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**SWAN VALLEY FOODS LIMITED
(CRESTON VALLEY FOODS LIMITED)**

v.

ASSESSMENT APPEAL BOARD

Supreme Court of British Columbia (C780492)

Before: MR. JUSTICE K.E. MEREDITH

Vancouver, May 16, 1979

C.B. Coutts for the appellant
P. Klassen for the respondent

Reasons for Judgment

May 18, 1979

The petitioner applies to quash a decision of the Assessment Appeal Board made December 14, 1978, because an error in law appears on the face of the record, and to direct the Board as to the manner in which it should direct the assessor to amend the assessment roll.

The petition arises out of an assessment of a plant owned by the petitioner near Creston, British Columbia. The plant as originally planned was to have produced frozen french fried potatoes. Before the buildings were constructed the plans were changed to adapt production to a potato product in a plastic pouch. A great deal of money has been spent in developing the technology for this process so as to make the plant economically viable. The plant was constructed in the years 1973 to 1976 before the technology had been perfected. The Government of British Columbia had a substantial interest in the shares of the appellant. In 1975 a new Government was elected. It was decided that the assets of the company be sold. A year later after an intensive effort to find a buyer, Creston Valley Foods Ltd. was incorporated. That company purchased the buildings, machinery and equipment and technology under a debenture for \$1.5 million. As part of the transaction, Hardee Farms International Ltd. purchased the shares of Creston Valley Foods Ltd. through a wholly owned subsidiary called Federal Diversiplex Ltd. for \$10.00 and guaranteed the debenture on the condition that the plant prove to be economically viable by April 15, 1980.

After the purchase the assessor assessed the plant in the sum of \$4,629,938.00, the replacement cost. The assessment was appealed to the Court of Revision and to the Assessment Appeal Board, the respondent on this application. The Board upheld the assessment holding that the replacement cost approach was the "only proper method due to the specific design concepts used and the inability to find direct comparables which would sell on a property basis rather than on a corporate share concept which would include such items as goodwill".

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.

The matter was remitted to the respondent board for further consideration. The Board convened a further hearing. The reasons handed down later recite that "the purpose of the hearing was to afford counsel an opportunity of giving the Board their view as to the action which the Board should take, having in mind the opinions expressed by the Supreme Court in its decision of April 10, 1978".

The submissions of counsel are recited in the reasons:

Mr. Coutts, on behalf of the appellant, urged that in view of the opinions expressed by Mr. Justice Meredith, the assessment made by the assessor and confirmed by both the Court of Revision and the Board, was invalid and a complete nullity. The Board should, therefore, now direct the assessor to value the subject property on the basis of the market data available.

In his argument, Mr. Klassen submitted that the function and power of the Supreme Court was to answer the questions posed in the stated case and to cause those answers or opinions to be remitted to the Board. Thereafter, Mr. Klassen submitted the Board must determine the complaint raised in the Notice of Appeal, having regard to the opinions of the Supreme Court given an answer to the questions posed. Any other views or opinions expressed by the court, which were in addition to the answers to the questions raised in the Supreme Court were superfluous and need not be regarded by the Board in reaching its determination of actual value.

The reasons continue:

The Board concurs with these views expressed in the submission of Mr. Klassen and considers itself bound to take into account factors other than original cost in the determination of actual value. In answering questions No. 1 and 2 in the negative, the Supreme Court should not, in the opinion of the Board, be taken as precluding consideration of a valuation based on the replacement cost basis. These conclusions seem justified in view of Mr. Justice Meredith's partial answer to question No. 3 posed in the Stated Case. On page 11 of his judgment, Mr. Justice Meredith states in respect to question No. 3 that he believed the Board correct in deciding that factors of economic and functional obsolescence were not applicable in the present case. These factors, of course, apply only to a valuation determined on the replacement cost basis. The Board does not, therefore, accept the submission urged upon it by Mr. Coutts that any consideration of replacement cost is wrong in principle. Any support for that proposition, which is found in the judgment of Mr. Justice Meredith, is in any event extraneous to the questions posed in the Stated Case. . .

In giving the question of actual value further consideration in accordance with the opinions of the Supreme Court, the Board has carefully reviewed the evidence concerning the acquisition by Hardee Farms Ltd. through its subsidiary, Federal Diversiplex Limited, of all the issued and outstanding shares of Creston Valley Foods Ltd., and the sale by the Appellant to that newly incorporated company of the properties forming the subject matter of this appeal. The Board is not at all satisfied that these transactions in themselves constitute evidence that the market value and hence actual value of the subject properties is in the discounted value of the debenture, issued by Creston Valley Foods Ltd. Unquestionably, after very considerable effort, only one purchaser for the shares and assets concerned was located. Moreover, that purchaser could not be persuaded, after very considerable negotiation, to do other than guarantee the debenture in consideration for the transfer to it of all the issued and outstanding shares of Creston Valley Foods Ltd., on the understanding that it would be relieved of its commitment if the project was not

completed and viable by 1980. In a normal arms length market transaction, between a solvent owner and purchaser, the purchase price is the best evidence possible of the actual value of the subject property. In the instant transaction, it is obvious that the face value of the debenture, or its discounted value, is all that the potential purchaser would agree to guarantee in consideration of the right to proceed with the transaction if economically viable in a period of 2 or 3 years. On the evidence, the purchaser was well aware that it would have to expend a further sum in excess of approximately \$2,000,000.00 in order to bring the plant into operation on a viable basis. On the other hand, the Appellant was prepared to accept the guaranteed debenture, although it represented a sum considerably less than the cost of the subject property, because of governmental and other considerations which were also influencing the decisions in this matter.

The Board has also had regard to Section 24 (3) which requires land and improvements used for the purpose of carrying on an industry or commercial undertaking to be valued as the property of a going concern. On the facts before us, the land and improvements concerned are not so used since the plant has not yet been brought into production. Now, having given further consideration to present use, location, original cost, cost of replacement and the particulars of the transaction involving Hardee Farms and its subsidiary, Federal Diversiplex Limited, the Board concludes that the replacement cost approach, originally adopted by the assessor, is the best available indicator of actual value at the time of assessment.

From this I take it first, that because the Board considered the price agreed to be paid on the sale to Creston Valley Foods Ltd. was suspect as not being at arms length, it would not adopt the market approach, and second, that because no commercial undertaking was being carried on, the property could not be valued as a going concern. Apparently, as it could find no alternatives, the Board reaffirmed the replacement cost as "the best available indicator of actual value" without a scrap of evidence to suggest that replacement cost represented the "exchange" or "actual" worth of the property. This was an error in principle.

The decision of the Board must be quashed. Under the authority vested in me under section 5 of the *Judicial Review Act* I direct that the Board reconsider and determine the question of the assessment applying the principles I have expressed.

The petitioner is entitled to its costs.