VILLAGE RENTALS LIMITED

v.

CORPORATION OF THE DISTRICT OF SURREY

British Columbia Court of Appeal (CA760009)

Before: MR. JUSTICE M.M. MCFARLANE, MR. JUSTICE W.R. MCINTYRE, MR. JUSTICE A.B.B. CARROTHERS

Vancouver, May 25, 1976

R. Crawford for the Appellant
P.W. Klassen for the Respondent

Reasons for Judgment of Mr. Justice McFarlane

(On an appeal from the decision of Toy J.)

McFarlane, J.A. (Oral): The Assessment Appeal Board stated a case, dated November 15, 1975, for the opinion of the Supreme Court of British Columbia under the *Assessment Act*, S.B.C., 1974, chapter 6, assented to June 20, 1974, which Act was amended by the *Assessment Amendment Act*, 1974, assented to November 26, 1974. The purpose of the *Assessment Amendment Act*, stated in broad terms, was to freeze assessed values for subsequent years at those for the calendar year 1974.

This case involves the assessment of improvements on the appellant's land in the District of Surrey for the calendar year 1975.

I take the facts from certain paragraphs of the stated case, to which I will refer now:

> "3. That the said improvement was assessed as a completed building for the taxation year 1973 in the sum of $24,060.00.
>
> "4. That the said improvement was assessed for the taxation year 1974 in the sum of $28,910.00."
>
> "5. That the said improvement was assessed for the taxation year 1975 in the sum of $62,930.00."

The next fact, which I take from paragraph 7, has a finding in these terms; although the Board premised this paragraph with the words "The assessor gave evidence that," I read it as a finding as follows:

> "7. . . . the assessment of $62,930.00 for the year 1975 was a completely new assessment of the improvements based on the increased square footage from three thousand five hundred to seven thousand square feet and including new construction in the sum of $3,002.00."

I interpolate that it is common ground that when the building was first assessed in 1973, the assessor miscalculated the area of the building at thirty-five hundred square feet, whereas the building in fact had an area of seven thousand square feet.

Returning to the stated case, paragraph 8:

> "8. The appellant has no objection to the increase of $3,002.00 made by the assessor as representing 'new construction' under section 24 of the *Assessment Act*. . ."

Three questions were propounded by the stated case, but only one of them is concerned in view of developments. That question reads:

> "Was the Board correct in law in holding that the alleged error in square footage could under the *Assessment Act*, 1974, be assessed and included in the 1975 assessment as 'new construction or new development'?"

(I note parenthetically that counsel agree, and in my view correctly, that the reference there in the question to the *Assessment Act*, 1974, ought to read the *Assessment Amendment Act*, 1974.)

Mr. Justice Toy answered that question in the affirmative, following with approval the reasoning of Mr. Justice Meredith in the matter of an assessment appeal by *Bernhardt Bros. Holdings Ltd.* on July 17, 1975, unreported. This appeal is brought against the judgment of Mr. Justice Toy.

It is necessary to refer to certain provisions of the statutes to which I have referred. The first is section 24 of the first of the statutes, the *Assessment Act*, 1974, subsection (1) of which reads:

> "Land and improvements shall be assessed at their actual value."

By the A*ssessment Amendment Act*, 1974, section (1), section 24 of the *Assessment Act* was amended by adding, *inter alia*, subsection (6), and the portion of that subsection with which we are concerned reads:

> "(6) Notwithstanding subsection (I) 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;
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> (b) where a change in the value of land and improvements occurs by reason of
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> (i) a change in the physical characteristics of the land or improvements, or both; or
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> (ii) new construction or new development thereto, thereon, or therein; or
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> (iii) a change in the zoning or reclassification of land and improvements.
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> 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;"

For the purposes of my judgment I note that sections 25 and 27 referred to in subsection (6) (a) are not applicable. Certain words in subsection (6), I think, should be emphasized, and those are first the opening words:

> "Notwithstanding subsection (1) or anything to the contrary in this Act. . ."

Secondly, I would emphasize the word "occurs" in the first line of subclause (b). It seems to me that the use of the word "included" following number (iii) may be the cause of some difficulty. I think that the word is there used by the legislature in the sense of "reflected" , "considered" or "contemplated." A clue to that I find in the use of the words later in the sentence "and has been taken into account in the preparation of the assessment roll for the calendar year 1974."

The question for our decision is pointed up by stating the argument presented to Mr. Justice Meredith and to Mr. Justice Toy in the two cases. The appellant's contention is that new construction and new development, the words used in subsection (6) (b) (ii), mean construction or development which have taken place since the roll for 1974 was prepared. Mr. Justice Meredith, with the approval later of Mr. Justice Toy, expressed his view in this way, and I am paraphrasing to some extent. He said if "new" was confined to events taking place after the preparation of the 1974 assessment roll, there would be no need to add the words "that is not included in the assessment roll for the calendar year 1974," because the new construction or development could not have been included in the 1974 roll.

With great respect for both learned judges, I cannot accept that reasoning. I think that the language of subsection (6) in the portion of it which I have read, is clear in the sense that one can determine the intention of the legislature from the words used in the subsection itself. I think that meaning may be expressed for the purposes of the present appeal as follows: the exceptions mentioned in subsection (6) (a) are changes in value brought about by an enumerated cause after the preparation of the 1974 roll. In other words, I accept the interpretation which is supported here by the appellant.

Both counsel referred to section 12 of the *Assessment Act*, and I am referring, of course, to the 1974 Act which was assented to in June of that year. It provides:

> "12. Where, subsequent to the completion of an assessment roll, the assessor finds that any property or anything liable to assessment
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> (a) was liable to assessment for the current year, but has not been assessed on the roll for the current year; or
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> (b) has been assessed for less than the amount for which it was liable to assessment,
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> he shall assess the property or thing on a supplementary roll, or further supplementary roll for the current year, subject to the conditions of assessment governing the current assessment roll on which the property or thing should have been assessed."

I think that some assistance in interpretation of the new subsection (6) is derived from a consideration of that section, particularly in the context, of an error by an assessor, in this case an error by way of a miscalculation of square footage of an improvement.

I would therefore allow this appeal, answer the question in the negative, with the result that the 1974 assessment stands for 1975, subject to the accepted increase of $3,002.00.

McINTYRE, J.A. (Oral): I agree with what has been said and have nothing to add.

CARROTHERS, J.A. (Oral): I agree.

McFARLANE, J.A.: The appeal is allowed accordingly.