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CROWN FOREST INDUSTRIES LIMITED

v.

ASSESSOR OF AREA 24 – CARIBOO
ASSESSOR OF AREA 4 – NANAIMO-COWICHAN
ASSESSOR OF AREA 5 – PORT ALBERNI
ASSESSOR OF AREA 6 – COURTENAY
ASSESSOR OF AREA 25 – NORTHWEST
THE ASSESSMENT COMMISSIONER

British Columbia Court of Appeal (CA 003490) Vancouver Registry

Before: MR. JUSTICE J.D. LAMBERT, MR. JUSTICE R.P. ANDERSON, and MR. JUSTICE R.F. CHEFFINS

May 8, 1986

B.J. Wallace for the Appellant
J.K. Greenwood for the Respondents

Reasons for Judgment of Mr. Justice Lambert May 8, 1986

Crown Forest Industries Ltd. owns Tree Farm 8 and Tree Farm 65. The land covered by those two Tree Farms falls within five separate assessment areas. In determining the assessed value for the 1984 taxation year of the parts of the Tree Farms within their areas, all five assessors failed to apply the provisions of the *Assessment Act*. That was because they applied the wrong statutory provision and so thought, incorrectly, that they were to carry forward the 1982 values rather than do new values, as of the end of 1983, for the purposes of the 1984 taxation year.

Crown Forest Industries Ltd. did not appeal any of the assessments to the courts of revision. But British Columbia Forest Products Ltd. appealed similar assessments with respect to its Tree Farms. It was unsuccessful at the court of revision level but successful before the Assessment Appeal Board. After that decision was made, it was too late for Crown Forest Industries Ltd. to embark on the appeal procedure. But there was still a period of two months before expiry of the time limit within which the Assessment Commissioner could correct any errors in the completed assessment rolls, under s. 11 (3) of the *Assessment Act*. Crown Forest Industries Ltd. asked him to correct the errors. It also asked the five assessors to participate in the correction process by making entries in supplementary assessment rolls as contemplated by s. 11 (3). Neither the Commissioner nor any of the five assessors took any steps to correct the errors.

Crown Forest Industries Ltd. brought a petition for judicial review of the original assessments and for judicial review of the failure of the Assessment Commissioner to correct the assessment rolls. That petition was dismissed by a Supreme Court judge, in chambers. This appeal is from his decision.

There is a well developed line of cases which establishes that, if, in making an assessment, the assessor makes an error with respect to his jurisdiction then the assessment is *ultra vires*, and a nullity, and can be declared to be so in appropriate originating proceedings, even if the appeal

period has passed, or even if an appeal was taken that was unsuccessful. On the other hand, if the assessor made a mistake that was within his jurisdiction to make, that mistake can only be remedied by the appeal procedures under the assessment and taxation legislation. If the appeal period has expired, the error must stand. See *The Municipality of the Town of MacLeod* v. *Campbell* (1918), 57 S.C.R. 517 (S.C.C.); *Bishop of Vancouver Island* v. *Victoria* [1921] 3 W.W.R. 214 (J.C.P.C.); and *Abel Skiver Farm Corporation* v. *Ste. Foy* [1983] 1 S.C.R. 403 (S.C.C.).

The question therefore becomes one of categorizing the error made by the assessors as either jurisdictional or not jurisdictional. The law on that question has been sharper since the decision of the House of Lords in *Anisminic Ltd.* v. *Foreign Compensation Commission* [1969] 2 A.C. 147, particularly per Lord Reid at p. 171. Of course, I am using the concept of jurisdiction in what Lord Reid would regard as the broad sense, that is, to encompass not only the initial power to embark on the decision-making process, but also the obligation to keep within the proper requirements of that process, that is, with the jurisdictional envelope, until the process is completed and the jurisdiction is discharged. To paraphrase the words of Lord Reid, the decision maker's decision will be a nullity if the decision maker misconstrued the provision giving him power to act so that he failed to deal with the question remitted to him or decided some question which was not remitted to him; or if he refused to take into account something which he was required to take into account; or if he based his decision on some matter which he had no right to take into account.

Mr. Justice Dickson put the same point in *Service Employees Union* v. *Nipawin Dist. Staff Nurses Assoc.* (1974),41 D.L.R. (3d) 6, when he said, at p. 12, that the kind of error which makes a decision reviewable as a nullity includes "misinterpreting provisions of the Act so as to embark on an enquiry or answer a question not remitted to it." That misinterpretation, of course, can occur at any stage of the decision-making process.

The authorities on this point have recently been reviewed by Mr. Justice Beetz, for the Supreme Court of Canada in *Re Syndicat des Employes* (1985), 14 D.L.R. (4th) 457.

In this case, all five assessors were required to assess the actual value of Tree Farm land. They were required to apply the valuation provisions of Part 3 of the *Assessment Act*, and particularly s. 29. But they made no assessment of actual value, nor did they apply the valuation provisions. The reason why they did not discharge those statutory functions was because they wrongly considered that British Columbia Regulation 440/83, and s. 41 of the *Assessment Amendment Act*, S.B.C. 1984, c. 11, which provided that 1984 assessments were to be based on December 1982 values rather that December 1983 values, applied to Tree Farms. In my opinion, this misconception of the .statute caused the assessors to take up and discharge a different task than the one they were required by the *Assessment Act* to undertake. But the reason why they failed to make a true considered assessment and the reason why they failed to apply the valuation provisions, are, strictly speaking, irrelevant. It is enough that they failed to exercise their jurisdiction. Their assessment decisions are nullities.

Because my opinion in this appeal turns on the invalidity of the assessments, it is unnecessary for me to consider whether, if the assessments had been merely wrong, and not nullities, it would have been appropriate to make an order with respect to the Assessment Commissioner's failure to correct the errors under s. 11 (3) of the *Assessment Act*.

I would allow the appeal. I would declare that the 1984 assessments and assessment rolls, in so far as they affect Crown Forest Industries Ltd.'s Tree Farms 8 and 65, are null and void. I would be prepared to make more detailed orders under the powers conferred by the *Judicial Review Procedure Act*, as was done in *The Queen* v. *Newmont Mines Limited* [1982] 3 W.W.R. 317, if either of the parties requires any further order.

THE HONOURABLE MR. JUSTICE ANDERSON: I agree.

THE HONOURABLE MR. JUSTICE CHEFFINS: I agree.