvements shall be assessed at their actual value." (section 24(1)). The Act was subsequently and almost immediately amended (1974, chapter 105, section 1) so as to freeze assessed values at the 1974 levels. The amending subsection reads:

"(6)Notwithstanding subsection (1) or anything to the contrary in this Act,

(a) except as provided in paragraphs (b), (c), and (d) and sections 25 and 27, land and improvements shall be assessed at the same value and on the same basis at which the land and improvements were assessed for the calendar year 1974;

(b) where a change in the value of land and improvements occurs by reason of

(i) a change in the physical characteristics of the land or improvements, or both; or

- (ii) new construction or new development thereto, thereon, or therein; or
- (iii) a change in the zoning or reclassification of land and improvements

that is not included in the assessment roll for the calendar year 1974, the land and improvements shall be assessed at the same value and on the same basis as if those changes in value had occurred and had been taken into account in the preparation of the assessment roll for the calendar year 1974;

(c) subject to paragraph (b), improvements used for industrial purposes shall be assessed at the same value level and on the same basis at which improvements used for industrial purposes were assessed for the calendar year 1974;and

(d) the percentage utilization of a pipe-line shall continue to be determined under the *Taxation Act, Municipal Act, or Vancouver Charter*, as the case may be."

In making an assessment of land and improvements for 1974 an assessor is governed by section 24(2) as follows:

"(2) In determining the actual value for the purposes of subsection (1), the assessor may given consideration to the present use, location, original cost, cost of replacement, revenue or rental value, the price that the land and improvements might be reasonably expected to bring if offered for sale in the open market by a solvent owner, and any other circumstances affecting the value, and the actual value of the land and the improvements so determined shall be set down separately in the columns of the assessment roll, and the assessment shall be the sum of those values."

Thus it seems that a number of components are to be considered where improvements, such as are the subject of this case, are concerned. I do not have specifics of the assessment roll or the basis of the Assessor's computations. It appears, however, that the assessments for improvements were as follows:

1973	\$ 918,000.00
1974	\$ 963,900.00
1975	\$1,362,875.00

In fact, the building was, as early as the end of 1972 or the beginning of 1973, substantially complete, occupied and operating as a revenue property. This situation was not known to the Assessor until after the assessment for 1974 was made. The Assessor sought to correct, in the roll for 1975, the previous omission despite the freeze imposed by section 24(6) above recited.

I take it that the Assessor in increasing the assessment for 1975 was influenced by two factors: the first that physical construction not included in the 1974 assessment had in fact earlier taken place, and second, that the assessment in 1974 was made in the erroneous belief that the accommodation in the building had not rented, or at any rate fully rented. That use was a consideration in the assessment, I take from this passage from the statement of facts:

"(8)The Assessor called Mr. Sidney Brown-John the appraiser who made the assessment. Mr. Brown-John was sworn and told The Board that he had inspected the building in 1972 and placed an unfinished value of \$918,000. on it for the year 1973.

Mr. Brown-John told The Board that owing to the strike of the elevator workers in 1972 and 1973 the builder was able only to obtain occupancy permits for only 9 suites on the two lower floors of the residential area. His inspection for the 1974 roll was carried out late in 1973. There was a permit for an office in the commercial area on the second floor. When he tried to use the elevator from the commercial floor he was told the elevators

were not working. He then assumed that the situation was similar to that in 1972 or early 1973 and again placed an unfinished value this time of \$963,900.00 on the building for 1974."

Section 24(6) says that improvements shall be assessed, ". . . on the same basis which the . . . improvements were assessed for the calendar year 1974 . . .", except (*inter alia*) where change in value occurs by new construction or new development that is not included in the assessment roll for 1974. Mr. Pearce contends that "new construction" and "new development" mean construction and development which have taken place since the roll for 1974 was prepared and that the subsection does not permit rectification of the apparent omission of the Assessor. I would be inclined to agree, even though the result would be that the taxpayer would enjoy fortuitous discrimination from its neighbours, if it were not that the words ". . .that is not included in the assessment roll for the calendar year 1974 . . ." appear. If "new" were confined to events taking place after the preparation of the 1974 assessment roll, there would be no need to add the words quoted because the new construction or development could not have been included in the 1974 roll. In any event, I would think that had the legislature intended the interpretation for which Mr. Pearce contends, the section would have in appropriate language confined the changes to those occurring after the preparation of the 1974 roll.

Thus it seems to me that the construction under consideration here, added in 1972 or 1973 but not included in the assessment roll until 1975, was "new" construction and the change in use from unoccupied to occupied was "new" development within the meaning of the subsection.

Counsel have posed this question as one they consider appropriate to this case:

"Under section 24(6) of the *Assessment Act*, can an assessor add the value of improvements to a building carried out prior to 1974, but not included in the 1974 assessment roll to the 1975 assessment?"

I think the question might be more appropriately phrased thus:

"Was the assessor correct when, in preparing the assessment roll for 1975, he included improvements made prior to 1974 and considered use made of the improvements prior to 1974 but which improvements were not included or use considered in the preparation of the 1974 assessment roll?"

For the reasons given the answer to that question, in my opinion, is "yes". I believe that these reasons dispose of the first two questions posed by the Assessment Appeal Board in the stated case. The last two questions perhaps are answered by inference. It seems to me that subsection 24(6) is clear: if there has been no change in the physical characteristics of the land or improvements, and if there has been no new construction or new development, and if there has been no change in the zoning or reclassification of land and improvements, then the market value assigned by the Assessor on the 1974 roll must stand on the roll for 1975, even though the Assessor may change his mind and considers that his estimate of market value for 1974 was incorrect.