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MACMILLAN BLOEDEL LIMITED

v.

ASSESSOR OF AREA 7 - SUNSHINE COAST

Supreme Court of British Columbia (A820740) Vancouver Registry

Before: MR. JUSTICE A.G. MacKINNON

Vancouver, June 25, 1982

B.J. Wallace for the Appellant
J.E.D. Savage for the Respondent

Reasons for Judgment July 13, 1982

By way of stated case the appellant seeks the opinion of this court as to whether the Assessment Appeal Board of the Province of British Columbia erred in law in assessing certain machinery, structures or equipment forming a part of the respondent's new paper mill at Powell River, British Columbia.

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 million and $107 million. 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 million.

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 million, i.e. 80% of $105 million.

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 million, 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 million, 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 million 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 million.

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.

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 (f) of the regulations aforesaid?

The respondent raised a preliminary objection with respect to question No. 2. It is submitted such question is one of fact or mixed fact and law and, therefore, not to be reviewed by the court.

The Board made a finding the structures or machinery of the appellant were not "stored" and, therefore, did not fall within the scope of s. 3-3 (f) of the Regulations of the *Assessment Act*, which provides:

3-3 Commercial and industrial improvements referred to in Regulation 3-1 but generally described as follows shall also be exempt from assessment under the Act:

(f) Stored or spare equipment which is not installed.

I reserved on the preliminary objection.

The finding made by the Board was reached not after consideration of conflicting testimony but rather an interpretation of undisputed facts as to whether certain structures or machinery were "stored equipment which is not installed". In *Bell* v. *Ontario Human Rights Commission* (1971), 18 D.L.R. (3d) 1 at p. 19 Martland J. of the Supreme Court of Canada stated:

> The present case raises a question of law as to the meaning of the phrase "self-contained dwelling unit". The facts involved in relation to whether or not the appellant's premises available for rent were within that phrase relate only to the structure of a building and do not involve choosing between the conflicting testimony of witnesses.

In *Assessment Commissioner* v. *Wayne Hawes*, Stated Case 111, Supreme Court of British Columbia No. 166/78, Fulton J. was giving consideration to mobile homes held in storage, and the question was raised as to whether it was a question of law or one of fact. He said:

> I am satisfied that the question involved is, in fact, a matter of law and that in making a decision whether the mobile home in question was within an exempt category, the Assessment Appeal Board was deciding a question of law. Although they were arriving at a decision of fact, they were applying principles of interpretation which are principles of law.

The interpretation of the words "stored or spare equipment which is not installed" is a question of law and one which may be reviewed by the court.

Accordingly, the motion on the preliminary objection is refused.

In 1980 the appellant made large expenditures in the construction of a paper mill on its site in Powell River. Most of the machinery and equipment was added during 1980 but the project was not completed until March 1981. They built a power substation and expanded an existing thermal mechanical pulp mill, a new chip handling facility and silos. There were pictures exhibited in the proceedings which illustrate the massive extent and complexity of the additions which cost $105 million. Of that sum $84 million was completed by December 31, 1980. The assessor included the sum of $84 million as improvements at December 31, 1980.

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 legislature intended each property in a municipality or rural area be included in the assessment roll. Property includes improvements as defined in the Act.

Improvements are defined in two sections under the *Assessment Act*, R.S.B.C. 1979, c. 21. Counsel appear to be in accord the second definition is the appropriate one to apply in the circumstances of this case:

> "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. . .

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

ERECTED OR PLACED UPON

Webster's Third New International Dictionary of the English Language was cited in support of the appellant's submission as to the meaning of "erected":

> "erect" to put up (as a building or machine) by the fitting together of material or parts; cause to stand ready for use, to hoist and bolt and place fabricated parts of (a ship's structure) before rivetting or welding.

The appellant emphasizes the additions it seeks to exclude were *not ready for use* and, in that sense, were therefore not erected.

No decisions were cited where the term "erect" was judicially considered. In *Northern Broadcasting Company Limited* v. *The Improvement District of Mountjoy*, [1950] S.C.R. 502 the Supreme Court of Canada gave consideration to the interpretation of the word "place" but not specifically to "erected".

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 for use" were added, then the submission of the appellant might be accepted. Without such statutory language the submission is rejected.

Even, however, if I am wrong in that regard and the additions cannot be considered as having been erected as at December 31, 1980, they were, in my view, placed on the property, in the sense found by the Supreme Court of Canada in the *Northern Broadcasting* case, as being something that is placed with some degree of permanency. The additions were constructed and set in place so as to form a permanent part of a large and expensive paper mill site, and as such, fell within the definition of an improvement under the statute as machinery or structures placed on the land.

Counsel for the appellant did not, in his submissions, go into any detailed description of the nature of the additions with a view to establishing they were of such a kind they did not "acquire locality". It seems to me, from the description given, as to the type of machinery, the purpose for which it was constructed, the immense cost and massive size and complexity, that such machinery (classified by the Board as structures) was probably within the class of things which we would expect would remain in position and became placed on the property as contemplated by the legislature when it included as improvements "structures placed on the land".

Taylor J. recently had before him a series of stated cases relating to the question of assessability of equipment which was said by the Assessor to be within the scope of improvements as having been "placed on the property". In the case of *Assessment Commissioner* v. *Woodward Stores Ltd. et al.* (unreported) British Columbia Supreme Court, May 28, 1982, Taylor J. carefully reviewed the authorities and the definition of "improvements", and in particular the question of the interpretation of the word "placed" within the context of the statute. Some of the characteristics and findings adverted to in the judicial consideration of the term "placed" include:

> 1. Heavy articles placed in one particular spot with the idea of remaining there so long as they are used for the purpose for which they were placed upon the premises-*Northern Broadcasting* v. *Mountjoy* (supra);
>
> 2. The weight of the equipment is so large and so difficult to dismantle, it is considered to be settled or placed-*City of London* v. *John Labatt Ltd.* [1953] O.R. 800 and *Greenmelk* v. *Township of Chatham,* [1955] O.W.N. 757;
>
> 3. Machines intended to be moved about at will are not "placed" and therefore, not assessable-*Re Orr's Assessment* (1955) 16 W.W.R. 25;

4. Bowling alleys were intended to remain in place in the place and position where installed, and were, therefore, assessable-*Toronto* v. *Eglinton Bowling Co.,* [1957] O.R. 621;

5. Large tanks erected with "some idea of permanency" and, therefore, were assessable-*Re Trans Mountain Oil Pipe Line Company* (1966),56 W.W.R. 705;

6. Tanks are huge and heavy and completely immobile and they were, therefore, assessable-*Trans Mountain* case (supra);

7. Cash registers were not "placed"-*Hudson's Bay Company* v. *Assessor* (1979), 12 B.C.L.R. 59;

8. "Placed" does not encompass items intended to be shifted about at will *Assessment Commissioner* v. *Woodward Stores* (1981),28 B.C.L.R. 22;

9. Taylor J. said, in *Assessment Commissioner* v. *Woodward Stores* (supra):

> In relation to machinery, substantial size, or substantial weight, may well be evidence from which the necessary degree of permanency of placement is to be inferred. Other possible indicia of the required degree of placement includes the existence of a prepared special site or resting place, service connections of a rigid character such as plumbing, difficulty of disassembly and relocation, and incorporation in a process which can only be carried on in a particular location. None of these characteristics is essential to establishment of the required degree of placement. But one or more of them may, in a particular case, be evidence from which the necessary permanence of position can be inferred, and there may be others. In every case the question to be asked is, not whether the item concerned is in fact intended to be moved by the particular owner, but whether by reason of its character, function and placement, as determined from all the evidence, the item concerned falls into the class of things which, once put in position can normally be expected to remain in that position, rather than falling into the class of things which can generally be expected to be moved around from time to time in the normal course of business.

Applying the principles thus enunciated, I am satisfied the structures were "placed" on the land. I am of the view the structures were either erected or placed on the land. In either event, they are improvements and assessable.

STORED OR SPARE AND NOT INSTALLED

Sections 3-1 and 3-3 (f) of British Columbia Regulations 799/74 of the *Assessment Act* read as follows:

> 3-1 Fixtures, machinery and similar things refer to those items which as if so erected or affixed by a tenant, would as between landlord and tenant, be removable by the tenant as personal property;
>
> 3-3 Commercial and industrial improvements referred to in Regulation 3-1 but generally described as follows shall also be exempt from assessment under the Act:
>
> (f) Stored or spare equipment which is not installed.

The appellant submits the additions fall within 3-3 (f) and are, therefore, exempt from assessment.

I find no merit in this submission.

To qualify for such an exemption the appellant has the onus of bringing itself within the exempt provision.

What has been exempted under the Regulation is "stored or spare equipment which is not installed".

There was no evidence relied upon to establish the additions were:

(a) stored;

(b) spare;

(c) equipment;

(d) not installed.

The appellant relied upon definitions found in the Shorter Oxford English Dictionary:

> "store" to keep in store for future use; to collect and keep in reserve; to deposit (goods, furniture. etc.) in a store or warehouse for temporary safekeeping.

The appellant submits the additions fell within such a definition in the sense they were kept for future use.

Considering the nature of the additions in the context of the statute under consideration, they cannot be exempted simply because they are kept for future use. They must, to be exempted, be considered as "stored equipment". Turning again to the Shorter Oxford English Dictionary. "equipment" is defined as:

> "equipment" anything used in equipping; furniture, outfit, warlike apparatus; necessaries for travelling, etc.

However one might interpret "equipment", the fact remains the Board has found, after consideration, that the additions were "machinery or structures". There is no finding they were "equipment". It is not "machinery or structures", but rather "stored equipment" which is exempted.

To succeed the appellant must further establish the additions were "not installed". The Board found to the contrary. It found all of the items assessed "to the extent installed December 31, 1980 were in position with almost a complete degree of permanence save for the possibility of changes of alignment such as by adding shims to the securing bolts on the paper machine".

With respect to the submission the additions were spare equipment. I turn again to the Shorter Oxford English Dictionary and find:

> "spare" not in actual or regular use at the time spoken of, but carried, held or kept in reserve for future use or to supply an emergency; that can be spared, dispensed with, or given away, as being in excess of actual requirements; superfluous.

The size and the expense and the nature of the additions lead me to conclude without any reservation the additions are not now, nor were they contemplated at any time as being in the nature of, spare.

In my view the additions were not stored, not spare, were not equipment, and were found to be installed. They clearly are not within the exempting regulation.

The answers to the questions are as follows:

1. No.

2. No.

3. Yes.

4. Yes.

The respondent is entitled to costs. Judgment accordingly.