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**THE PRUDENTIAL INSURANCE CO. OF AMERICA
(and Respondent)**

v.

**ASSESSOR OF AREA 11 - RICHMOND-DELTA
(and Appellant)**

Supreme Court of British Columbia (A851244) Vancouver Registry

Before: MR. JUSTICE K. M. LYSYK

Vancouver June 20 and 21, 1985

J.R. Lakes for the Respondent
J.E.D. Savage for the Appellant

Reasons for Judgment

July 15, 1983

The Assessment Appeal Board ("the board"), at the request of the respondent (appellant) ("the assessor"), submits three questions of law for the opinion of this Court in the form of a stated case pursuant to s. 74 (2) of the *Assessment Act* R.S.B.C. 1979, c. 21 ("the Act"). The assessor attacks, and the appellant (respondent) ("the company") defends, the board's findings on the issues raised by these questions of law.

1. *The facts as stated by the board.*

The stated case sets out, as the material facts, the following:

1. The subject property is a warehouse which had an actual value on the 1983 Assessment roll of \$2,453,850.00.
2. Between December 31, 1982 and December 31, 1983, there was no change in the state and condition or use or permitted use of the subject property.
3. The Assessor did not appeal the value of the 1983 Assessment Roll, nor did he issue a Supplementary Assessment Roll in connection with that value.
4. The value on the 1983 Assessment Roll was not subject to any appeal by a taxpayer or third party, and therefore the final value on the 1983 Assessment Roll for the subject property was \$2,453,850.00.
5. The Assessor, in preparing the 1984 Assessment Roll, valued the property at \$3,081,500.00 based on his opinion of the actual value of the property.
6. The Court of Revision confirmed the value of the property at \$3,081,500.00 for the 1984 Assessment Roll.
7. The Appellant appealed the Decision of the Court of Revision.

8. The Board accepted the Appellant's submission that in the circumstances the Assessor was prevented from changing the value of the property from the 1983 Assessment Roll value.

9. The Board did not embark on hearing evidence as to the actual value of the property, other than the submissions of the Appellant and Respondent as to the property's actual value at December 31, 1982.

10. Attached hereto and marked as Schedule "A" is the Decision of the Assessment Appeal Board.

2. *The questions submitted.*

The questions of law are formulated in the following terms:

1. Did the Assessment Appeal Board err in law in its interpretation of section 41 of the *Assessment Amendment Act*, 1984, in finding that once the actual value for the subject property was finally determined on the 1983 Assessment Roll, there being no change in the state and condition or use or permitted use between December 31, 1982 and December 31, 1983, the actual value on the 1984 Assessment Roll must be the same for the 1983 Roll?

2. Did the Assessment Appeal Board err in law in its interpretation of section 41 of the *Assessment Amendment Act*, 1984, in finding that the actual value on the 1984 Assessment Roll must be the same as it was on the 1983 Assessment Roll?

3. Did the Assessment Appeal Board err in law in finding that, in the circumstances of the appeal, that the final actual value determined on the 1983 Assessment Roll must be the final actual value on the 1984 Assessment Roll?

3. *The legislation, the issues, and the positions of the parties.*

The answers to the questions submitted turn on the effect of s. 41 of the *Assessment Amendment Act, 1984* ("the Amending Act"), the material portions of which read as follows:

41. (1) In this section the reference to section 26 of the *Assessment Act* is a reference to that section as it stood on December 31, 1983.

(2) In relation to the completion during 1983 of an assessment roll for the purpose of taxation during the year 1984, the expression "actual value" in section 26 of the *Assessment Act* means and shall be conclusively deemed always to have meant the actual value that land and improvements would have had on December 31, 1982 had they been on that date in the state and condition that they were in on December 31, 1983, and had their use and permitted use been on December 31, 1982 the same as they were on December 31, 1983.

(3) . . .

(4) This section is retroactive to the extent necessary to give it effect.

The first subsection refers to s. 26 of the Act as it stood on December 31st, 1983. At that time subsections (1) and (2) of s. 26 read as follows:

26. (1) The assessor shall determine the actual value of land and improvements.

(2) In determining the actual value under subsection (1), the assessor may give consideration to the present use, location, original cost, cost of replacement, revenue or rental value, the price that the land and improvements might be reasonably expected to bring if offered for sale in the open market by a solvent owner, and any other circumstances affecting the value, and the actual value of the land and the improvements so determined shall be set down separately in the columns of the assessment roll, and the assessment shall be the sum of those values.

It is common ground that for all purposes material to this proceeding "actual value" may be treated as the equivalent of fair market value. Under the practice followed for a number of years prior to the coming into force of the Amending Act, the assessor determined actual value as at December 31st for purposes of the assessment roll of the next following year. Thus, the assessor determined the actual value of the subject property as at December 31st, 1982 for purposes of the 1983 assessment roll.

According to the material facts as stated by the board, the assessed actual value on the 1983 assessment roll of slightly less than 2 ½ million dollars (paragraphs 1 to 4) was raised on the 1984 assessment roll to a little more than 3 million dollars (paragraph 5). Over the material period of time there had been no change in the state and condition or use or permitted use of the warehouse (paragraph 2). Having regard to s-s. (2) of s. 41 of the Amending Act, on what basis, then, did the assessor assign a higher value as at December 31st, 1983 for purposes of the 1984 assessment roll than that assigned a year earlier for the 1983 assessment roll? The board's statement of material facts refers to the higher value set by the assessor for the 1984 assessment roll (paragraph 5) but does not disclose the date as of which he valued the property at this higher figure. For this information it is necessary to turn to the transcript of evidence before the board. Fortunately, counsel agree that the evidence speaks clearly on this matter. While the Court is confined to questions of law on the stated case, reference to uncontradicted evidence is permissible, at least in the absence of objection and insofar as it provides an aid to understanding the board's decision.

In his testimony before the board the assessor stated the value assigned as at December 31st, 1982 for the 1983 assessment roll was in error because it was based on incomplete information. The property had not been visited in 1982. Referring to what was done at that time he stated: "We valued building permits, if you will" (Proceedings, p. 21). During inspection for preparation of the 1984 assessment roll it was concluded that there had been ongoing changes in the property not considered in preparation of the 1983 assessment roll (Proceedings, p. 24). In brief, the assessor's position is that the higher value assigned to the property for the 1984 assessment roll did not result from a fresh determination of actual value as at December 31st, 1983 but from a revised determination of actual value as at December 31st, 1982. The assessor contends that s. 41 (2) of the Amending Act left untouched his right and duty to ascertain actual value for the 1984 assessment roll and that for this purpose he was entitled to revise upward the value he had fixed as at December 31st, 1982 in the light of subsequently acquired information.

The company, adopting the reasoning of the board, points out that the Act provides other means by which the assessor could seek a revision of the value he placed on the subject property as at December 31st, 1982. In its decision the board stated:

If the assessor were of the opinion that the 1983 Roll value was incorrect he could have changed it by Supplementary Roll. If there had been a change in the state and condition or use or permitted use the Assessor would then have been permitted to change the value on the 1984 Roll. If there had been no change in the state and condition or use or permitted use and the assessor, nevertheless, wanted to challenge the actual value for the 1984 Roll, the proper procedure would have been for him to have placed the 1983 Roll value on the Roll for 1984 and then appealed that value.

Counsel for the company contends that the intent must have been to provide that value established as at December 31st, 1982 would be determinative for purposes of the 1984 assessment roll subject only to changes in state and condition or in use or permitted use-in other words, that such changes to or respecting the subject property are exhaustive of the circumstances in which the assessor is permitted to alter the figure at which the property was valued as at December 31st, 1982.

The substantial question of law before the Court, therefore, comes to this. In determining actual value of the subject property for purposes of the 1984 assessment roll, was the assessor obliged by the terms of s. 41 (2) of the Amending Act to ascribe to the property the same actual value as that determined for the 1983 assessment roll (as the board found) or was he free to make a new determination of actual value on the basis of having changed his opinion concerning the actual value of the property as at December 31st, 1982? For purposes of this central issue, and keeping in mind that there has been no change in state and condition or use or permitted use of the subject property, the controlling portion of s. 41 of the Amending Act is this:

(2) In relation to the completion during 1983 of an assessment roll for the purpose of taxation during the year 1984, the expression "actual value" in section 26 of the *Assessment Act* means and shall be conclusively deemed always to have meant the actual value that land and improvements would have had on December 31, 1982 . . .

4. *The authorities and governing principles.*

Counsel for the company placed considerable reliance on the decision of this Court in *Trizec Equities Ltd. v. Assessor of Area 9-Vancouver* (January 30, 1985), Vancouver Registry No. 842726 (Bouck, J.), leave to appeal refused (May 13, 1985), Vancouver Registry No. CA003649, (Carrothers, J.A., in Chambers). This is the only decision to date in which s. 41 of the Amending Act and its relationship to s. 26 of the Act have received judicial consideration. The issue there was different. The questions posed in the *Trizec* stated case turned on whether a change in the subject property's vacancy rate effected a change in its "state and condition" within the meaning of those words in s. 41 (2) of the Amending Act. Mr. Justice Bouck answered in the affirmative. Since he dealt with one of the situations in which s. 41 (2) expressly envisages departing from value assigned as at December 31st, 1982, it was not necessary for him to address the pivotal question in the present proceeding-namely, in what circumstances, if at all, may a value different from that determined as at December 31st, 1982 be placed on the 1984 assessment roll where changes of the types expressly mentioned in s. 41 (2) (state/condition or use/permitted use) have not occurred? Counsel for the company draws comfort from certain passages in Mr. Justice Bouck's reasons which suggest that changes in the subject property of the kinds expressly mentioned in the subsection represent the only circumstances in which the value determined as at December 31st, 1982 can be varied. Thus, after an analysis of the terms of the regulation which was carried over into s. 41 (2), Bouck, J. summed up as follows (at p. 7):

Apparently the intention of the regulation was to freeze the 31 December, 1983 assessment roll at the same figures established on 31 December, 1982 except where there were changes in the state and condition of the land and improvements or changes in their use and permitted use during the 1983 calendar year. Whether it accomplished this objective is the subject matter of these reasons.

The observations in this passage and elsewhere in the reasons to the effect that the subsection imposes a "freeze" subject only to changes in state and condition or use and permitted use during 1983 must be regarded as *obiter*, not being a necessary link in the chain of reasoning leading to the result arrived at by Bouck, J. Consequently, I am not constrained by *Trizec* on the principles expressed in *In re Hansard Spruce Mills Ltd.* (1954) 13 W.W.R. (NS) 285 (B.C.S.C.). Nor am I required, for purposes of the present proceeding, to determine whether changes to the subject property of the kinds expressly mentioned in s. 41 (2) are fully exhaustive of the circumstances in which value determined as at December 31st, 1982 may be varied for purposes of the 1984

assessment roll. The conclusion I have come to does nonetheless accord with the analysis in *Trizec*.

The matter is, ultimately, one of ascertaining the intention of the legislature in enacting s. 41 of the Amending Act. The central issue may be restated in the following way. For purposes of the 1984 assessment roll, does s. 41 of the Amending Act contemplate substitution of a value different from that determined as at December 31st, 1982, on the basis of error in making such determination, without resort to procedures specifically provided for in the Act whereby such determination may be reviewed or varied? I have reached the conclusion that it does not.

As the board pointed out in the passage from its decision set out earlier in these reasons, the assessor could have availed himself of procedures provided for in the Act to reassess the subject property (on a supplementary roll) or to seek a review of his own determination of actual value as at December 31st, 1982. He could have moved directly, that is to say, to reopen the question of actual value as of December 31st, 1982. I see no reason to read into the words employed by the legislature in s. 41 (2) of the Amending Act an intention to authorize him to do so indirectly—that is, otherwise than by means of the procedures prescribed by the Act.

The language employed in s. 41 (2) is not a model of clarity. The approach to be taken in construing ambiguous provisions of the Act was addressed by Taggart, J.A., delivering the judgment of the Court of Appeal in *MacMillan Bloedel Limited v. Assessor of Area 07-Sunshine Coast* (1983), 47 B.C.L.R. 291 where he stated (at p. 302):

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.

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.

The principle expressed in the last sentence of the quoted passage points toward a conclusion I would reach in any event as representing the preferred interpretation of s. 41 (2) on consideration of the statutory scheme as a whole.

5. *Conclusion.*

The three questions on which the opinion of the Court is sought are set out under head 2. of these reasons. Counsel, in their submissions, did not distinguish among the three questions in terms of the essential issues presented on this stated case. Nor do I find it necessary to do so. I would answer all three questions in the following terms:

In the circumstances of the appeal, the board did not err in law by concluding that the actual value of the subject property for the 1984 assessment roll must be the same as that determined for the 1983 assessment roll.