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ASSESSMENT COMMISSIONER

v.

WILFRED M. LeCHASSEUR

Supreme Court of British Columbia (81/1511) Victoria Registry

Before: MADAM JUSTICE B.M. McLACHLIN

Victoria, September 21, 1981

J. Greenwood for the Appellant
Wilfred M. LeChasseur appeared in person

Reasons for Judgment September 24, 1981

This is an appeal by way of Stated Case pursuant to the *Assessment Act*, R.S.B.C. 1979, c. 21. The property in question is located near Miracle Beach between Courtenay and Campbell River on Vancouver Island. Its owner, Wilfred M. LeChasseur, operates a tourist resort on the property during the summer tourist season. To this end, he provides facilities for overnight accommodation of guests, as well as a store, a diner and a shed used for storage of rental boats. The store, diner and shed, while used primarily to service the resort's overnight guests, are used by other persons as well. All the facilities close for the winter at the same time.

The Assessor divided the resort for purposes of assessment. The portion of the property upon which guests actually camp or sleep overnight was designated Class 8 (Seasonal Resort), 11 % of the value of which is taxable. The portion of the property upon which the store, diner and shed are located was classified as Class 6 (Business and other use), 24.5 % of the value of which is taxable. Mr. LeChasseur did not dispute the values attributed by the Assessor to the respective portions of property. However, he appealed the Assessor's classification of the portion of the property associated with his store, diner and shed as Class 6 property. The Court of Revision upheld the Assessor's approach. The Assessment Appeal Board, however, took a different view, holding that the whole of the property (save for Mr. LeChasseur's residence, the classification of which was not in issue) is a "seasonal resort" falling under Class 8. It is from this finding that the Assessment Commissioner brings this appeal.

At issue is the interpretation of Regulation 455/80, 534/80, which classifies real property for purposes as follows:

> 1. The percentage of actual value at which each class of property defined herein shall be assessed in 1981 is fixed as follows:
>
> 11 %* Class 8-Seasonal Resort, Recreational Property and Fraternal Organizations shall include:

(a) that part of any land or improvements or both used to provide overnight sleeping accommodation, including hotels, motels. trailer parks, recreational vehicle parks, campgrounds and resorts where. during an offseason period of 150 days a year or more,

(i) the accommodation is closed. . .

Counsel for the Assessment Commissioner argues that since the store, diner and shed are not themselves used to provide overnight sleeping accommodation, they do not fall within Class 8, even though their primary purpose is to provide services to overnight guests on the property. Mr. LeChasseur, on the other hand, contends that the portion of his property upon which guests camp, as well as the store, diner and shed, constitute integral parts of a single resort devoted to providing overnight tourist accommodation.

The answers to the questions posed in the Stated Case depend mainly upon how the word "used" in the definition of Class 8 is interpreted. Are the store, diner and shed "used" to provide overnight sleeping accommodation? A narrow interpretation of "used" supports the conclusion that only property in or upon which people actually sleep overnight falls under Class 8. A more liberal interpretation of "used" would permit not only actual sleeping facilities but related facilities whose primary function is to provide services to overnight guests, to be classified under Class 8.

As a general rule, the Court when in doubt should lean in favour of the subject in interpreting statutes and regulations which impose taxes: *The Stockton Railway Company* v. *Barrett*, 11 Cl. & F. 590 at 607, per Lord Brougham; *Orr* v. *The City of Vancouver*, 1 B.C. Stated Cases 1, per Wilson, C.J.B.C.; *Hutchison* v. *The Assessor for the Corporation of the District of Saanich* , July 11, 1975, No. 437/75, Victoria, per Wootton, J. This principle supports adoption of a broad definition of "used" in the case at bar, as do the cases in which "use" or "used" in the context of assessment legislation have been considered. In *Newcastle City Council* v. *Royal Newcastle Hospital* [1959] A.C. 248, it was held that vacant land surrounding a hospital was "used" for the purposes of the hospital in that it was held for the purpose of securing the privacy, fresh air, and peace advantageous to the hospital's operations. Similarly, Wootton, J. in *Hutchison* v. *The Assessor for the Corporation of the District of Saanich*, July 11, 1975, No. 437/75, held that unoccupied land surrounding a residence was "used" for residential purposes, notwithstanding the absence of residential or other activities on the land in question. Most recently, Proudfoot, J. held, following Newcastle, that "use" should receive a liberal interpretation, holding in consequence that unfenced, uncultivated land held in conjunction with cultivated land should be classified as "farm" land for purposes of assessment: *Assessment Commissioner, Province of B.C.* v. *McMinnn* [1981] B.C.D. Civ. 382-01, February 18,1981, No. 802162, Victoria (B.C.S.C.).

In the instant case, a liberal interpretation of the word "used" is also indicated by the definition of Class 8 property used in the Regulations. The phrase "used to provide overnight sleeping accommodation" is followed by the phrase, "including hotels, motels, trailer parks, recreational vehicle parks, campgrounds and resorts." These examples assist in determining what was intended by "use" for "overnight sleeping accommodation". Consider the first case specified, hotels. Hotels typically provide more than bare sleeping accommodation; frequently they include restaurants, bars and small shops which serve both the guests of the hotel and the public. If a hotel in its entirety falls under Class 8, so should the premises here in issue. If any doubt existed, it would be removed by the inclusion of "resort" on the list of operations specifically designated as falling under Class 8, immediately following "trailer parks, recreational vehicle parks," and "campgrounds". In this context, "resort" must mean more than a place to pitch a tent or park a trailer or motor home. In my view, it must be taken to refer to facilities for overnight accommodation together with related recreational and service facilities forming part of the same enterprise. I may add that, from a practical point of view, it seems to me preferable to assess integrated enterprises such as hotels and resorts as a unit in view of the difficulty of fairly segregating the various uses.

The Board has posed three questions upon which it seeks guidance from this Court:

1. Did the Assessment Appeal Board err in law in holding that the land and improvements on Folio No. 06-71-771-05533.119 should be classified as Class 8-Seasonal Resort notwithstanding that the same was not used to provide overnight sleeping accommodation?

2. Did the Assessment Appeal Board err in law in holding that the land and improvements on Folio No. 06-71-771-05533.119 were properly classified as Class 8-Seasonal Resort where there was no evidence to show that the said land and improvements were used to provide overnight sleeping accommodation?

3. Did the Assessment Appeal Board err in law in classifying the subject property as it did?

I answer them as follows:

1. No.

2. No.

3. No

The Board is advised accordingly.