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CANADIAN PACIFIC AIR LINES, LIMITED

v.

ASSESSOR OF AREA 11 - RICHMOND-DELTA

British Columbia Court of Appeal (CA005781) Vancouver Registry

Before: MR. JUSTICE TAGGART, MR. JUSTICE ANDERSON, MR. JUSTICE ESSON

Vancouver, November 27, 1987

G.R. Heinmiller for the Appellant
J.E.D. Savage for the Respondent

Reasons for Judgment of Mr. Justice Taggart (Oral) November 27, 1987

TAGGART,J.A.: This appeal is from the judgment of Mr. Justice Spencer dismissing an appeal by way of Stated Case from a decision of the Assessment Appeal Board.

The proceedings before Mr. Justice Spencer arose from an assessment of property of the appellant. The appellant constructed a jet engine testing facility at Vancouver International Airport. In order to prevent noise from escaping into the environment, and for other reasons as well, a test cell was constructed with an expensive system of noise suppressors. The value attributed to the building and to the equipment in it is $6,994,000.00. The Assessment Appeal Board found that the amount of the assessed building value which may be attributed to control and abatement of noise is $4,906,110.00. Mr. Savage, for the respondent, challenged that finding of the Board because of the nature of the evidence which the Board heard. I need not resolve that aspect of the matter.

The basis of the appeal to the Assessment Appeal Board was that the test cell facility should qualify for an exemption under the provisions of s. 398 (q) of the *Municipal Act*, R.S.B.C. 1979, chap. 290. That section provides:

> "**398.** Unless otherwise provided in this Act, the following property is exempt from taxation to the extent indicated:
>
> (q) an improvement or land used exclusively to control or abate water, land or air pollution, including sewage treatment plants, effluent reservoirs and lagoons, de-odorizing equipment, dust and particulate matter eliminators; and where the improvement or land is not exclusively but is primarily so used, the assessment commissioner may, in his discretion, determine the portion of the assessed value of the improvements or land attributable to that control or abatement and that portion is exempt;"

We were told that the predecessor of sub-clause (q) came into the legislation in 1969.

The Assessment Appeal Board felt itself bound by the decision of W Justice MacKinnon in the *Assessor of Area 10* v. *Chevron Canada Limited*. That decision is unreported. The judgment is dated October 11, 1984, the Vancouver Registry number is A840694. Mr. Justice MacKinnon held that s. 398 (q) did not provide an exemption for improvements made to control and abate noise.

The appellant, acting under the relevant provisions of the *Assessment Act*, requested that the Board seek the opinion of a judge of the Supreme Court on questions of law. The questions propounded in the Stated Case submitted by the Board to the Supreme Court are these:

> 1. Did the Assessment Appeal Board err in law when it found that certain machinery, equipment and improvements installed by Canadian Pacific Air Lines, Limited for the purpose of controlling and abating noise were not exempt from assessment and taxation pursuant to section 398 (q) of the *Municipal Act*, R.S.B.C. 1979, c. 290?
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> 2. Did the Assessment Appeal Board err in law when it held that an improvement used for the purpose of controlling or abating noise was not 'an improvement ... used exclusively to control or abate water, land or air pollution . . .' within the meaning of section 398 (q) of the *Municipal Act*, R.S.B.C. 1979, c. 290?"

Like the Board, Mr. Justice Spencer felt himself bound by the judgment of Mr. Justice MacKinnon. Mr. Justice Spencer said that the case before him did not fall within one of the three circumstances set out in the judgment of Mr. Justice Wilson (as he then was) in *Re Hansard Spruce Mills Ltd.* (1954) 13 W.W.R. (N.S.) 285. Consequently, Mr. Justice Spencer followed the judgment of Mr. Justice MacKinnon and answered the questions appropriately.

On this appeal the appellant took essentially three positions. First, it was said that where there are competing constructions which may be given to a statute it is permissible to look to the purpose of the legislation and construe it in a manner which is in harmony with the purpose of the legislation.

We were referred to the decision of the Supreme Court of Canada in *McBratney* v. *McBratney* (1919) 59 S.C.R. 550. Particular reference was made to the judgment of Mr. Justice Duff (as he then was) at p. 591. However, as I view the matter before us it is not so much a case of competing constructions as deciding how to construe the language of sub-clause (q) of s. 398. Specifically, the question is whether s. 398 (q) has the effect of including in pollution of air the concept of pollution of air by noise.

Secondly, counsel for the appellant said that the use of the word "including" and the language following in sub-clause (q) can be utilized to expand the meaning to be given to the word "pollution". In support of that proposition we were referred to the judgments of the Supreme Court of Canada in *Nova, an Alberta Corporation* v. *Amoco Canada Petroleum Company Ltd.* et al (1981) 2 S.C.R. 437. We were referred particularly to the language of Mr. Justice Estey which appears at p. 460 and p. 461.

However, as I read sub-clause (q) the word "including" and the words following modify the word "improvement" which appears as the second word in sub-clause (q). The word "including" and the following words do not, as I read the section, modify the word "pollution".

The third approach taken by counsel for the appellant was to refer us to dictionary definitions of the term pollution, or similar terms. The dictionaries to which we were referred included the Supplement to the Oxford English Dictionary, vol. 3, 1983; the Oxford Companion to Law, 1980; the New Columbia Encyclopedia of 1975; Jowitt's Dictionary of English Law, vol. 2, 1977; and Black's Law Dictionary, 1979. Those dictionary references were supplemented by a reference to the Handbook of British Columbia Environmental Law, chap. 7, and Canadian Environmental Law, issue No. 6. The latter two deal with the subject of noise pollution and noise control respectively. The definitions contained in those materials show that noise may indeed be a pollutant. The concept of noise pollution, of course, has been with us for many years and it comes as no surprise to see these reference works deal with the subject of pollution by noise and the effect of noise transmitted through the air. But frequently the terms 'air pollution' and 'noise pollution' are used to denote quite different kinds of pollution and the question for us becomes

whether the language employed by s. 398 (q) can be said to include noise as one of the things which brings about the "pollution of air".

In the final analysis, my opinion is that resort must be had to the plain meaning rule of interpretation. We must decide whether the term "air pollution" as used in s. 398 (q) includes pollution of air by noise. When read in its context I think the answer is that pollution of air by noise is not included in the term air pollution. Being of that view I would dismiss the appeal.

ANDERSON, J.A.: I agree.

ESSON, J.A.: I agree.

TAGGART, J.A.: The appeal is dismissed.