MACMILLAN BLOEDEL LIMITED

v.

ASSESSOR OF AREA 7 - SUNSHINE COAST

BRITISH COLUMBIA COURT OF APPEAL
(CA820888, CA821005) Vancouver Registry

Before MR. JUSTICE J.D. TAGGART, MR. JUSTICEE. E. HlNKSON, AND MR. JUSTICE J. D. LAMBERT

B.J. Wallace for the appellant, MacMillan Bloedel Limited
John R. Lakes for the appellant, Cominco Ltd.
J. E. D. Savage for the respondents, Assessor Area 7 - Sunshine Coast and Assessor Area 18 - Trail

Reasons for Judgment of Mr. Justice Taggart September 13, 1983

For the Court

We have before us two appeals. In the first, MacMillan Bloedel Limited is appellant and the Assessor of Area Number 07 - Sunshine Coast is the respondent. In the second Cominco Ltd. is the appellant while the Assessor of Area #18, Trail-Grand Forks is the respondent. In the latter appeal the Assessor has a cross-appeal.

I will hereafter refer to the first appeal as the MacMillan appeal and to the second as the Cominco appeal.

The MacMillan appeal was heard May 25th and 26th of this year. Because there are issues common to each appeal judgment was reserved in the MacMillan appeal until we had heard argument in the Cominco appeal. The principal issue in each appeal relates to the assessability of improvements made by the companies to their industrial plants.

In each appeal the arguments focused on the meaning to be given the words used in the *Assessment Act*, 1979 R.S.B.C., c. 21 (the Act) to describe "improvements". There are two definitions of improvements in the Act. The first defines improvements for general municipal and provincial taxation purposes under the *Municipal Act*, the *Vancouver Charter* and the *Taxation (Rural Area) Act*. The second definition with which we are concerned reads in part:

> "improvements" for purposes other than for general municipal and Provincial taxation purposes under the *Municipal Act*, *Vancouver Charter* and *Taxation (Rural Area) Act* includes
>
> > (a) all buildings, fixtures, machinery, structures and similar things erected or placed in, on, under or affixed to land or to a building, fixture, or structure in, on, under or affixed to land and, without limiting the generality of the foregoing, includes aqueducts, tunnels other than mine workings, bridges, dams, reservoirs, roads, transformers and storage tanks of whatever kind or nature, and fixtures,

> machinery and similar things of a commercial or industrial undertaking, business or going concern operation so erected, affixed or placed by a tenant, except those exempted by regulation.

In each appeal we are concerned with the meaning to be given to the language used in the first three lines of paragraph (a).

I.
THE BACKGROUND TO THE APPEALS

The Act requires the assessor to complete the assessment roll by December 31st of the year preceding the year in which taxes will be levied. In these cases MacMillan and Cominco had begun the construction of additions to very large industrial plants. By the end of 1980 substantial amounts of money had been spent on the additions but the whole of the work had not been completed. In each case the assessor valued the "fixtures, machinery, structures and similar things" by taking the estimated final cost of the additions and applying to it a factor equivalent to the estimated degree of completion of the additions. For example, in the MacMillan case the estimated final cost of the additions was $105,000,000. It was estimated the additions were 80% complete at the end of 1980. The assessor therefore valued the additions at $84,000,000 for the 1981 taxation year.

MacMillan and Cominco each appealed the assessments and ultimately the appeals reached the Assessment Appeal Board. The appeals were heard at different times but the members of the Board were the same for each appeal. Each appeal was dismissed. MacMillan and Cominco each appealed to the Supreme Court by way of stated cases asking for the opinion of that court. The MacMillan appeal was heard by MacKinnon J. who dismissed the appeal on July 13, 1982. The Cominco appeal was heard by Wallace J. who dismissed the appeal on August 11, 1982. He made no reference to the decision of MacKinnon J. in the MacMillan case and I assume that he was unaware of it.

The Act limits appeals to the Supreme Court to questions of law "arising in the appeal" (s. 74 (1)) or "taken during the appeal" (s. 74 (5)). "The appeal" is, of course, the appeal to the Assessment Appeal Board.

Section 74 (7) of the Act provides:

> An appeal on a question of law lies from a decision of the court to the Court of Appeal with leave of a justice of the Court of Appeal.

I would grant leave to appeal in each case.

In order to appreciate the approaches taken by MacKinnon J. in the MacMillan appeal and by Wallace J. in the Cominco appeal I propose to set out the stated cases and the questions propounded in each. I will then state the conclusions reached by MacKinnon J. and Wallace J. Thereafter I will deal with the arguments presented to us on the two appeals and state my conclusions.

II.

THE STATED CASES

A. THE MACMILLAN CASE

STATED CASE

This case, stated by the Assessment Appeal Board shows that the appeal was heard at Vancouver on November 18 and 19, 1981. Appellant was represented by Mr. Brian Wallace; Respondent was represented by Mr. Robert Hutchison.

FACTS

1. Appellant owns a pulp and paper mill complex at Powell River. For the past two years and more Appellant has been installing a new paper mill on its property. It was agreed by the parties that the value of the additions as in place on the property when completed and operational was between $105,000,000 and $107,000,000. The additions were completed and operational on or about March 20, 1981. Their value at that time was found by the Board to be $105,000,000.

2. It was agreed by the parties that 80% of the total value of the additions had been completed as of December 31, 1980. The Board found that value to be $84,000,000, i.e. 80% of $105,000,000.

3. It was submitted by Appellant that although the value of the additions as completed at December 31, 1980, might be of the order of $84,000,000, only $17,212,340 of that was completely installed and in condition to be operated at December 31, 1980, and therefore only $17,212,340 could be placed upon the roll. The Board found that the entire value of the installation at December 31, 1980, namely $84,000,000 was assessable and properly to be placed upon the roll.

4. It was also submitted by Appellant that the items comprising the difference between $17,210,340 and $84,000,000 were "stored" and therefore were exempt from assessment under the *Assessment Act* regulations of December 6, 1974. The Board found that the items were not "stored", as the Board understood that term.

5. The Board found that the roll items to the extent installed as of December 31, 1980, were structures or machinery erected upon and forming part of the new paper mill complex. To that extent the Board found the items to be assessable at a total value of $84,000,000.

6. The Board's decision as given December 30, 1981, is attached as Appendix "A" to the Statement of Facts.

GROUNDS FOR STATING A CASE

Appellant has requested the Board to state a case for the opinion of the Court as to whether the Board erred in law in its decision and as to whether there was any evidence (a) that the machinery at issue was either structures and machinery erected upon and forming part of the paper mill complex to the extent installed as of December 31, 1980; (b) that none of the machinery at issue was "stored" within the relevant regulations.

February 2, 1982.

ASSESSMENT APPEAL BOARD

"signed"

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Chairman, for the Board.

QUESTIONS FOR THE CONSIDERATION OF THE COURT

1. Did the Assessment Appeal Board err in law in its interpretation of the meaning of the word "improvements" for purposes other than for general municipal and Provincial taxation purposes as including those parts which had been assembled of machinery "the whole complex (of which) is self-complementary, the parts of necessity being idle until tied in with the other parts and

connected with power or water" in which "the whole system would still require testing and alignment modification before being fully operational"?

2. Did the Assessment Appeal Board err in law in not determining that the parts of machinery described in the preceding question were exempt from assessment pursuant to paragraph 3-3 (f) of B.C. Regulations 799/74, 623/76 and 202/78?

3. Was there any evidence before the Assessment Appeal Board on which it could find that the machinery at issue were "either structures or machinery erected upon and forming part of the new Paper Mill complex to the extent installed as of December 31, 1980"?

4. Was there any evidence upon which the Assessment Appeal Board could determine that none of the machinery at issue was "stored" within the meaning of that word in paragraph 3-3 (s) of the regulations aforesaid?

DATED at Vancouver, B.C., March 1,1982.

MACMILLAN BLOEDEL LIMITED

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Per: "B.J. Wallace"

B. THECOMINCO CASE

STATED CASE

This case stated by the Assessment Appeal Board shows that the appeal was heard at Vancouver on November 12 and 13, 1981. Appellant was represented by Mr. J.R. Lakes; Respondent was represented by Mr. J.E.D. Savage.

FACTS

1. The Appeal involved three issues. One issue was as to the assessability of certain items in Appellant's data processing centre, Trail. The Board's decision on that issue was reserved. Another issue was as to the proper method of valuing items on three roll numbers and put in question the Respondent's allowances for appreciation and depreciation. The Board dismissed Appellant's appeal on that issue and it is not involved in the stated case.

2. The third issue, the only subject of this stated case, was as to the assessability of installations in Appellant's Zinc Electrolytic and Melting Plant. The roll numbers are 04118 and 04119. The issue involves several hundred separate roll items but by agreement between the parties, only two were dealt with at the hearing on the understanding that the final decision on the two will be taken as determinative of the issue on all.

3. The issue as put to the Board was this: can an item be placed on the roll before it is completely installed and operational. Appellant says no. Respondent says yes.

4. The two items agreed to be dealt with were:

(a) the melting furnace;

(b) the zinc stripping machine;

5. The evidence on the two items is presented in Exhibits 2 and 6 and amplified by the oral testimony of witnesses.

6. Upon the evidence the Board made the following findings of fact:

(1) both items are of enormous size, weight and complexity, costing millions of dollars;

(2) a special building, the size of several football fields has been built to house them;

(3) as at December 31, 1980, the items had been substantially, but by no means completely installed;

(4) the Assessor has placed the value of the items on the Roll to the extent they were installed as of December 31, 1980;

(5) the furnace sits on huge concrete pylons specially formed to receive it; the pylons are embedded in and arise from the ground below the main plant floor; the furnace is bolted to the pylons; the furnace is lined with fire brick;

(6) the zinc stripping machine is perhaps more complex than the furnace, if that is possible. To the extent installed at December 31, 1980, the parts were secured to the floor and walls, both specially designed to receive it; bolts secured it to the supporting members;

(7) neither item was operational at December 31, 1980; power and hundreds of other connections were necessary before operation; the items themselves might have to be adjusted with shims to bring them into perfect alignment with the whole melting and zinc stripping operations; and

(8) as of December 31, 1980, the items, to the extent then installed, were placed with almost a complete degree of permanence, save only for the fractional adjustments for alignment, if any.

7. The Board found that the two items, to the extent installed as of December 31, 1980, were "structures" erected upon and forming part of the melting and electrolytic plant and were assessable. The appeal on the issue was therefore dismissed.

8. The Board's decision as given January 19, 1982, is attached as Appendix "A" and forms part of the statement of facts.

GROUNDS FOR STATING A CASE

Appellant has requested the Board to state a case for the opinion of the Court as to whether the Board erred in law in its decision that the two representative items under roll numbers 04118 and 04119 were assessable. The specific question to the Court, as drafted by Appellant, follow.

March 9, 1982.

ASSESSMENT APPEAL BOARD,

"H. K. Housser"
Chairman, for the Board

QUESTIONS FOR THE CONSIDERATION OF THE COURT

1. Did the Assessment Appeal Board err by applying the definition of "improvements" in the Act to all those items set out on Assessment Roll Nos. 04118 and 04119 which were disputed in this appeal and which had been included in the assessment roll as machinery and equipment?

2. Did the Assessment Appeal Board err by applying the said definition of "improvements" to the said items under appeal notwithstanding the fact that none of them was complete or operational as of December 31, 1980?

3. Did the Assessment Appeal Board err by describing the melting furnace and the zinc stripping machine as "structures"?

4. Was there any evidence on which the Assessment Appeal Board could properly find that the zinc stripping machine and the melting furnace were properly assessable as "structures" on the 1981 assessment roll?

5. Was there any evidence on which the Assessment Appeal Board could properly find that all the items under dispute on the said roll numbers were assessable as improvements?

DATED at Vancouver, B.C., this 12th day of March 1982.

COMINCO LTD.

Per: "J.R. Lakes"

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COUNSEL FOR THE APPELLANT

III.

THE REASONS FOR JUDGMENT

A THE MacMILLAN CASE

After setting out the stated case, the questions propounded and rejecting a preliminary objection of the assessor, Mackinnon J. described the grounds of appeal raised by MacMillan in this way:

The appellant raises two grounds of appeal:

> 1. The appellant submits the additions were not structures and machinery erected upon and forming part of the paper mill complex;
>
> 2. The appellant submits the additions were "stored or spare equipment which is not installed" and, therefore, exempt from assessment.

The judge then set out the definition of improvements and noted that counsel were agreed it was the second definition which is applicable. He said MacMillan's argument was:

> . . . the additions are not machinery or structures that are erected or placed on land and, therefore, not assessable.

At that point in his reasons he inserted a heading which reads:

ERECTED OR PLACED UPON

The judge considered the dictionary definition of "erect" and said:

> I take it the legislature intended that improvements include structures that are erected in the sense structure was "put up by the fitting together of materials or parts," or to "hoist and bolt in place before rivetting or welding." I do not interpret the words as necessarily implying that the structure must be "ready for use" or operational. If so, the legislature would have so stated. If words such as "and operational" or "ready to use" were added,

> then the submission of the appellant might be accepted. Without such statutory language the submission is rejected.

He went on to say that if he was wrong in his conclusion as to the meaning of "erect" he was of the view the additions were "placed" on the property. He referred to the meaning given that word in *Northern Broadcasting Company Limited* v. *The Improvement District of Mountjoy* [1950] S.C.R. 502 and to the judgment of Taylor J. in *Assessment Commissioner* v. *Woodward Stores Ltd. et al.* [1982] 4 W.W.R. 686. He concluded that "the structures were either erected or placed" on the land.

The judge then considered and rejected the submission that the additions fell within ss. 3-1 and 3-3 (f) of the Regulations made under the Act and were exempt from assessment.

B. THE COMINCO CASE

Wallace J. also set out the stated case and the reasons propounded. He stated the issue in this way:

> The issue simply stated would appear to be whether an item such as a melting furnace, or a zinc stripping machine can be placed on the assessment roll as an improvement before it is completely installed and operational.
>
> In the instant case neither item was completely installed or operational in 1980.

The judge set out the two definitions of improvements given in the Act and the relevant provisions of s. 26 of the Act. He rejected the submission of counsel for the assessor that the questions before the court were questions of mixed law and fact and not reviewable.

He then said the Act defined "improvements" as including among other things, "fixtures", "machinery" and "structures". He dealt with each of those in turn. With respect to "structures" he referred to the judgment of this court in *Re Assessment Equalization Act-Re Trans Mountain Oil Pipe Line Company* (1966) 56 W.W.R. 705 and *City of London* v. *John Labatt Ltd.* [1953] O.R. 800 and concluded:

> It is my opinion the term "structure" does not apply to partially assembled components of an uncompleted project. The term structure implies something constructed to that degree of completion which would enable it to perform its intended function. Until that stage is reached one only has an assembly of different items.

In considering the meaning to be given to "machinery" the judge referred to the *Northern Broadcasting Company* case and to the *John Labatt* case. His conclusion on this aspect was:

> While the items in question might well come within the definition of machinery when they had reached a stage of completion which would permit them to perform their intended function, it is my opinion that component parts of an incomplete assembly which could not perform the intended function or object of the completed assembly can not be considered "machinery" in the context in which the term is used in the *Assessment Act*.

He then dealt with the word "fixtures". He referred to the judgment of this court in *La Salle Recreation Ltd.* v. *Canadian Camdex Investments Ltd. et al.* [1969] 68 W.W.R. 339 and concluded:

> The Statement of Facts (supra), para. 5 discloses the degree of annexation of the items to the property; the special housing provided for these immense installations; the object and permanence of their installation; all of which inevitably leads one to the conclusion that the items were intended to, and did become fixtures, affixed to land or buildings and

> hence are "improvements" within the definition of that term set forth in s. 1 of the *Assessment Act*. How improvements of this nature are to be valued by the assessor in compliance with the directions contained in s. 26, and what, if any, value they may have, are not matters raised in the stated case.

IV.

THE ISSUES ARISING ON THE APPEALS

A. ISSUES COMMON TO EACH APPEAL

1. Are the questions propounded questions of law or mixed law and fact?

2. What principles govern the interpretation of the Act?

3. Are the additions improvements?

B. ISSUES IN THE COMINCO APPEAL

1. Could the judge deal with "fixtures" when the Assessment Appeal Board had not done so?

2. Are the additions "fixtures"?

C. ISSUE IN THE MACMILLAN APPEAL

1. Are the additions equipment which is stored or spare and not installed and thus exempt from assessment by reason of ss. 3-1 and 3-3 (f) of the Regulations made under the Act?

V.

ARE THE QUESTIONS PROPOUNDED QUESTIONS
OF LAW OR MIXED LAW AND FACT?

Although the arguments took slightly different forms in each appeal counsel for the assessor urged that the questions were not questions of law but at best, questions of mixed law and fact. I do not agree.

What is really in issue is the construction of the second definition of improvements. I think what was said in *Tisdale (TP)* v. *Hollinger Consolidated Gold Mines Ltd.* [1933] S.C.R. 321 is apt. At p. 323 Cannon J. said:

> The construction of a statutory enactment is a question of law while the question of whether a particular matter or thing is of such a nature or kind as to fall within the legal definition of its term is a question of fact.

Both MacKinnon J. and Wallace J. rejected similar submissions of the assessor on this point and I think they were right in doing so.

VI.

PRINCIPLES GOVERNING THE INTERPRETATION
OF THE ACT

Counsel for MacMillan submitted that the Act imposes tax liabilities on owners of property that must be strictly construed in favour of the property owner. Counsel for Cominco said the Act, being a taxing statute, must be strictly construed against the assessment authority.

The assessor contended the Act is not a taxing statute since it provides only for the assessment of real property and improvements and does not impose a tax. Alternatively he says if it is a taxing statute the correct rule of construction is stated in *Sammartino* v. *Attorney General of British Columbia* [1972] 1 W.W.R. 24, see especially at p. 32.

My opinion is that the Act is an integral part of the statutory scheme whereby taxes are levied on real property and improvements. As a part of that scheme it is to be construed in the same way as a taxing statute.

I agree with the assessor that the correct principles are set out in the *Sammartino* case. It was referred to by Fulton J. in *Canfor Limited* v. *Minister of Finance* [1976] 3 W.W.R. 519, see especially at pp. 520 and 521. That judgment was adopted by the Supreme Court of Canada, see [1978] 1 S.C.R. 1047.

Shortly put, the principles are that if the words of the statute are in themselves precise and unambiguous they are to be construed in their ordinary sense. If the imposition of the tax is not shown clearly and without ambiguity the construction should be in favour of the taxpayer.

VII.

ARE THE ADDITIONS IMPROVEMENTS?

For convenience I will repeat the second definition of improvements:

> "improvements" for purposes other than for general municipal and Provincial taxation purposes under the *Municipal Act*, *Vancouver Charter* and *Taxation (Rural Area) Act* includes
>
> > (a) all buildings, fixtures, machinery, structures and similar things erected or placed in, on, under or affixed to land or to a building, fixture, or structure in, on, under or affixed to land and, without limiting the generality of the foregoing, includes aqueducts, tunnels other than mine workings, bridges, dams, reservoirs, roads, transformers and storage tanks of whatever kind or nature, and fixtures, machinery and similar things of a commercial or industrial undertaking, business or going concern operation so erected, affixed or placed by a tenant, except those exempted by regulation.

The second definition differs from the first in a number of respects. The most important difference for our purposes is that the second definition uses the verb "placed" whereas the first definition does not. This difference seems to have arisen because of the differing origins of the two definitions. The first definition came to the Act by way of the *Taxation Act*. See for example 1948 R.S.B.C., c. 332 and 1960 R.S.B.C., c. 376. The second definition came by way of the *Public Schools Act*. See for example 1948, R.S.B.C., c. 297.

Ultimately the two definitions found their way into the Act by way of its predecessor, the *Assessment Equalization Act*.

Counsel for MacMillan was good enough to prepare a very complete and useful legislative history of the two definitions from which the foregoing very brief summary is taken. Aside from explaining the origins of the two definitions the history does not materially assist in construing the second definition.

When one compares the judgments of MacKinnon J. and Wallace J. it will be apparent that MacKinnon J. based his judgment on the verbs "erected" and "placed" whereas Wallace J. based his on the nouns "structures", "machinery" and "fixtures". The latter is not common to the two appeals so this portion of my reasons will be limited to structures and machinery.

With respect I think the first three lines of paragraph (a) of the second definition must be looked at in their entirety to ascertain the meaning to be given to them. When that is done and the verbs and nouns given their ordinary meanings I think the sense is that machinery and structures and similar things only become subject to assessment when they have been erected or placed. The verbs are used in the past tense which shows it is only when a piece of machinery or a structure has been completed in all essential respects, that is to say, it has been placed or erected in its final position and is capable of being used for the purposes for which it is designed, that it becomes subject to assessment as an improvement.

That is the sense given to the nouns by Wallace J. I agree with his conclusion that the term "structure" does not apply to partially assembled components of an incomplete object; and with his conclusion with respect to "machinery" that it does not include component parts of an incomplete assembly which cannot perform the intended function of the assembly when completed. Support for those conclusions is found in the *Trans Mountain Oil Pipeline* and *John Labatt* cases in so far as structures are concerned; and in the *Northern Broadcasting Company* and *John Labatt* cases in so far as machinery is concerned. While Wallace J. considered the nouns in isolation from the verbs I think when taken together in the context of the definition as a whole the correct construction is that which he gave.

Thus far I have limited my consideration of the definition of "improvements" to the first three lines of paragraph (a). Support for my conclusion as to the meaning of improvements may be found in the remainder of the paragraph where things which are improvements are set out. I think these things are not improvements until they are essentially completed, that is to say, they have been placed or erected in their final positions and are capable of being used for the purposes for which they were designed. I refer in this connection to the words "aqueducts", "tunnels" , "bridges", "dams", "reservoirs", "roads", "transformers" and "storage tanks". Thus an aqueduct is not an aqueduct until it can conduct water; a dam is not a dam until it can hold back water; a bridge is not a bridge until it is connected at each end. A similar approach can be taken to the remainder of the words to which I have referred.

VIII.

FIXTURES IN THE COMINCO CASE

Counsel for Cominco contended that the judge should not have dealt with fixtures because the stated case was concerned only with "machinery" and "structures".

In the facts set out in the Cominco stated case the Board refers to "installations" and "structures" but says the issue was whether an item can be placed on the assessment roll before it is completely installed and operational. That issue would cover fixtures as well as structures and machinery.

The questions propounded and especially Questions 1 and 2 are not limited by the nature of the things which the Board held were improvements. In these circumstances I think Wallace J. was right when he said:

> In order to respond to the question raised in the stated case it is necessary to consider whether the items come within the category described as "fixtures".

When dealing with the reasons of Wallace J. I said that he referred to the judgment of this court in the *La Salle Recreation* case. I then set out his conclusions and reasons on the issue of fixtures. I take it from his reasons he was of the view that the things in question met one or more of the tests referred to in the *La Salle Recreation* case and therefore are fixtures. From that he drew the conclusion they are improvements.

With respect I think that reasoning overlooks the context of the first three lines of the second definition of improvements. I would apply to fixtures the same reasoning I did when dealing with structures and machinery and reach the same conclusion, viz. it is only when a fixture has been completed in the sense that it has been placed, erected or affixed in its final position and is capable of being used for the purposes for which it is designed that it becomes subject to assessment as an improvement.

IX.

STORED OR SPARE EQUIPMENT

This issue arose only in the MacMillan case. MacKinnon J. dealt fully with this argument and rejected it. Essentially the same argument was addressed to us. I agree with the conclusions and reasons of MacKinnon J. and would reject the submission.

X.

CONCLUSION

In conclusion with respect to the interpretation of "improvements" it is my opinion that when the Statute is read as a whole with its purpose in mind, the words used to define improvements do not clearly and unambiguously make the things in dispute in these two appeals assessable.

For the foregoing reasons I would allow both these appeals, dismiss the assessor's cross-appeal in the Cominco case and remit this opinion to the Assessment Appeal Board for its consideration. The appellants should have their costs of the appeals, and, in the Cominco case, of the cross-appeal.

HINKSON, J.A.: I agree.

LAMBERT, J.A.: I agree.