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SC 102 Van. Assessment v. Rayonier Canada & MacMillan Bloedel

### VANCOUVER ASSESSMENT AREA

v.

### RAYONIER CANADA (B.C.) LIMITED and MacMILLAN BLOEDEL INDUSTRIES LIMITED

Supreme Court of British Columbia (Victoria 1393/1394/76)

Before: MR. JUSTICE H.P. LEGG

Vancouver, March 2, 1977

Peter W. Klassen for the Appellant

Bruce I. Cohen for the Respondents

#### Reasons for Judgment

March 17, 1977

The British Columbia Assessment Authority, Vancouver Assessment District, brings these two appeals from decisions of the Assessment Appeal Board, dated December 3, 1976. Both appeals relate to the assessments of certain mechanical barker machinery at the respective sawmills of the respective respondents.

An agreed statement of facts was filed with respect to each appeal. These agreed statements of facts are similar in wording and the grounds of appeal taken by the Assessment Authority are identically worded. It is, therefore, unnecessary for me to set out in detail each of the agreed statements of facts.

The statements show that after 1975 each of the respondents installed and used a mechanical barker in the operation of each sawmill operated by each respondent. Each mechanical barker was equipped with a series of knives in a ring which tore the bark off a log.

Prior to 1975 each respondent had utilized a hydraulic barker for the purpose of removing bark. Tests made of the effluent discharged by the hydraulic barker showed levels of water pollution which fell below those required by the Provincial pollution control objectives. In order to reach the level required by the pollution control objectives it was necessary for each respondent to replace the hydraulic barker with a mechanical barker which produced dry bark which could be disposed of in a burner.

As a result of the installation of the mechanical barker in place of the hydraulic barker the respondents totally eliminated the water effluent problem and were able to comply with the required pollution control standards. When the assessor assessed the mechanical barker improvements of each respondent for the year 1976, he did not assess the mechanical barker as exempt pursuant to section 396 (e) of the *Vancouver Charter*.

Each respondent appealed to the 1976 Vancouver Court of Revision and that Court of Revision held that the assessment of each mechanical barker should be reduced by 25 per cent of the difference between the value of the mechanical barker and the depreciated value of the hydraulic barker in order to recognize the contribution of the new mechanical barker towards pollution abatement. The appellant Assessment Authority was dissatisfied with the decision of the Court of Revision and appealed to the Assessment Appeal Board.

The Assessment Appeal Board ordered the Assessor to further reduce the subject assessments to reflect a 50 per cent exemption on each mechanical barker.

The Assessment Appeal Board gave precisely the same reasons for judgment in explaining its reasons for its decisions and held that in the opinion of the Board the primary purpose of each of the respondent companies in installing the mechanical barkers was to endeavour to meet the requirements set for them by the Pollution Control Board. The Assessment Appeal Board further held that it was not the respondents' desire to replace the hydraulic barkers, which were in good working condition and efficient.

It stated in part as follows:

"The Board must assert its privilege and responsibilities as an arbitrator for equity in all matters of assessment including discretions of the Commissioner, to ensure recourse in situations where a taxpayer 'could be left without recourse in what he feels is an unjust application of a Statute'."

The appellant's notices of appeal list seven grounds of appeal. Counsel for the appellant agreed in making his submission, however, that grounds 1 to 3 inclusive and grounds 4 to 7 inclusive, set out two basic grounds of appeal. I therefore set out grounds 1 and 4 as follows:

"1. The Assessment Appeal Board having found that the subject improvement was not exclusively used for pollution control or abatement, erred in law when it held that the Assessment Appeal Board could determine the portion of the assessed value of the subject barker attributable to such control or abatement, and exempt such portion pursuant to Section 396 (e) of the *Vancouver Charter*, being Chapter 55, of the Statutes of British Columbia, 1953.

4. The Assessment Appeal Board erred in law and misdirected itself in law when it held that a portion of the assessed value of the subject barker could be exempted pursuant to Section 396 (e) of the *Vancouver Charter* because 'the primary purpose of the Respondent companies was to endeavour to meet the requirements set for them by the Pollution Control Board.'"

Section 396 (e) of the *Vancouver Charter*, referred to in ground 1 of the notice of appeal, is worded as follows:

"396. All real property in the City is liable to taxation pursuant to a rating by-law, subject to the following exemptions:-

. . . (e) Any improvement of land used exclusively for the control or abatement of water, land, or air pollution, including sewage-treatment plants, effluent reservoirs and lagoons, deodorizing equipment, dust and particulate-matter eliminators; provided, however, that where the improvement or land is not being used

exclusively for the purpose of pollution control or abatement but is primarily so used, the Assessment Commissioner may, in his discretion, determine the portion of the assessed value of the improvements or land attributable to such control or abatement, and such portion is exempt;"

Counsel for the Assessment Authority submitted, with respect to ground 1, that the Court of Revision had no jurisdiction to entertain an appeal from the exercise of the discretion by the Assessment Commissioner. He argued that the Board had found that the mechanical barkers in question here were not used exclusively for the control or abatement of water pollution and that therefore the Court of Revision, in entertaining the appeal, was reviewing a discretion exercised by the Assessment Commissioner under the provisions of the proviso to subsection (e) of section 396. He argued further that because the Court of Revision had no jurisdiction to entertain such an appeal, the Assessment Appeal Board had no jurisdiction to hear the appeal by the appellant Assessment Authority.

This argument calls for a consideration of the sections of the *Vancouver Charter* which deal with the Assessor's function in the instant appeal, the sections of the *Assessment Act* which deal with the Court of Revision's jurisdiction and, finally, the sections of the *Assessment Act* which deal with the jurisdiction of the Assessment Appeal Board.

Section 341 (c) of the *Vancouver Charter* provides that the Assessment Commissioner shall in each year estimate the value of each parcel of real property in the city and shall cause a real property assessment roll to be prepared annually in which he shall cause to be entered:

". . .

- (b) The estimated value of the land
  - (i) subject to taxation; and
  - (ii) exempt from taxation:
- (c) The estimated value of the improvements thereon
  - (i) subject to taxation; and
  - (ii) exempt from taxation:"

When that language is read with the language of section 396 (e), I conclude that the Assessment Commissioner's function was to estimate the value of any improvement exempt from taxation and in performing this function he was required by section 396 (e) to estimate the value of any improvement which was used exclusively for control of abatement of water pollution. If, however, the improvement was not used exclusively for pollution control or abatement, but was primarily so used, the Assessment Commissioner was then under a duty to use his discretion and estimate the portion of the assessed value attributable to such pollution control or abatement.

It is clear from the stated case that the respondents on this appeal, being dissatisfied with the Assessment Commissioner exercise of his discretion in determining that no portion of the assessed value of the mechanical barkers should be exempt, appealed the Assessment Commissioner's decision to the Court of Revision.

Although section 363 (1) of the *Vancouver Charter* provides a right of appeal to a Court of Revision with respect to "the extent of any exemption allowed" by an Assessment Commissioner, I consider that the jurisdiction of the Court of Revision is determined by the provisions of the *Assessment Act* and not by the *Vancouver Charter*.

Section 32 (1) of the *Assessment Act* clearly provides that Courts of Revision are appointed under that Act to hear appeals on assessments of land and improvements.

That section is worded in part as follows:

"32 (1) Notwithstanding any other Act, the Lieutenant-Governor in Council shall appoint Courts of Revision to hear appeals on assessments of land and improvements in all municipalities and rural areas, and shall set the date and time on which, and the place at which, each Court of Revision shall commence its sittings."

Further, section 33 (1) of the *Assessment Act* deals with the right of appeal from an error or omission with regard to an exemption.

That section reads in part as follows:

"33 (1) Where a person is of the opinion that an error or omission exists in the completed assessment roll in that. . .

(e) an exemption has been improperly allowed or disallowed, he may personally, or by a written notice signed by him, or by a solicitor, or by an agent authorized by him in writing to appear on his behalf, come before, or notify, the Court of Revision and make his complaint of the error or omission, and may in general terms state his ground of complaint. and the Court shall deal with the complaint, and either confirm, or alter the assessment."

I consider that each respondent in the case at bar had the right to appeal to the Court of Revision and claim that the Assessment Commissioner had improperly disallowed an exemption, that the log barkers were primarily used for pollution control or abatement and that the Assessment Commissioner had failed to estimate the portion of the assessed value of each mechanical barker which should be attributed to water pollution control or abatement and which should therefore be exempt.

Moreover, section 37 (1) (b) of the *Assessment Act* empowers the Court of Revision to "investigate the assessment roll and the various assessments therein made, whether complained against or not, and, subject to subsection (4), to adjudicate upon the assessments and complaints so that the assessments shall be fair and equitable and fairly represent actual values within the municipality or rural area."

I consider that the Court of Revision was empowered under that section to determine whether the Assessment Commissioner had caused to be entered on the roll (in, the wording of section 341 (e) of the *Vancouver Charter*):

". . . The estimated value of the improvements

(i) subject to taxation; and

(ii) exempt from taxation;"

If the Court of Revision concluded that the estimated value of the improvements of the respondents which were exempt from taxation had not been entered on the roll it was entitled to make its estimate of the assessed values that were exempt so that the assessments should be fair and equitable and to direct such amendments as might be necessary to give effect to its decision.

In exercising this jurisdiction I consider that the Court of Revision had power to consider whether the improvements in question were used exclusively for the control or abatement of water, land or air pollution and if they were not being used exclusively for this purpose, but were primarily so used, to review the Assessment Commissioner's determination that no portion of the assessed value of the improvement was attributable to pollution control or abatement and that no such portion was exempt.

In my opinion the questions which the Court of Revision had to consider were questions of fact and not questions of law and were within the powers of the Court of Revision.

I next consider the jurisdiction of the Assessment Appeal Board.

The jurisdiction of the Assessment Appeal Board is set out in the *Assessment Act* previously referred to, chapter 6, S.B.C. 1974, and in particular in sections 54 to 59 inclusive and 60 to 66 inclusive.

Sections 54 to 59 inclusive of the *Assessment Act* are similar to sections 30 to 36 inclusive of the *Assessment Equalization Act* and sections 60 to 66 inclusive of the *Assessment Act* are similar to sections 44 to 50 of the *Assessment Equalization Act*. Thus the terms of the *Assessment Act* are essentially the same as the terms of the *Assessment Equalization Act* in so far as the jurisdiction of the Assessment Appeal Board is concerned.

I refer to this brief legislative history because the jurisdiction of the Assessment Appeal Board has been considered by distinguished members of this Court and in particular by Wilson, J. (later Chief Justice) in *Re Assessment Equalization Act and re Appeal of MacMillan Bloedel and Powell River Ltd. et al* (1961-2) 36 W.W.R. (N.S.) 463, and by Mr. Justice Munroe of this Court in *Re Assessment Equalization Act, re Taxation Act and re Western Forest Products Industries Ltd. Appeal* (1966) 54 W.W.R.766.

In the first cited case, Wilson, J. rejected the argument that the Board could do anything that a Court of Revision could do and stated that it was a statutory creation not to be credited with any powers which are not expressly, or by the most compelling implication, entrusted to it. He considered that the powers of review of the Assessment Appeal Board were contained in sections 46 and 47 of the *Assessment Equalization Act*. Those sections are in almost precisely the same terms as sections 62 and 64 of the *Assessment Act*. He considered that section 47 of the *Assessment Equalization Act* (equivalent to section 64 of the *Assessment Act*) was not meant to enlarge the specific powers of review given to the Board by section 46 (equivalent to section 62 of the *Assessment Act*).

Mr Justice Munroe adopted a similar approach in the *Western Forest Products Industries Appeal* and held that the Assessment Appeal Board had no jurisdiction to decide whether or not timber licences were assessable or otherwise.

In my view the questions of fact which were considered by the Assessment Appeal Board in the case at bar were essentially the questions of fact which the Court of Revision considered and to which I have referred on pages 7 and 8 of these reasons for judgment. They may be distinguished from the question of whether property is assessable, which was considered by Mr. Justice Munroe.

I respectfully adopt the interpretation of the Assessment Appeal Board's jurisdiction referred to by Mr. Justice Wilson and by Mr. Justice Munroe when I consider the answer to the questions before me. After reviewing the sections of the *Assessment Act* and in particular sections 62 and 64 (the sections which were equivalent to those sections which Wilson, J. considered), I have concluded that the *Assessment Act* does not expressly or by the most compelling implication entrust the Board with power of review entitling it to determine the portion of the assessed value of the subject mechanical barkers attributable to pollution control or abatement, and exempt such portion pursuant to section 396 (e) of the *Vancouver Charter*.

The determination of this question is clearly not a determination of whether the property which was assessed bore a fair and just relation to the value at which similar land and improvements are assessed under the provisions of section 62 (1) (a) of the *Assessment Act*. Nor is this determination an exercise of the jurisdiction under section 62 (1) (b) under which the Board is authorized to determine whether the assessed value of land and improvements is in excess of the assessed value as properly determined under section 24 of the *Assessment Act*. Further, I consider that section 64 of the *Assessment Act* does not enlarge the specific powers of review under section 62 so as to entitle the Board to exercise the jurisdiction which it did exercise.

Accordingly, I allow the appeal of the Assessment Authority on ground 1.

It follows from what I have said that I would also allow the appeal on grounds 2 and 3 in the notices of appeal and that it is unnecessary for me to deal with grounds 4 to 7 inclusive in the notices of appeal.

I also wish to add that I find it regrettable that the *Assessment Act* does not provide the Assessment Appeal Board with the jurisdiction which it purported to exercise on the questions of fact before it in the instant appeal.