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SWAN VALLEY FOODS LIMITED
(CRESTON VALLEY FOODS LIMITED)

v.

ASSESSMENT APPEAL BOARD

British Columbia Court of Appeal

Before: MR. JUSTICE J.D. TAGGART, MR. JUSTICE E.E. HINKSON, and MR. JUSTICE J.D. LAMBERT

Vancouver, May 1, 1980

B.W.F. McLoughlin Q.C. for Swan Valley Foods Ltd.
P.W. Klassen for the British Columbia Assessment Authority

Reasons for Judgment of Mr. Justice E. E. Hinkson (Oral) May 1, 1980

Taggart, J.A.: Mr. McLoughlin, the court does not need to hear from you. I will ask Mr. Justice Hinkson to give the first judgment.

Hinkson, J.A.: This is an appeal from a decision of Mr. Justice Meredith, sitting in chambers, when he, pursuant to the provisions of the *Judicial Review Procedure Act* quashed a decision of the Assessment Appeal Board. In order to appreciate the issues arising on this appeal, it is necessary to deal with the circumstances which preceded that application. Swan Valley Foods Ltd. had constructed a plant originally designed to produce frozen french fries. Construction of the plant commenced in 1973. Before construction a unique technology had been developed to preserve potato products in a plastic pouch and Swan Valley Foods, rather than proceeding with its intention of producing frozen french fries, decided to adopt this new technology.

Swan Valley obtained support and substantial financial contribution from the Government of the Province of British Columbia for the project. At one point, the Government owned in excess of 40% of the shares of that company. Fixed machinery and equipment were integrated into the plant to produce the pouch potato product. Construction of the plant was substantially completed between June and September 1976, but. the company was not at that date in a position to commence commercial production.

At that stage difficulties were being experienced with the product breaking the pouch; and discolouration of the product. Initially the assessment authorities were concerned in this matter with the 1977 assessment of the property. In 1975 a change of Government occurred in British Columbia. At the instance of the new government on May 5th, 1976, a consulting firm, Woods Gordon, in Vancouver was retained to act as manager of Swan Valley Foods Ltd. In turn, Woods Gordon retained William McQuaid and Associates to find a buyer for the company.

William McQuaid and Associates investigated local, national, and international companies to try and find a buyer. These efforts resulted in the incorporation of Creston Valley Foods Ltd. which purchased all the buildings, machinery, equipment, and technology under a debenture for 1.5 million dollars, dated April 15, 1977.

As part of that transaction, Hardee Farms International Ltd. purchased the shares of Creston Valley Foods Ltd. through a wholly-owned subsidiary called Federal Diversiplex Ltd. for ten dollars and guaranteed the Debenture on the condition that the plant proved to be economically viable by April 15, 1980. The purchaser was aware at the time of purchase that a further sum in excess of two million dollars would have to be spent to bring the plant into viable operation.

In respect of the 1977 assessment, the assessor made his assessment of the plant based solely on the replacement cost value. There was an appeal by Swan Valley Foods Ltd. or Creston Valley to the Court of Revision, which confirmed the assessment. The decision of the Court of Revision was appealed by the company to the Assessment Appeal Board which was confirmed by a decision dated, December 20, 1977. Then the decision of the Assessment Appeal Board was appealed to the Supreme Court of British Columbia by way of stated case, pursuant to the provisions of section 67 of the *Assessment Act*. Four questions were asked of the court and these are set out at page 7 of the appellant's factum:

> (a) Was the Assessment Appeal Board correct in law in deciding that the cost approach method of finding actual value for this type of industrial property was the only proper method of assessment, to the exclusion of all others?
>
> (b) Was the Assessment Appeal Board correct in law in failing to decide that the Assessor ought to have taken into account factors other than original cost in the determination of actual value?
>
> (c) Was the Assessment Appeal Board correct in law in deciding that the factors of economic and functional obsolescence were not applicable and in failing to consider the state of development of the business of the Company as directly affecting the actual value of the land and improvements?
>
> (d) Was the Assessment Appeal Board correct in law in deciding that the Assessor was justified in not considering market evidence?

The stated case came before Mr. Justice Meredith who, by his decision on April 10, 1978 answered questions (a) and (b) in the negative, and gave a partial answer to question (c) in the affirmative.

The Chambers Judge directed that the case be remitted to the Assessment Appeal Board for further consideration. The matter came on again before the Assessment Appeal Board on the 14th of May, 1978. The first question that had been asked of the court was as set out above, and the effect of Mr. Justice Meredith's decision was to inform the board that as a matter of law, the cost approach method of finding actual value for this type of industrial property was not the only proper method of assessment, to the exclusion of all others.

On its reconsideration of the matter, the Board indicated that it gave consideration, pursuant to the provisions of section 24 (2) of the *Assessment Act*, to the matter set out in that sub-section, and then concluded that on all the evidence the replacement cost approach was the best available indication of actual value. It therefore confirmed the assessment on the land and buildings.

As a result of that decision of the Assessment Appeal Board, the company petitioned, as I have indicated, pursuant to the *Judicial Review Procedure Act*, and the petition came on for hearing before Mr. Justice Meredith, who quashed the decision. It is from that decision that the present appeal is taken.

In his reasons for judgment on the stated case, Mr. Justice Meredith held that the replacement cost approach was not a proper approach to be adopted in this matter, and as I have indicated, answered the first question in the negative.

Upon the matter being remitted to the Board, it purported to canvass the various matters set forth in section 24 (3) of the *Assessment Act*, and then came to a conclusion again, that the replacement cost approach was the best available indication of actual value. No appeal had been taken from the first decision of Mr. Justice Meredith, and in my view it was not open to the Board to reach that conclusion in the light of the disposition he made of the questions asked on the stated case. In the course of dealing with the petition to quash the decision of the Board, Mr. Justice Meredith indicated that in his view there was not any evidence before the Board to support its conclusion that the appropriate approach was replacement cost, and it is from that aspect of his decision that the present appeal is taken.

Counsel for the appellant contends that the Chambers Judge was in error in reaching that conclusion. In the course of his Reasons for Judgment, Mr. Justice Meredith in dealing with the motion to quash made reference to the earlier stated case and said this:

> "The Petitioner appealed to this Court by way of Stated Case. The Court was asked whether the Board was correct in deciding that the replacement cost method of determining actual value was the only proper method of assessment. I held, on what I considered to be the authority of *Assessment Commissioner of the York Assessment Office* vs. *Office Specialty Ltd.* (1975) 1 SCR 677, that it was not. I conceived that the case stood for the proposition that where the assessor is in search of an "actual" or "market" value, he may use replacement cost as a yardstick but only where he can regard the owner as a possible purchaser and then only to such amount as the owner would be willing to pay to replace that which is valued. In the present case there is no evidence that the owner would be willing to pay the replacement cost. All evidence is to the contrary."

As I understand counsel for the appellant, he does not disagree with the proposition of law as stated in that passage, but, it is his contention that on the evidence the learned trial judge was in error in holding that the owner would not be willing to pay the replacement cost.

I have recited the circumstances lying behind this appeal in considerable detail because, those circumstances indicate to me that the learned Chambers Judge was correct. I have reached the conclusion he reached, that in the present case there was no evidence that the owner would be willing to pay the replacement cost. Having reached .that conclusion, I would dismiss the appeal.

Taggart, J.A.: I agree. I wish only to add that in reaching the conclusion that Mr. Justice Meredith was correct in his conclusion that there was no evidence to support the utilization of the replacement cost approach, I do not wish to be taken as saying that that approach is incorrect in appropriate circumstances. I say only that in the circumstances of this case, the evidence upon which the approach might be taken was wanting. And, that the trial judge was correct in his conclusion as to the lack of evidence to which my brother has referred. I think the replacement approach may well be used in appropriate circumstances, such as those referred to in the *Office Specialty* case, to which my brother has referred, and in the *City of Montreal* vs. *Sun Life Assurance Co. of Canada* (1952) 2D.L.R. 81.

For those reasons as well as for the reasons given by my brother, I agree that the appeal should be dismissed.

Lambert, J.A.: Mr. Justice Meredith, in the extract from his reasons of 18th of May 1978, that were quoted by my brother Hinkson, says that in the present case there is no evidence that the owner would be willing to pay the replacement cost. I consider that what is meant is that there is no evidence either that the owner would be willing to pay the replacement cost or that any hypothetical owner would be willing to pay the replacement cost.

I agree with all that has been said by my brother Hinkson and my brother presiding, and I would dispose of this appeal as they propose.

Taggart, J .A.: The appeal is accordingly dismissed.