# The following version is for informational purposes only

**WHISTLER VILLAGE LAND CO. LTD. and**
**RESORT MUNICIPALITY OF WHISTLER**

**v.**

**ASSESSOR OF AREA 8 - NORTH SHORE-SQUAMISH VALLEY**

Supreme Court of British Columbia (A803283) Vancouver Registry

Before: MR. JUSTICE W. A. ESSON

Vancouver, February 23, 1981

B.I. Cohen and S.M. Tratch for the Appellants
J.K. Greenwood for the Respondent

**Reasons for Judgment** February 25, 1981

The Assessment Appeal Board has stated a case for the opinion of the Court under s. 74 of the *Assessment Act*. The principal issue raised by it is whether land beneficially owned by a municipality is subject to assessment under the *Assessment Act* if legal title to the land is held by, and the land is registered in the name of, a trustee which is not a municipality.

The appellant Resort Municipality of Whistler (the Municipality) was incorporated under the provisions of the *Resort Municipality of Whistler Act* passed in 1975. In 1978, the land which is the subject matter of this proceeding was conveyed to the Municipality by Crown grant. Earlier in that year, the Municipality, as it was authorized to do under what is now s. 19 (3) of the *Municipal Act*, caused to be incorporated the appellant Whistler Village Land Co. Ltd. (the Company). The Municipality owned and continues to own all of the shares of the Company, and to control it in all respects. In 1979, the lands were conveyed to the Company on the trusts and conditions set out in certain written agreements between the Municipality and the Company, whereby the Company agreed *inter alia* that the land would be used solely for the purposes of the Municipality in accordance with its development plan. The Company has no interest in the land, save as agent and trustee for the Municipality.

In 1980, the respondent assessed the land as property of the Company as if the Municipality had no interest in it. That assessment was upheld by the Court of Revision. The present appellants then appealed to the Assessment Appeal Board, which has stated this case on the basis of a statement of facts agreed upon by the parties and before embarking on the hearing. The first question raised by the Board asks for the opinion of the court as to the power of the Board to proceed in that way. It reads:

> 1. Does section 74 of the *Assessment Act* entitle the Assessment Appeal Board to submit in the form of a stated case, signed by the Chairman on behalf of the Board, for the opinion of the Supreme Court, a question of law arising out of a statement of facts agreed to by the parties affected by the Appeal and accepted by the Board without the Board having heard any evidence or having made any findings of fact other than those facts agreed to by the parties?

Section 74 authorizes the Board to submit by way of stated case a question of law arising in the appeal, "at any stage of the proceedings before it . . .". The proceedings before the Board

commence upon notice of intention to appeal being given under s. 68. Nothing in the Act prevents the question of law being raised prior to the hearing, as was done here. Indeed, it is right that such a course be followed in an appropriate case. The first question, therefore, should be answered in the affirmative. The second question, which raises the substantive point, is:

> 2. Is the property registered in the name of the appellants exempt from taxation pursuant to s. 327 (1) (b) of the *Municipal Act*, R.S.B.C. 1960, chap. 255 and amendments thereto?

Section 327 (1) (b), which was the provision in effect at the time of assessment, reads as follows:

> 327 (1) Except as otherwise provided in this Act, the following property is exempt from taxation to the extent indicated:
>
> (b) all land or improvements or both land and improvements vested in or held by the Municipality.

That section has now, as a result of the consolidation of the statutes which became effective on May 19, 1980, been replaced by s. 398 (a) which reads as follows:

> 398. Unless otherwise provided in this Act, the following property is exempt from taxation to the extent indicated:
>
> (a) land, improvements or both vested in, or held by, Her Majesty or the municipality.

Counsel agree that the revision in wording does not affect the substance of the section. The issue remains one as to:

> (1) whether the land is vested in or held by the Municipality, and
>
> (2) if it is, whether s. 398 (a) applies to exempt it from taxation in the circumstances of this case.

In my view, the land is both vested in and held by the Municipality. Mr. Cohen submitted a number of decisions, mainly from Ontario, which have held that "vested in" in similar contexts can mean less than absolute ownership, and would be satisfied if the land was, for instance, under the control of the Municipality. Two of these cases are:

> *Re Hydro-Electric Power Commission of Ontario and Townships of Thorold and Pelham*, [1924] 60 O.L.R. 431 (Ont. C.A.);
>
> *Re Knight* v. *Medora and Wood*, [1887] 14 0.A.R. 112.

Here, it is not necessary to have resort to extended meanings. It is only the bare legal title which is vested in the Company. The entire beneficial interest is in the Municipality and it is that which, having regard to the purpose of the section, is significant. Even more clearly, the land is held by the Municipality. As between the Municipality and the Company, the land can be said to be held by the Company, but it is held for the Municipality. As between the Municipality and the rest of the world, the lands are held by the Municipality and that is what matters here.

The assessor does not seriously dispute that the land is vested in and held by the Municipality but contends that, in the circumstances, the section does not exempt the land from taxation.

The respondent's case is based upon *City of Vancouver* v. *A-G of Canada, A-G for British Columbia and the Canadian Northern Pacific Railway Company*, [1944] S.C.R. 23; (1944) 1 D.L.R. 497. That case involved land in the City of Vancouver which was owned by the Railway

Company and occupied by the Crown Dominion under a long-term lease of vacant land. The Crown, as it was permitted to do by the terms of the lease, had constructed buildings which were to be removed at the end of the lease. The City assessed the Railway Company as owner, taking into account for valuation purposes the value of the buildings.

In both this Court and the Court of Appeal the assessment was held invalid. That decision was reversed by the Supreme Court of Canada, which held that the railway was properly assessed as owner.

Here, the respondent submits that the appellant Company is in the same position as the Railway Company. It was the registered owner and, therefore, subject to assessment. In *City of Vancouver*, the fact that the Crown had an interest in the land was held to be irrelevant. It is submitted that the fact that the Municipality has an interest in the land is equally irrelevant.

The difficulty with that submission is that it overlooks the ground upon which the Supreme Court of Canada held that the interest of the Crown was irrelevant. When regard is had to that, the case, in my view, supports the position of the appellants rather than that of the respondent.

Six of the seven members of the court who sat concurred in allowing the appeal, although their reasons are set out in four separate judgments. The effect of those judgments is summarized in the following extract from the headnote which appears at p. 24-25 (S.C.R.):

> The provincial statute does not operate by way of attempting to impose any liability on the Crown in respect of any interest under the leases, and there has been no attempt by the city appellant to impose such liability on the Crown. The respondent railway company, as registered owner of the land, is liable to taxation in respect of its value as assessed in conformity with the statute. The provisions of the statute do not contemplate the assessment, as a separate subject, of improvements in an assessed parcel of land. There has been a separate valuation of the buildings as improvements; but the value of the buildings has been taken into account only for the purpose of valuing the parcel of land and calculating the tax to be paid in respect of it, and also in order to permit of the operation of other sections of the statute. The Crown's exemption, provided by section 125 *B.N.A. Act* or by section 46 (1) of the *Vancouver Charter*, remained unimpaired.

For the purposes of this case, the principal point which emerges from the judgments of the majority is, I think, that the interest of the Crown is not relevant because what was being assessed and taxed was the owner and its interest in the land, not the Crown or its interest.

That distinction appears also from the dissenting judgment of Hudson, J. He reached a different conclusion because he held a different view as to whether the assessment was upon the interest of the Crown. At pp. 45-6, he said:

> The result is that the Crown had the sole beneficial use and ownership of the building. The real situation is that the building never became the property of the landlord and, for that reason, no conveyance from it was called for. The exemption from taxation under section 125 is of "lands and property belonging to the Crown".
>
> There is no limitation on the kind of property. It may be real or personal, tangible or intangible, with a title legal or equitable. The words "belonging to" are more comprehensive than the words "owned by". That the equitable title of the building is in the Crown could hardly be open to doubt and, for the purposes of exemption, beneficial ownership does not differ from legal ownership (6 Halsbury at 736 et seq.) and was recognized by this Court in the case of *Quirt* v. *The Queen* (1891) 19 Can. S.C.R. 510.

The same basis of disagreement can be found upon a reading of the judgments of the Court of Appeal, where Sloan, J. A. dissented and reached the same conclusion as that which prevailed in the Supreme Court of Canada: (1942) 58 B.C.R. 371; [1943] 1 W.W.R. 196; [1943] 1 D.L.R. 510.

The majority in the Supreme Court of Canada did not, as I read the judgments, disagree with the statement by Hudson, J. that, for the purposes of exemption, beneficial ownership does not differ from legal ownership. The disagreement was with the proposition that the Crown had the sole beneficial use and ownership of the building, and that it was that which was being taxed. I think it is clear that, had the majority considered that the assessment was upon the interest of the Crown-whether beneficial or legal-that would have been held invalid. That is implicit in the finding, as summarized in the headnote, that:

> The Crown's exemption, provided by section 125 *B.N.A. Act* or by section 46 (1) of the *Vancouver Charter*, remained unimpaired.

Section 125 of the *B.N.A. Act* has, of course, no application to the position of a municipality. But s. 46 (1) of the *Vancouver Charter*, which section is the predecessor of certain of the provisions in s. 398 of the *Municipal Act*, exempted from taxation "all property vested in or held . . .” by His Majesty. Those words appear in s. 398 and are relied upon here by the Municipality. I conclude that, had the majority of the Supreme Court found that the effect of the assessment upon the railway was to impair the exemption, it would have found it invalid. Therefore, the case supports the position of the Municipality. Here, there can be no doubt that the assessment does impair the exemption because it is only the Municipality which has a beneficial interest in the property and, if the Company is subject to being assessed and taxed, the whole of the benefit of the exemption is effectively destroyed.

It is true that the Company appears on the record in the Land Registry Office as registered owner of the land, and that it is to the records in that office to which the assessor is to have regard, in the first instance, in making up the assessment roll. But I can see nothing in the legislation, or in the reasoning of the Supreme Court of Canada in the *City of Vancouver* case, to support the suggestion that the land registry records are conclusive so as to require or permit the assessor to ignore the exemption created by s. 398 (a) of the *Municipal Act*. Section 26 (5) of the *Assessment Act* provides:

> 26. (5) Notwithstanding this or any other Act, where land and improvements are exempt from taxation, unless ordered by the commissioner, the assessor need not, in respect of the exempt land and improvements,
>
> (a) assess the land and improvements; or
>
> (b) prepare an annual assessment roll.

I hold, therefore, that the second question of law in the stated case should be answered in the affirmative. For convenience, I will here set out the questions and answers:

> 1. Does section 74 of the *Assessment Act* entitle the Assessment Appeal Board to submit in the form of a stated case, signed by the Chairman on behalf of the Board, for the opinion of the Supreme Court, a question of law arising out of a statement of facts agreed to by the parties affected by the Appeal and accepted by the Board without the Board having heard any evidence or having made any findings of fact other than those facts agreed to by the parties?
>
> Answer: Yes.

2. Is the property registered in the name of the appellants exempt from taxation pursuant to s. 327 (1) (b) of the *Municipal Act*, R.S.B.C. 1960, chap. 255 and the amendments thereto?

Answer: Yes.

I have answered the second question as if, instead of referring to "the appellants, " it referred to "the appellant company." That is the basis upon which the matter was argued and which is established by the evidence. In effect, then, I have treated the question as amended by necessary implication. If counsel consider that I erred in doing that, the point may be spoken to. On the assumption that the amendment is correct, the questions are hereby remitted to the Board, as provided in s. 74 (6) of the *Assessment Act.*