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GREENWOOD FOREST PRODUCTS

v.

ASSESSOR OF AREA 17 - PENTICTON

Supreme Court of British Columbia (A800595)

Before: MR. JUSTICE K.F. FAWCUS (in chambers)

Vancouver, May 16, 1980

R.R. Walsh, for the Appellant
J.E.D. Savage, for the Respondent

Reasons for Judgment (Oral)

May 16, 1980

THE COURT: (Oral) Pursuant to section 67 of the *Assessment Act*, S.B.C. 1974 chapter 6, the Assessment Appeal Board has submitted in the form of a stated case for the opinion of this court two questions of law which are phrased as follows:

- "1. Did the Board err in law in holding that it did not have jurisdiction to assess the interest of Her Majesty the Queen in right of Canada in the subject lands?
2. If the answer to the first question is affirmative, did the Board err in law in failure first to assess the actual value of the interest of Her Majesty the Queen in right of Canada prior to assessing the actual values of the interests of the appellant?"

The lands in question are leased by the appellant from Her Majesty the Queen in right of Canada. They are occupied by the lessee. However, the appellant submits as it did to the Board, that the lessor is a joint occupant by reason of its right to air space over the lands in question, which rights are dehors the leases and further by its right to certain easements and other benefits as contained in the leases. Therefore, it submits the Board erred in deciding that it had no jurisdiction to assess the lessor and erred further in failing to assess the lessor's interest in the lands prior to assessing the actual value of the appellant's interest.

In my view, however, based on the stated case and appendices thereto, the lessee is clearly the occupier and the exclusive occupier of the lands within the meaning of sections 1 and 28 of the *Assessment Act*. These sections read as follows:

"Section 1. 'Occupier' means (ii) the person in possession of Crown land that is held under a . . . lease. . .

"Section 28 (1) Land, the fee of which is in the Crown, or in some person on behalf of the Crown, that is held or occupied otherwise than by, or on behalf of, the Crown, is, with the improvements thereon, liable to assessment in accordance with this section."

The rights of the lessor to the air space, easements and other benefits do not, in my view, establish the lessor as part-occupant of the land but rather go only to the question of the value thereof: *vide* the decision of my brother, Murray, J. in *The Assessment Commissioner of the*

Province of British Columbia v. John Wayne Ryan decided April 10th, 1979, Victoria Registry No. 367/79 (not yet reported) and the cases referred to therein.

I therefore agree with the submission by counsel on behalf of the respondent and with the decision of the Board as to its jurisdiction and with its reasons in that respect which reasons are as follows:

"Mr. Cornock presented to us an excellent and exhaustive brief in which he analyzed the value of the Crown and the Indian band interests in the subject property and urged us to apportion part of the actual values found by the assessor to those interests. We have no jurisdiction to do so. Appellant is the lessee of Crown land and it is our duty to determine the value of the land and improvement as a freehold having regard to the restrictions placed upon the property."

The first question posed in the stated case is, therefore, answered in the negative. It is, therefore, unnecessary for me to answer the second question. In compliance with section 67 (5) of the Act I direct that this opinion be remitted to the Board. Costs will follow the event.