SC 113 City of Vancouver v. Pacific Centre Ltd.

CITY OF VANCOUVER

v.

PACIFIC CENTRE LIMITED

Supreme Court of British Columbia (No. C780818)

Before: MR. JUSTICE H.E. HUTCHEON

Vancouver, February 27, 1978

J.L. Mulberry for the Appellant
B.I. Cohen for the Respondent

Reasons for Judgment March 20, 1978

The assessment for the year 1977, among other things, added $2,320,650 to the value of the retail mall and parking areas owned by Pacific Centre Limited ("Pacific Centre"). The Assessment Appeal Board allowed the appeal on this aspect of the assessment.

The decision of the Board is stated in the following paragraphs of the stated case:

> "5. The evidence at the hearing disclosed that for the year 1977 the Assessor changed the method of determining the assessment on certain portions of the improvements on the aforesaid properties. The consequence of this change, specifically to the retail mall area and the parking garage, was to increase the 1977 assessment by a net amount of $2,320,650.00.
>
> 6. The evidence discloses that the Assessor changed the assessment notwithstanding section 24 (6) of the *Assessment Act*, S.B.C. 1974, Chapter 105, now repealed by section 18 of the *Assessment Amendment Act*, 1977 (No. 2).
>
> 7. The evidence further discloses that the Assessor felt that he was justified in making the aforesaid change on the ground that the opening of the retail mall on Block 42 and the volumetric parcels during the year 1976 constituted a change in the physical characteristics of the improvements or new development within the meaning of section 24 (6) (b) of the *Assessment Act* as that Act existed at the closing of the assessment roll for the year 1977.
>
> 8. After hearing the evidence and reserving their decision, the Assessment Appeal Board decided that the net increase in assessment in respect of the retail mall and parking areas of Block 42 and adjoining volumetric parcels was contrary to the provisions of the then existing section 24 (6) of the *Assessment Act*, and directed that the increase of $2,320,650 be deducted from the improvement assessment."

The scheme of section 24 (6) of the *Assessment Act* was to freeze the value of property for assessment purposes at the 1974 level unless there had been a change. The nature of the change to justify a different value is spelled out in section 24 (6) (b). I quote the relevant legislation:

> "24. (1) Land and improvements shall be assessed at their actual value.
>
> . . .
>
> (6) Notwithstanding subsection (1) 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;
>
> (b) where a change in the value of land and improvements occurs by reason of
>
> (i) a change in the physical characteristics of the land or improvements, or both; or
>
> (ii) new construction or new development thereto, thereon, or therein; or
>
> (iii) a change in the zoning or reclassification of land and improvements
>
> 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;"

The question that is submitted for the opinion of this Court is as follows:

> "Did the Board err in its interpretation of section 24 (6) of the *Assessment Act*, S.B.C. 1974, chapter 105 (now repealed)?"

In more specific terms the question is whether the change in use of the mall and parking area from unoccupied to occupied as a result of the opening in 1976 is "new development thereto, thereon, or therein".

I am governed in the interpretation of section 26 (b) by the recent decision of our Court of Appeal in *Re British Columbia Forest Products Limited* (unreported, December 16, 1977). In that case it was held that a cruise of certain forest lands subsequent to the completion of the 1974 assessment roll was not "new development" which would justify an assessment at an increased value. At page 14 of the reasons for judgment, Robertson, J. A., speaking for the Court, said: "With great respect, I must disagree with the learned judge. I think that he has fallen into error in giving no effect to the words 'thereto, thereon or therein' and also in reading 'new development' as though it were 'a new development'.

> As stated in paragraph 9 of the stated case, a cruise is a method of estimating the quantity of merchantable timber on a tract of land. As an estimate it is only an expression of opinion. The making of a cruise report and filing it with the Assessor may be said to be a new development for the purpose of ascertaining the actual value of the land, but it cannot be said to be new development to, on, or in the land. No one going on the land

> after as well as before the filing of the report would be able to see on the later occasion that the land had been newly developed.
>
> Further, I think that 'development' takes some colour from its neighbour 'construction', which must be something physical."

There may be a change in the value of land and improvements but to be an exception to section 26 (a) the change in value must have been brought about by one of the causes set forth in section 26 (b). In this case what had been previous to 1976 the work area of tradesmen in the construction industry became a shopping area and a parking area frequented by the shop owners, their clerks and their customers. It is plain that there was a change in value by reason of the activity associated with shopping and parking. The start-up in 1976 of these commercial enterprises may be said to be a new development but as the words have been interpreted in the *British Columbia Forest Products Limited* case it was not "new development" to, on or in the land or the improvements.

Whether, by reason of that interpretation, there could be "new development" which did not involve a change in the physical characteristics of the land or the improvements and thus within the exception of section 26 (b) (ii) is a matter which has concerned me. I have not been able to conceive of an example. The question, however, is not whether the words "new development" have a separate meaning but whether they apply to the facts of this case. I have concluded that they do not and accordingly the answer to the question posed is that the Assessment Appeal Board did not err in its interpretation of section 24 (6).

There are two matters which I mention in case this matter goes to appeal. Mr. Mulberry for the City of Vancouver argued but did not press the argument very strongly that the change in use from unoccupied to occupied was a change in the physical characteristics. The second point is that the City of Vancouver did not rely on the connecting up of the mall area with the older lower level of stores under the Pacific Centre in the block north of the subject property as either a change in physical characteristics or new development.