ASSESSOR OF AREA 12 - COQUITLAM

v.

CHEVRON CANADA LIMITED

Supreme Court of British Columbia (A840788) Vancouver Registry

Before: MR. JUSTICE J.E. SPENCER (In Chambers)

Vancouver, April 2, 1984

J.E.D. Savage for the Appellant
S.B. Armstrong for the Respondent

Reasons for Judgment April 9, 1984

The appellant (sic), Chevron Canada Limited, is the owner of a number of service stations in Assessment Area No. 12-Coquitlam. It appealed from the assessment of machinery values attributed by the Area Assessor on the 1981 and 1983 assessment rolls. It persuaded the Assessment Appeal Board that it should reject the Assessor's individual evaluation of the machinery on a service station by service station basis and accept instead a standardized schedule of depreciation rates found by a 1979 Appeal Board which dealt with service stations in areas numbered 08, North Shore-Squamish Valley, 09, Vancouver, and 13, Dewdney-Alouette. In so doing, the Board found that the Assessor had omitted to consider that sort of depreciation which leaves no observable physical effects. The Board apparently had in mind functional obsolescence, including the uniform rate at which the utility of like pieces of equipment ebbs away in comparison with newer equipment which becomes available.

The Assessment Commissioner formed the view that the Board, in rejecting the evidence of the Assessor, as it applied to the individual service station locations, made a mistake in law by failing to determine the actual value of the improvements as required by s. 26 (1) of the *Assessment Act* R.S. Chapter 21. Two questions of law were therefore posed to the Court as follows:

> (1) Did the Assessment Appeal Board err in law in prescribing an arbitrary rate of depreciation on the appellant's machinery?
>
> (2) Was there any evidence to support the Assessment Appeal Board's finding?

This Court's sole function on a stated case is to determine questions of law. It has nothing to do with the finding of facts made by the Assessment Appeal Board, including the method of valuation followed by the Board and the actual values found.

In his submission that the Board erred in law, Mr. Savage, for the Commissioner, relied substantially upon the reasons for judgment of MacIntyre, J.A., as he then was, in *Pacific Logging Company Limited* v. *The Assessor for the Province of British Columbia* (1976) Case No: 99 B.C.A.A. Stated Cases 520. MacIntyre, J.A.'s reasons were adopted by the Supreme Court of

Canada at (1977) 2 S.C.R. 623. At p. 525 in the Court of Appeal Report the learned judge said that a failure to assess value in accordance with s. 37 (1) of the *Assessment Equalization Act* R.S.B.C. 1960 chapter 18 (now s. 26 (1) of the *Assessment Act* R.S. chapter 21) is an error in law. He went on to say that the method of assessment there adopted was arbitrary. That case had to do with the assessment of the beds of various lakes on Vancouver Island. To value them, the Assessor, without any market evidence and without any inspection of the lakes in question to determine their comparability one to the other, simply took an average upland value for the area in which the lake was located, divided it in two and then adjusted it at a uniform rate depending upon whether the particular lake was larger or smaller than an arbitrarily chosen optimum size of fifty acres. That approach was found to be arbitrary and therefore to be wrong at law because it had nothing to do with actual value. I have formed the view that the method of valuation preferred by the Board in this case is not arbitrary. The Board has not established depreciation rates for machinery out of thin air. What it has done is to accept rates fixed by another Board in a case decided five years earlier and in relation to a spectrum of twenty-six different service stations. The exact location of those twenty-six stations is not shown in the 1979 decision but all are from areas reasonably close to the subject area in Coquitlam.

To have inspected and assessed each service station individually, as the Assessor has done in this case, is a perfectly acceptable method of valuation in law. It may or may not be preferable to the use of standard depreciation rates favoured by the Board. That is not for me to say. As time passes and machinery changes, the use of a standard depreciation rate based upon that found in 1979 may become arbitrary. As circumstances change it may have less relevance to the current value of more modern machinery. I only say that for this appeal it was not purely arbitrary for the Board to look to standard depreciation rates for similar machinery in a similar location. I refer to the words of Sloan, C.J.B.C. in *Regina* v. *Penticton Sawmills Limited* (1954), 11 W.W.R. (N.S.) 351, quoted by Seaton, J (as he then was) in *MacMillan Bloedel* v. *Assessment District of Alberni et al.* (1967), Case No: 53:

> We are not, however, in this appeal, troubled with the actual assessment in terms of quantum, but whether or not the Assessor erred in principle in adopting as a guide to values the upset price of timber sales, subject, of course, to his adjustment of his assessments as differing circumstances demanded. If the upset price was a mere arbitrary figure with no relation to reality, some criticism might be directed against its use even as a guide, but it is a price arrived at only after a prolonged and careful study of all physical and other factors.

The upset price there spoken of was a factor derived from actual experience with logging sales. The standard depreciation rate in the case at bar also is derived from actual experience with service station machinery. It provided some evidence of actual value and the Board did not make an error of law in deciding to rely upon it.

Accordingly, I am of the view that question (1) must be answered in the negative.

The Board did not prescribe an arbitrary rate of depreciation on the appellant's machinery and therefore made no error of law in that respect. Question (2) must be answered in the affirmative. Even though there was evidence from the Assessor which might have warranted a different finding, there was evidence before the Board to support the finding it made.

The appeal by way of stated case is therefore dismissed with costs to Chevron Canada Limited.