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

v.

ASSESSMENT AREAS OF VANCOUVER
and BURNABY-NEW WESTMINSTER

British Columbia Court of Appeal

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

Vancouver, April 29, 1980

P.W. Klassen for the Appellant, the British Columbia Assessment Authority
B.I. Cohen for the Respondent, Rayonier Canada (B.C.) Limited

Reasons for Judgment of J. D. Taggart (Oral) April 29, 1980.

This is an appeal from the judgment of Mr. Justice Fulton who allowed an appeal from the decision of the Assessment Appeal Board of British Columbia.

For our purposes, the facts are succinctly set out in paragraphs 1 to 5A of the agreed Statement of Facts which was before the Assessment Appeal Board and which were incorporated in the Stated Case to the Supreme Court of British Columbia following the Board's decision. Those paragraphs read:

"AGREED STATEMENT OF FACTS

A. ROLL NO. 265-156-840-76-000

1. The appellant, Rayonier Canada (B. C.) Limited, a body corporate, incorporated under the laws of British Columbia, operates a sawmill at 9050 Heather Street, in the City of Vancouver, in the Province of British Columbia.

2. One of the improvements used in the operation of this sawmill is a machine known as a mechanical barker. The purpose of the mechanical barker is to remove bark from logs prior to the logs being used for the production of lumber. The bark is removed solely for commercial purposes.

3. The mechanical barker is a machine with a series of knives in a ring and as the log goes through the machine in a horizontal fashion, the barker tears the bark off the log. A barker is an integral and necessary part of the production process in the sawmill.

4. Prior to 1975, the appellant utilized what is known as a 'hydraulic' barker for the purpose described in 2 above.

5. Tests made of the Marpole Division hydraulic barker effluent showed levels of water pollution falling between Levels Band C of the Provincial Pollution Control Objectives. In

order to reach the required A levels for hydraulic effluent it was necessary to reduce the total suspended solids to 1.5 lb. per cunit of logs cut. This level could not be reached, even with sophisticated screening systems. As an alternative settling tanks could have been used but, at a discharge rate of 1,900,000 gallons of effluent per day, the size of tanks required would have been in excess of the available area on the mill site. The only solution to compliance with the Provincial Pollution Control Objectives for hydraulic barker effluent was to replace the hydraulic barker with a mechanical barker which produces dry bark.

5.A. The mechanical barker has no pollution control equipment on it, rather the pollution was eliminated due to the fact that the mechanical barker produces no pollution."

The sole question posed by the Stated Case related to the interpretation of section 396 (e) of the *Vancouver Charter* which is 1953 Statutes of British Columbia, chapter 55, and to the interpretation of section 327 (1) (p) of *Municipal Act* which is *1960 Revised Statutes of British Columbia,* chapter 255.

Those provisions are for our purposes in all material respects the same. There are some slight differences but those differences do not affect the submissions made to us.

Counsel for the appellant on the appeal to Mr. Justice Fulton took a preliminary objection which was rejected by Mr. Justice Fulton. Counsel for the appellant has repeated his argument in relation to the preliminary objection here.

That argument depends on his submissions that it is the Assessment Commissioner acting under the second portion of the legislation to which I have already referred, who creates the exemption referred to in those sections. From that flows the assertion that none of the Assessor, the Court of Revision, the Assessment Appeal Board, the Supreme Court Judge and this court have jurisdiction to entertain appeals.

In my opinion, the preliminary objection fails because I am unable to construe the section as conferring on the Assessment Commissioner the authority to create an exemption. On the contrary, in my opinion, it is the Legislature which has created the exemption and which has given the Assessment Commissioner power to decide, if he finds there is not the exclusive use of facilities referred to in the early part of the section, what percentage of use for pollution control abatement should be allowed.

Being of that view, I agree with the conclusion reached by Mr. Justice Fulton and with his analysis of the relevant sections of the *Assessment Act* relating to the appellate process once the Assessor has made his assessment.

For those reasons, as well as for the reasons given by Mr. Justice Fulton with which I generally agree I think the preliminary objection advanced to us by counsel for the appellant cannot be sustained.

I turn now to the merits of the appeal which, as I have already intimated, relate to the interpretation of the relevant sections in the *Vancouver Charter* and in the *Municipal Act*.

For our purposes, I will use the section as it appears in the *Municipal Act*.

"327 (1) Except as otherwise provided in this Act, the following property is exempt from taxation to the extent indicated:-

(p) Any improvement or 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."

From the foregoing quotation from the relevant section of the *Municipal Act*, it will be apparent that the Legislature has evinced an intention to provide taxation relief for enterprises to expend money in respect of land or improvements used for the control or abatement of pollution.

The first portion of the section, that is to say, the part that appears before the semi-colon following the word "eliminators" in the fourth line, appears to envision a complete exemption for improvements which are used exclusively for the control of pollution. The second part provides for a reduction in the complete exemption if the use is not exclusive, but is primarily for the control or abatement of pollution. That leads me to the conclusion that the Legislature envisioned a use for pollution control and, as well, another use or uses. I should think that almost invariably these uses, other than pollution control uses, would relate to the production process.

The argument advanced to us by counsel for the appellant points almost exclusively to the word "use" or the word "used" and ignores for the purpose of interpreting the second portion of the section the words "for the purpose of".

I think the latter words must be given a meaning and must be given a meaning in conjunction with the preceding words, that is to say, "used exclusively for the purpose of".

The word *exclusively* relates back, of course, to the first portion of the section. The important thing is that the word "used" is inserted in the section by the Legislature in conjunction with the words "for the purpose of".

And it is the coupling of those words that I think gives meaning to the subsection.

Giving those words their appropriate meaning, it seems to me that in the facts of this case the trial judge reached the correct conclusion when he interpreted the section as affording relief from taxation to the taxpayer.

I note, in passing, the caveat of Mr. Justice Fulton that he does not deal with other circumstances not before him. I join with him in expressing that caveat.

I think the analysis of the language of the subsection undertaken by Mr. Justice Fulton was appropriate and I agree generally with the reasons which he has expressed for reaching his conclusion.

For the reasons that I have given, as well as for those expressed by Mr. Justice Fulton, I am of the view that the appeal must fail.

HINKSON, J.A. (oral): I agree.

LAMBERT, J.A. (oral): I agree.

TAGGART, J.A. (oral): The appeal then is dismissed.