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GEORGE S. CUMMING AND M.I. CUMMING

v.

DISTRICT OF LANGLEY

Supreme Court of British Columbia (34149/75)

Before: MR. JUSTICE F.C. MUNROE

Vancouver, July 17, 1975

Mr. R.K. Baker for the Appellants
Mr. M.P. Leroux for the Appellants
Mr. D.G.S. Rae for the Respondents

Reasons for Judgment

This is an application brought by the defendant to set aside the writ of summons herein, the defendant having entered a conditional appearance thereto.

By the endorsement on the general form of writ of summons, the plaintiffs claim a declaration that their property should be classified as farm land (pursuant to Sec. 332) of the *Municipal Act*) and assessed and taxed as such, and for an order that the Assessor of the Municipality of Langley do amend the Assessment Roll to record the said land as "farm land".

Upon this application Counsel for the defendant submits that this Court is without jurisdiction to grant the relief claimed in this action by the plaintiffs, and I agree.

Sec. 332 of the *Municipal Act* authorizes the Assessor to "classify land of five or more acres as farm land" and sets out the factors to be considered by him when making such a determination. Here, the Assessor declined to classify the land of the plaintiffs as farm land, as he was lawfully entitled to do. The effect of classifying land as "farm land" is not to exempt it from taxation but to reduce the rate of taxation: Sec. 50 of the *Taxation Act*. I hold that the classification of land for assessment purposes is a matter of assessment or valuation and is not a determination of whether or not the land is liable to or exempt from municipal assessment so as to oust the jurisdiction of the Assessor as was the case, for example, in *re Western Forest Industries Ltd.* (1965) 54 W.W.R. 764. Support for this view may be found in the reasons for judgment of Clement, J.A. in *re Crow's Nest Pass Coal Co. Ltd.* (1907) 13 B.C.R. 55 at 60.

Sec. 33 (1) (d) of the *Assessment Act* 1974 provides for an appeal from the decision of the Assessor to the Court of Revision by any person who is of the opinion that his or her land has been improperly classified by the Assessor. Such an appeal was taken by the plaintiffs and dismissed following a hearing. No appeal there from was taken to the Assessment Appeal Board. In reliance upon the statutory provisions and the decision in *re MacMillan Bloedel & Powell River Ltd.* (1961) 36 W.W.R. 463, it is the submission of Counsel for the plaintiffs that the Assessment Appeal Board is without jurisdiction to hear such an appeal. In reliance upon Sections 62 and 24

of the *Assessment Act*, Counsel for the defendant submits otherwise. I do not find it necessary to adjudicate upon these conflicting submissions because, in either case, it does not follow that this Court has any jurisdiction to determine a matter of classification. If the Assessment Appeal Board has no jurisdiction to review the decision of the Court of Revision, the decision of the latter is determinative of the matter. If the Assessment Appeal Board has jurisdiction to review the decision of the Court of Revision, in that event the only remedy available to the plaintiffs is to appeal to it and if unsuccessful to follow the procedure set forth in Sec. 67 of the *Assessment Act* by appealing to this Court in the form of a stated case on a question of law only, within the time limited by the statute: *Barraclough* v. *Brown* (1877) A.C. 615; *Punton* v. *Ministry of Pensions* (1964) 1 A.E.R. 448; *Chant* v. *City of Regina* (1925) 1 D.L.R. 480; *Weaver* v. *Baird* (1930) 3 D.L.R. 875; *O'Brien* v. *O'Brien* (1957) 9 D.L.R. (2d) 470; *Municipal District of Pershing No. 581* v. *North West Lumber Co. Ltd.* (1923) 2 D.L.R. 666.

The application is granted. The action is dismissed with costs.