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PIERS ISLAND ASSOCIATION

v.

SAANICH AND THE ISLANDS ASSESSOR

Supreme Court of B.C. (A761412)

Before: MR. JUSTICE E.D. FULTON

Vancouver, September 15, 1976

Mr. F.H. Herbert, for the Appellant
Mr. R.B. Hutchison, for the Respondent

Reasons for Judgment

October 8, 1976

This is an appeal by way of stated case from a decision of the Assessment Appeal Board ("the Board") confirming a decision of the Court of Revision which in turn confirmed the decision of the Area Assessor for Saanich and the Islands, that the lands of the Appellant Association ("the Association") on Piers Island are not exempt from taxation by virtue of the provisions of Sec. 24(w) of the *Taxation Act*, R.S.B.C. 1960, Ch. 376 and Amendments, and confirming the assessments as made. This appeal is taken pursuant to the provisions of Sec. 67 of Part VIII of the *Assessment Act*, S.B.C. 1974, Ch. 6, and there is no challenge to the validity of any of the earlier proceedings taken under other provisions of that Act.

The facts necessary to be considered in determining this appeal are concisely and adequately set out in the case stated by the Board, and I cannot do better than reproduce them as they appear there, as follows:

"4. Piers Island is a basically round Island comprising approximately 240 acres, and lying in Satellite Channel between the northern tip of the Saanich Peninsula and Salt Spring Island. It is separated from the northern tip of the Saanich Peninsula by Colburn Channel averaging approximately 1 1/2 miles in width.

5. The perimeter of the Island has been sub-divided into residential lots which said lots average approximately 100 ft. of ocean frontage to a depth of 250 to 300 feet. The purchasers of such perimeter lots obtained title, duly and properly registrable in the Victoria Land Registry Office.

6. There are approximately 125 perimeter lots and approximately 80 to 90 homes and cottages built thereon.

7. The subject of the appeal herein is a parcel of approximately 147.3 acres comprising most of the centre or interior area of the Island and known as Lot A of Plan 13049. The

said Lot A is owned by the Appellant, a non-profit organization and a society duly incorporated under the *Societies Act* of the Province of British Columbia.

8. The owners of the perimeter lots as aforesaid are the only persons entitled to become members of the Appellant Society and in fact comprise the entire membership of the Society.

9. The Piers Island Improvement District is a Water District, duly incorporated under the *Water Act*, Chapter 405, R.S.B.C. 1960 and amendments thereto, the sole and only members of which are owners of the perimeter lots as aforesaid.

10. There is no ferry or plane service to Piers Island nor is there any bridge and the only access to the Island is by charter barge or boat or private boat.

11. The lands in question owned by the Appellant are in a wild and natural state and are used as follows:

(a) As a natural watershed and source of water for the residents of Piers Island and for the owners of the perimeter lots as aforesaid and contain three deep drilled wells, a 40,000 gallon water storage tank and reservoir. The aforesaid water and the accompanying water distribution system are under the control of the Piers Island Improvement District which holds a water licence under the *Water Act* and will also collect and store ground water for a 1,000,000 gallon reservoir being constructed on the lands in question and which will utilize drainage water from most of the lands in question and owned by the Appellant.

(b) As the site of the Piers Island Volunteer Fire Department which includes buildings structures, fire engines, hoses, portable pumps and other chattels and equipment, all of which are owned by the Appellant and the Improvement District and which are for the fire protection, and benefit of the owners of the perimeter lots as well as the Appellant. The members of the Piers Island Volunteer Fire Department are volunteers and consist solely of the owners of the perimeter lots and as aforesaid.

(c) As a source of firewood, rock, gravel, soil and other materials for the owners of the perimeter lots.

(d) As a park and recreational area for the owners of the said perimeter lots and their guests.

(e) As a preserve for natural wildlife including deer, hummingbirds, blue heron and bald eagles, which are of enjoyment to the owners of the said perimeter lots. The owners of the said perimeter lots through the Appellant and through the Improvement District passed regulations prohibiting and regulating hunting and the ownership and keeping of dogs and other animals.

12. The owners of the perimeter lots as aforesaid are residents and citizens of Canada and other countries who share in common the enjoyment and utilization of Piers Island, the ocean frontage and the lands owned by the Appellant.

13. The land owned by the Appellant enjoys no public services and all administration, maintenance, and operation of facilities relative thereto are carried out by members of the Appellant and the Improvement District being, in turn, owners of perimeter property.

14. The owners of the perimeter property comprising also the membership of the Piers Island Volunteer Fire Department, the Appellant herein and the Piers Island Improvement District in addition to business meetings and functions, have, during the course of each

year, social and recreational functions, including picnics, and fishing derbies, classes on water safety and sailing, and continually work together in the solution of problems common to the community, to the Appellant to the Piers Island Volunteer Fire Department, to the Piers Island Improvement District, to the owners of the aforesaid perimeter lots.

15. All owners of the aforesaid perimeter lots are subject to and governed by regulations duly passed by the Appellant and by the Piers Island Improvement District regulating:

- (a) the lighting of fires and fire protection:
- (b) the useage of water:
- (c) the useage of motor vehicle and motorcycles on the Island, and
- (d) the closure of the Appellant's land for fire prevention purposes.

16. A road circumvents the said Piers Island between the said perimeter lots and the Appellant's land which is maintained by the Appellant for the benefit of the owners of the perimeter lots and for useage by the Piers Island Volunteer Fire Department and the Piers Island Improvement District and for the benefit of the owners of the perimeter lots generally.

17. The constitution of the Appellant contains as objects, inter alia:
'to acquire land on Piers Island, in the Province of British Columbia which the Society shall deem necessary for the purposes of the Society:
to improve the land acquired by the Society by the construction of roads and paths therein and to develop the same as recreation centre for the members of the Society by the construction of playgrounds, swimming pools, golf courses and other improvements, such other buildings and improvements of a like nature as the Society shall deem advisable for the social and well-being of the members of the Society and their families and friends:
to own, manage, use, occupy and enjoy the said lands and improvements thereon or any portion or portions thereof in such manner and upon such terms as the directors of the Society for the time being shall from time to time decide.'

The Appellant contends that the facts as set out clearly bring the lands in question - Lot A - within the purview of the said Sec. 24(w) of the *Taxation Act* as lands exempt from taxation and therefore not subject to assessment. That provision reads as follows:

"24. The following land is exempt from taxation:-

(w) Land and buildings owned and used exclusively by a non-profit organization for activities which are of demonstrable benefit to all members of the community in which the land is situate."

The facts are not in dispute, and it appears to be common ground between counsel that the lands and buildings in question are used for the benefit of all members of the Association - that is, the owners of the perimeter lots, so that the main question for determination is whether the members of the Association are a "community", and whether Piers Island on which the land in question is situate, is a "community", within the meaning of that word as used in subsection (w). I consider that the word "community" must be looked at in its geographical or physical sense, in addition to its human sense, for the section refers to the community "in which" the land is "situate", and in my view those words give the matter a physical or geographical connotation as well. Mr. Hutchison raised also a question with respect to the word "benefit", arguing that as it is used here, in the

context of "community", it has a connotation or meaning of charitable in the sense of public, as opposed to private, benefit. I will deal with the two points together.

It was also agreed that neither the *Taxation Act* nor the *Assessment Act* contains a definition of the word "community" and that there has been no case in any court interpreting the word as used in Sec. 24(w). However, the precise question was dealt with by the Board on an earlier occasion in 1974, on an appeal by the present Appellants to that Board involving the same property and exactly the point involved here, i.e. the meaning of the word "community" as used in Sec. 24(w), and that decision will serve as a useful starting point.

In its decision dated 28 October, 1974 the Board, then differently constituted, considered the judgment of Porter, C.J.O. in the case of *National Council of Jewish Women of Canada, Toronto Section v. Township of North York and Beckett* (1962) O.R. 1, and particularly a passage at p. 3 where he considered the various ways in which the word "community" has been used or applied. The Board adopted, as its interpretation of "community" as that word is used in Sec. 24(w), the last sentence of that passage, where Porter, C.J.O. said:

"'The community' is an expression generally applied to the people of a country or district as a whole, the general body to which all alike belong, the public."

On this basis it was held that Piers Island is not a "community", but that the "community" involved here must extend to at least all members of the Victoria Assessment District. I will return to the consideration of this decision shortly.

For the Appellant, Mr. Herbert argues - and it is agreed - that the facts as set out establish that the activities carried out on and from the property in question are of demonstrable benefit to all members of the Association, who are all the property owners and users of Piers Island. He stresses particularly that there are no public services at all except those provided by the Association and the Improvement District through their members respectively, who do so for no profit but whose services demonstrably benefit all the property owners.

As to whether the property owners are a community, I was referred to various definitions from both lay and law dictionaries. From the Appellant's point of view the two most useful are those appearing in the Compact Oxford English Dictionary, Vol. 1, P. 486, and Black's Law Dictionary, 4th Revised Ed., p. 350.

The Oxford, dealing with "community" in the sense of "A body of individuals", contains the following:

"7. A body of people organized into a political, municipal, or social unity: . . .
(b) A body of men living in the same locality;"

Blacks, under the heading "COMMUNITY" contains the following:

". . . People who reside in a locality in more or less proximity. A society or body of people living in the same place, under the same laws and regulations, who have common rights, privileges or interests.

. . .

The term 'community', as used in a statute providing that communities may be incorporated for the purpose of supplying inhabitants with water, should be construed to include all the inhabitants of a district having a community of interest in obtaining for themselves in common a water supply for domestic use."

(Citations omitted)

In addition to these, reference should be made to definitions dealing with "community" in the physical or geographical sense. Webster's New Collegiate Dictionary (1973) has the following under "community" at p. 228:

"1: ... b: the people with common interests living in a particular area; *broadly*: the area itself."

Black's (supra) also defines the word in the following sense:

"Neighborhood; vicinity, synonymous with locality."

Certainly the property owners on Piers Island, being the only and all the members of the Association and the only ones who control and benefit from the activities of the Association and the Improvement District, and being bound by the constitutions of those organizations, are a community within the earlier set of definitions. Equally clearly, Piers Island as the locality in which they live and have their property - the area itself - is a community within the other set of definitions.

As against this, counsel for the Respondent refers to the passage in the judgment of Porter, C.J.O., in the *National Council of Jewish Women of Canada* case, quoted above. He submits that, in using the term "demonstrable benefit to all members of the community" the legislature intended that the benefit be a public benefit, as opposed to a private benefit: that is, that the benefits be available to all members of the public equally, not to a restricted group. In support he cited *Oppenheim v. Tobacco Securities Trust Co. Ltd.* (1951) A.C. 297 and *In re Hobourn Aero Components Limited's Air Raid Distress Fund* (1946) 1 Ch. 194.

These two cases, however, dealt with the question of whether the arrangements which were in issue constituted genuine charitable trusts in which a public charitable purpose was shown, or whether they were private charities "having regard to the restricted and entirely personal nature of the relationship which bound together the potential beneficiaries." - *Hobourn Aero Components*, per Lord Greene, M.R. at p. 200. In my opinion these cases are not of application or assistance here, for to apply them is to beg the issue before me. Here the issue is not whether the organization which carries on the activities in question is or is not a charitable foundation, nor is there any question but that the benefits of the activities accrue to all the residents of Piers Island without discrimination between them: the issue is, do those property owners, or does the island on which their property is situate, constitute a community?

To hold, as I am urged, that the lands are not exempt from taxation under the subsection because the kind of benefits conferred are not of a public charitable nature but of a private nature connected with the ownership of land, would be to hold that the purpose of the subsection is to exempt from taxation only lands held by charitable organizations and/or used for charitable purposes. But I can find no such meaning in the words of the subsection, which are that the activities carried on on the land must be for the benefit of all members of the community. To hold that the word "benefit" means benefit of a public charitable nature would be to import words which the legislature has not used, or a meaning which the legislature has not made clear, and would be, as I appreciate it, contrary to the rules of statutory interpretation, especially of the interpretation of taxing statutes. I therefore reject the argument based on this interpretation of the word "benefit".

This brings me back to the word "community" and the interpretation placed on it by the Board in its decision of 1974, adopted in the decision under appeal. With respect, I consider that the Board has proceeded on a wrong principle: that "community" must be interpreted in the sense that it means the public in general, and not a community in the sense of an isolated or identifiable area or group. As seen, the Board held that "community" as used in Sec. 24(w) must be interpreted broadly as extending to at least all members of the Victoria Assessment District because "the taxation of property in the *Taxation Act*, *Assessment Equalization Act* and *Municipal Act* is with

reference to entire municipalities or towns or assessment districts." Again with respect, in my opinion this overlooks certain fundamental principles to be applied in the interpretation of taxing statutes, viz. that they are to be interpreted narrowly, and in favor of those upon whom the burden is sought to be imposed-Maxwell, *The Interpretation of Statutes*, 12th Ed., pp.140 ff. and 256 ff. In the words of Rowlatt, J. in *Cape Brandy Syndicate v. Inland Revenue Commrs.*, (1921) 1 K.B. 64 at 71:

" . . . In a taxing Act, one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

On the basis of these principles I have already held that it cannot be implied that "benefit" means benefit of a general charitable nature; on the same basis, it cannot be implied or read in that the meaning of "community" is to be confined in a particular way or that the word is to be interpreted in one sense only, a sense adverse to the taxpayers and which excludes interpretations which that word has in ordinary or common usage. Again, "one can only look fairly at the language used." In my opinion, it is inescapable that the residents-the property owners of Piers Island, sharing the same problems, amenities and benefits, and contributing as members of the Association to the services shared by all, are a community in the ordinary and accepted sense of that word. It is equally inescapable that Piers Island is a community as being the area itself or locality within which the property owned by that human community is situate.

Looking fairly at the language of the statute, and reading nothing into it, the statute imposes a tax on land but, by Sec. 24, exempts from taxation certain land and improvements as enumerated therein: the principle that the language of a taxing statute is to be strictly construed in favor of the taxpayer applies to that portion thereof consisting of language exempting from taxation. Sec. 24(w) exempts from taxation certain land the use of which is of demonstrable benefit to all residents of the community in which the land is situate: unless one imports into the subsection terms such as "charitable" or "general public" - words which are not there and the importation of which is prohibited by one branch of the principles enumerated, or unless one says that the word "community" shall be interpreted only in accordance with a definition which is unfavourable to the taxpayer and not in accordance with a definition or definitions which are favourable to him - which is prohibited by the other branch of the principles of interpretation - then it is clear that the land of the Appellant on Piers Island falls within the exemption.

For the Respondent it is argued that this interpretation will give to a small group of individuals, for their private advantage, the benefit of an exemption which as a matter of policy was intended to be given only to truly charitable organizations whose activities serve the general public. This may be so. I make no comment on the matter of policy: the comment on this argument must be that, while Judges should not proceed blindly or unaware of the effect their decisions may have upon the tax - or other - systems which the legislature intends, this decision is not one which is going to have an immediate widespread consequence; I have to interpret the provision as I find it and if the result of applying to its words the rules of interpretation by which I am bound be considered undesirable from the policy point of view, the remedy is within the competence of the legislature, not the Judge.

In the result the opinion to be remitted to the -Board on the case stated is that the lands of the Appellant involved herein are exempt from taxation pursuant to the provisions of Sec. 24(w) of the said *Taxation Act* in that they consist of land and buildings owned and used exclusively by a non-profit organization for activities which are of demonstrable benefit to all members of the community in which the land is situate.

MEMORANDUM

Vancouver, October 8, 1976

To: The Registrar

From: Mr. Justice E. D. Fulton

Re: Assessment Act Appeal - Piers Island Association v. Saanich and the Islands Assessment District

Stated Case - No. A761412

1. I am submitting herewith my revised Reasons for Judgment and Opinion in this matter.
2. In this revised Opinion I have dealt with the meaning of the word "community" in both its human and its physical connotation. Before me, the argument on the meaning of "community" in the subsection was put forward mainly with relation to the question of whether the property owners form a community in the sense of a group of persons: I have considered it essential to deal also with the question of whether Piers Island is a community in the geographic or physical sense, for the subsection refers to the community "in which" the land is "situate" and it seems to me that those words give the matter a physical or geographical connotation as well. It is appreciated that the arguments were not specifically, directed to this aspect of the matter. Accordingly, although I have prepared these Reasons and formed my Opinion on the basis of my consideration of both aspects, I will be prepared to receive further submissions from counsel if they so desire.
3. According to sec. 67 (5) of the *Assessment Act*, my Opinion is to be remitted to the Board within one month from the date of the hearing; however, please withhold action in that regard until advice is received from counsel as to whether they wish to make further submissions. Because of the time factor, I suggest that this advice should be communicated by telephone.