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SC 106 West Bay Marina v. Capital Assessment Area

WEST BAY MARINA LIMITED

v.

CAPITAL ASSESSMENT AREA

Supreme Court of B.C. (A770840)

Before: MR. JUSTICE K.E. MEREDITH

Vancouver, June 24, 1977

B.I. Cohen for the Appellant
P.W. Klassen for the Respondent

Reasons for Judgment

June 27, 1977

This application is by way of a case stated by the Assessment Appeal Board. The first question is whether floating dwellings moored at West Bay Marina constitute "improvements" within the meaning of section 1 of the *Assessment Act*. Under the Act:

"improvements" includes

(iv) rafts, floats, docks, and other such devices which are anchored or secured, whether the land or property to which they are anchored or secured belongs to the owner or not, and buildings, fixtures, machinery, structures, storage tanks, and similar things erected, affixed, or placed thereon, . . ."

If I decide that the dwellings do constitute improvements then the second question is whether, as the dwellings were first moored at the marina sometime between the completion of the 1974 and 1975 assessment roll, and not included in the 1975 assessment, the assessor is prevented from including them in the 1976 roll.

As to the first question. The dwellings are supported by various flotation devices, including styrofoam logs, steel drums and cedar logs, they are used as residences and are tied to the main docks at the marina by rope. There are water and electrical lines from the main source of water and electricity to the dwellings. They have no means, of propulsion.

Mr. Klassen contends that the dwellings are in fact floats which are secured and upon which structures have been erected or placed, and thus come within the definition of "improvements".

Mr. Cohen argues that these dwellings are in fact houseboats, that the word houseboat has been part of the English language for several centuries and that if the Legislature meant to include houseboats in the definition of improvements they would have said so. Secondly, he submits that the dwellings cannot be said to be secured to the marina floats simply because they are tied to them. And finally, he says that in the context of the definition, improvements are things which

have a greater degree of permanence than these floating dwellings which can be moved at any time.

The photographs of the various dwellings suggest that at least one or two of them are simply placed on floats, particularly those shown in photographs 1, 3, 9 and 14. These seem to me to be clearly floats upon which structures have been placed and come within the definition. The remainder look as if they may have been constructed in one piece before launching. The underpinnings of these can only be described as "floats" upon which the structures have been erected. These also come within the definition.

The word "secure" must be read with the word "anchored", that is to say that the structures will fall within the definition whether they be anchored, whether or not free of any other structure, or secured along side. I conclude that the structures are secured, whether by ropes or chains or anything else.

As to permanency, it is of interest to note that in the several years that the dwellings have been moored at the marina, only two have been removed.

I therefore hold that these floating dwellings come within the definition of "improvements".

Mr. Cohen takes the further point that because the dwellings were erected between 1974 and 1975, but were not included in the 1975 assessment roll, they must not be included in the 1976. As I understand it the argument is based upon section 24 (6) of the *Assessment Act* which froze assessments at the 1974 level, and upon the case of *Re Village Rentals Ltd.*, (unreported, May 25, 1976, No. CA760009) where the Court of Appeal held that the subsection prevented the assessor from including in a subsequent assessment features of a building he had omitted to assess in 1974, as the features were not "new" construction or development within the meaning of the subsection. In any event the subsection was amended this year to expressly permit correction of errors and omissions in the 1974 assessment rolls. I see nothing in the subsection, either before or after amendment, which prevents the assessor including the dwellings in the 1976 assessment rolls simply because he failed to include them in 1975.

The answers, then, are that the dwellings are improvements, and that they were properly assessed as such in 1976.