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MacMILLAN BLOEDEL LIMITED

v.

ASSESSOR OF AREA 4 - NANAIMO-COWICHAN

Supreme Court of British Columbia (A852872) Vancouver Registry

Before MR. JUSTICE J. E. SPENCER

Vancouver, April 29, 30, 1986

Duncan Shaw, Q.C. and G.B. Gomery for the Appellant
J.E.D. Savage and B.T. MacDonell for the Respondent

Reasons for Judgment May 26, 1986

This is a stated case brought to challenge the finding of the Assessment Appeal Board dated August 16, 1985 which found the assessed value of the appellant's pulp mill complex at Harmac, B.C. for the purposes of the 1984 Assessment Roll. The Board stated seven questions for the opinion of this Court. I shall set them out in order as I deal with each of them. By way of brief background before doing so, however, I summarize what happened before the Board as follows. The Board was charged with finding the actual value of the appellant's special use industrial complex pursuant to s. 26 of the *Assessment Act*, R.S.B.C. 1979, c. 21. Sub-section (3) of that section reads:

> "26. (3) In determining actual value, the assessor may give consideration to present use, location, original cost, replacement cost, revenue or rental value, market value of the land and improvements and comparable land and improvements, economic and functional obsolescence and any other circumstances affecting the value of the land and improvements.' '

The appellant's position was that although in affluent times it was enough to use a cost approach to find the value of its property, the down turn in the economy and its effect upon the world market for the appellant's products has seriously reduced the profitability of its mill. It says that whatever value the mill may have by the cost approach it could not be sold for that value on the market. Without comparable sales to determine what price would be paid for the mill the appellant urged the Board that the correct approach to valuation was to estimate the cash flow from the mill over a period of years in the future and discount it to its present value. The Board rejected that approach and chose the cost approach. Both the appellant and the Assessor offered cost approach methods to valuation. They differed significantly between them about the way in which depreciation should be calculated for the purposes of the cost approach and the Board chose the Assessor's method in preference to the appellant's. There was some, but minimal evidence of market sales of pulp mills or similar industrial complexes and the Board made passing reference to it as some support for the value it found. The major questions which the Board had to answer, however, were with respect to the validity of the discounted cash flow method of valuation and to the choice between the two methods of depreciation proposed for a valuation by replacement cost.

I shall now deal with the questions stated by the Board.

Question No. 1:

> Did the Board act arbitrarily or unreasonably and thereby err in law in rejecting the discounted cash flow approach to valuation?

The question stated here relies upon the statements of facts set out in paragraphs 9 and 10 of the stated case. They read as follows:

> "9. The Board also held that the method advanced by the Appellant 'is fraught with expectations, assumptions and future predictions to the extent that little or no weight can be placed on the method to determine the actual value of the real property assets for the purpose of the assessment'.
>
> 10. The Board rejected the conclusion of value advanced by the Appellant as determined by the discounted cash flow approach."

Mr. Shaw's point for the appellant is that the discounted cash flow is a recognized method of finding value. There was evidence from the appellant's witnesses of its use in valuing income-earning undertakings and it has been recognized as a valuation tool in this province, see *Crown Forest Industries Limited* v. *Assessor of Area 6 - Courtenay*, (B.C.S.C., Vancouver Registry A843031, August 8, 1985), B.C. Stated Case 210, p. 1179. In a non-assessment setting, see *Cypress Anvil Mining Corporation* v. *Dickson et al.* (1982), 40 B.C.L.R. 180. The matters which may be considered by an assessor, and therefore by the Board, under s. 26 (3) to arrive at actual value, are unlimited, provided they have probative value. The discounted cash flow as a method of determining value ought, on persuasive evidence, to be considered. If the Board rejects it as a permissible method of finding present value, that is an error in principle and therefore an error of law. See the *Crown Forest Industries Limited* case (supra). That appears to be what the Board did in that case. At p. 1198 Southin, J. quotes from the Board's reasons, "future values have no place in assessment valuation". That is contrary to the specific provision in s. 26 (3) that revenue should be considered. I subscribe to what Southin, J. said about earnings projections and their influence upon value, with this observation, that the value of land and improvements will not in every, nor perhaps in any case, be dictated solely by their ability to earn, but it will have an influence on, and should not be rejected as a method of finding, value.

I do not think the Board rejected it here. From the facts stated in paragraphs 9 and 10, which I have quoted (supra), it appears that the Board considered the discounted cash flow method but, because of the particular evidence heard here, chose not to use it because of its unreliability. There was evidence to support that as a reasonable conclusion. The evidence is cited in Mr. Savage's brief and suggests that some of the assumptions that go into the prediction of future income, including costs of raw materials, world market prices and foreign, particularly United States exchange rates, are so uncertain but their leverage upon the predictions so great, that reliance upon the predictions of future cash flow discounted to the present time as a means of deriving present value was unreliable. The method was not rejected by the Board. Instead, it was considered and found wanting in this particular case.

The choice of method of valuation in any particular case is a question of fact for the Board to decide. See *Re Plateau Mills Ltd. and Assessor of Area No. 26 - Prince George* (1981), 120 D.L.R. (3d) 377; *MacMillan Bloedel Limited* v. *Assessor of Area 7-Sunshine Coast* (1985), Stated Case 206, p. 1151. So is the assigning of weight to any particular piece of the evidence, see *British Pacific Properties Ltd.* v. *Corporation of the District of West Vancouver* (1968), B.C. Stated Case 63, p. 315.

Mr. Shaw argued, based upon the *Crown Forest Industries Limited* case (supra), that if the Board's decision on a question of fact is one which it could not reasonably have reached then that amounts to an error of law. That is a logical extension of the principle that it is an error of law to make a finding of fact when there is no evidence to support it. But the Court must be careful to

distinguish between a case where the decision of fact is so unreasonable that it becomes arbitrary and therefore an error of law and a case where, although the Court might disagree with the decision of fact, there is nonetheless evidence upon which reasonable people could reach that decision. My reading of the facts stated by the Board and the way in which they framed their reasons for judgment on this point leads me to the conclusion that their decision of fact here was supportable by a reasonable view of the evidence, and that rather than rejecting the discounted cash flow evidence as a method of valuation they recognized it as a method but found it unreliable for this particular case.

The answer to Question No. 1 is; No.

Question No. 2:

> (a) Was there any evidence of the discounted cash flow method of valuation being used by purchasers and vendors of industrial properties such as the subject property?
>
> (b) If there was such evidence, were the Board's findings on the subject of the use by purchasers and vendors of the discounted cash flow method of valuation perverse?

The way in which the Board phrased its judgment is as follows:

> "The Board finds that there is no evidence whatsoever that any purchasers or vendors have ever consummated a sale/purchase of real property assets relying upon the indication of value derived by a discounted cash flow approach on such industrial properties as the subject property appealed. The Board, therefore, rejects the conclusion of value advanced by the appellant determined by the discounted cash flow approach."

It is clear from those reasons that the Board did not reject the method but the value as found by the method. For my reasons stated above, I think that was open to the Board. However, one of the factors going to that rejection was the absence of any evidence that purchasers or vendors have ever consummated as sale/purchase for such industrial properties as this relying upon the discounted cash flow approach. There was in fact some evidence of reliance upon the method. I refer to the evidence of Mr. Bowie, a business valuer called for the appellants who testified that he uses a discounted cash flow approach to value special purpose properties for purchase and sale and that he has used it, or a capitalized cash flow approach, in the specific examples he cited. Those include, at Vol. 4, p. 575, the operating assets of a major petrochemical processor and distributor, valued for future negotiations for an arm's length sale, the valuation of shares of steel fabricating companies for the purpose of purchase from an estate, the valuation of specialty auto and appliance parts manufacturers for a non-arm's length sale and the valuation of the shares of a lumber treatment operation for an arm's length sale. Those all appear to be businesses where values may be affected by the international market, as is the case with this pulp mill. I refer also to the evidence of Mr. Treadwell, Vol. 5, p. 744, who testified that he uses a discounted cash flow analysis to support lease/purchase transactions for a paper company in the United States. The subject matter of those transactions was not identified. His evidence was that this type of analysis is used more and more frequently by prospective buyers and sellers to determine price. Finally, I refer to the evidence of Mr. Bowden, an economic consultant called on behalf of the Assessor, at Vol. 6, p. 1091. He testified that it would be customary for a buyer or seller involved in the sale of a pulp mill to perform a discounted cash flow analysis as an indicator of potential value. It is true that the Board's reasons are quite specific. They refer to the consummation of a sale. I think a fair inference from the evidence I have mentioned is that sales of industrial properties like that under appeal, even if not pulp mills, are made in reliance upon a discounted cash flow analysis among other guides to value. The Board's finding that there was no such evidence was an error of law because the evidence is there. The Board was free to observe the evidence and to assign little or no weight to it if it thought fit, but the Board erred in thinking there was no evidence at all. The question then arises, whether that error of law is fatal to the Board's decision. Where the Board makes a reviewable error the Court is entitled to examine the

Board's reasons and to decide whether the mistake had any practical effect upon the decision. See *Dallinga* v. *Council of City of Calgary*, [1976] 1 W.W.R. 319 at 320, per Clement, J. A.,

> "On the second point, I agree that it is not necessarily actionable error in law on the part of a development appeal board to admit irrelevant evidence at a hearing, as this would put a legal burden on a board in the conduct of a hearing which in my view the Act does not contemplate. I discussed this aspect in *Actus Management Ltd.* v. *Calgary*, [1975] 6 W.W.R. 739. There are no doubt cases in which the evidence tendered is so obviously irrelevant or improper that it ought to be ruled inadmissible forthwith to avoid any implication that the Board might be influenced by it. But generally, the touchstone is whether the Board has allowed itself to be influenced in some measure by the evidence."

The case at bar is different. It is one where the evidence was overlooked. That is similar to the rejection of evidence because in neither case does the evidence have an opportunity to affect the mind of the Board. In such cases it is not possible to tell whether, had the Board observed the evidence, its decision would have been the same. The thrust of the appellant's case on valuation is that hard economic times in which the profitability of a business is substantially reduced require a re-consideration of assessment techniques. The market may not be willing to pay the adjusted cost price for an asset which will not return a sufficient profit on its price. Profitability is not the only indicia of market value but it brings into prominence the significance of a valuation of cash flow. Evidence that the market in fact relies upon an analysis of cash flow, had it been remembered, may have persuaded the Board to give more weight to it as a method of valuation.

The answer to Question No. 2 (a) is; Yes.

The answer to Question No. 2 (b) is; Yes.

Question No. 3:

> (a) Was there any evidence of purchases or sales of real property assets of such industrial properties as the subject property which relied upon the cost approach to valuation?
>
> (b) If there was no such evidence, did the Board act arbitrarily or unreasonably and thereby err in law in using the cost approach to valuation?

Having complained of the Board's erroneous finding that there was no evidence to support the use of a discounted cash flow analysis in the marketplace Mr. Shaw went on in the third question raised to attack the Board for using a cost analysis when there was no evidence to say that vendors and purchasers use it to determine the market price of industrial properties.

I agree with Mr. Savage that this is not a question which is open before this Court. That is because it was never an issue raised before the Board. Expert witnesses both for the appellant and the respondent agreed that a cost approach is proper to be used in valuing the subject property. Mr. Bowie, the appellant's expert, testified that buyers and sellers use it, although not exclusively. Mr. Treadwell, another expert called by the appellant, said that he would put most reliance for valuing the subject property on the cost approach. So there was never an issue about its use before the Board. Had there been, there was still evidence before the Board upon which it could reasonably rely in adopting the cost approach as a method of valuation, even without evidence of its use in fixing a sale price. In the absence of reliable comparable sales evidence, a cost approach is permitted by the statute. Mr. Shaw submitted that if an error of law appears on the face of an award it may be challenged by way of a stated case even if it was not in issue during the original hearing. He sought to distinguish cases stated in the course of a hearing pursuant to s. 74 (1) of the *Assessment Act* from those stated at the conclusion of the hearing pursuant to s. 74 (2). This being a case stated after the conclusion of a hearing, he argued that the Board is not confined to stating questions of law which have arisen before them. That is

contrary to the decision in *Assessment Commissioner* v. *Woodwards Stores Limited et al.* (1982), Stated Case 167, p. 931 (Vancouver Registry No. A820211). In that case my brother Taylor, J. wrote at p. 933:

> "It is not, I think, necessary to decide whether it is the law that a party may raise the question of jurisdiction for the first time on appeal to this Court, and at the same time object to this court exercising that jurisdiction which it has, and which the provincial tribunals lack. It is enough to say that it seems to me that such an argument cannot prevail on an appeal by case stated under the *Assessment Act*. A case stated is a limited form of review which can be taken only in relation to "a question of law arising in the appeal" (that is to say the appeal before the Board). While those words of section 74 (1) specifically refer to cases stated by the Board of its own motion, subsection (5) suggests that all cases stated, including those stated at the instance of a party, are subject to the same restriction. It is not, I think, open to a party to require the Board to state a case on an issue not raised before it."

In my opinion that reasoning is even more applicable to a case such as this where, not only was the question not raised before the Board but the appellant's own witnesses conceded the propriety of using a cost approach as part of their own case. Those cases mentioned before me on behalf of the appellant where the cost approach has been rejected as unfounded on the evidence deal with special circumstances where there has been a recent sale of the shares or assets of the business in question which gives a more accurate indication of its market value, see *Crown Forest Industries Limited* v. *Assessor of Area 6 - Courtenay* (1985), Stated Case 210, p. 1179 and *Swan Valley Foods Limited* v. *Assessment Appeal Board* (1978), Stated Case 115, p. 689. In the case before me there was no such evidence. So the answer to Question 3 is that it ought not to be raised, but if it were raised the answer to Question 3 (a) would be "Yes" and no answer would be called for to Question 3 (b).

Question No. 4:

> Did the Board, after holding
>
> > (a) that both parties considered appropriate factors to arrive at their independent opinions, and
> >
> > (b) that the Board takes no issue with the opinions or methods utilized by the appraisers,
>
> act arbitrarily in preferring the evidence of the Respondent on depreciation?; and

Question No. 5:

> Did the Board fail to give adequate reasons for its finding on the issue of depreciation and thereby err in law?

These two questions are interconnected. Both relate to the cost approach to valuation. Having rejected the discounted cash flow approach the Board chose the cost approach taken by the Assessor over the cost approach taken by the appellant. The substantial difference between those two cost approaches lay in the Assessor's method of calculating depreciation compared with that adopted by the appellant. The parties agreed that the cost approach starts by taking today's cost to replace the subject thirty-five-year-old mill with a new state of the art facility. Then, various deductions must be made for physical depreciation and obsolescence, the former to reflect the fact that the mill is partly worn out, the latter to reflect the fact that a modem mill can produce the same tonnage at a lower cost. Two assessment dates were relevant. The parties agreed as a fact that as of December 31, 1982 this mill was 50 percent worn out, and that as of

December 31, 1983 it was 50.75 percent worn out. They agreed that the total physical life of the plant was fifty years and that its remaining economic life is twenty years.

The appellant proposed a straight line method of depreciation, adopting the agreed percentages of physical depreciation of 50 percent and 50.75 percent respectively. The Assessor took a more sophisticated approach. He used the "need to replace" concept which relies upon economic rather than physical depreciation. Its basic theory is that although the mill might be 50 percent worn out on a given day it will not be replaced for another twenty years, that is to say its remaining economic life is twenty years. The cost of replacing the 50 percent depreciation in twenty years' time is then discounted by an appropriate rate to its present day value. In this case the Assessor testified that the appropriate factor for depreciation was 14 percent, which he adjusted for physically curable depreciation plus an allowance for functional obsolescence to a present figure of 24 percent depreciation. The two methods are contrasted at p. 4 of the Board's decision. Both start with a replacement cost of $492,008,175.00. The appellant's straight line method gives depreciation of $249,694,140.00 and functional obsolescence of $143,192,368.00 for a present value of $99,121,667.00. The Assessor's "need to replace" method gives physically curable depreciation of $21,000,000, physically incurable depreciation of $70,750,766, and functional obsolescence of $192,928,197, for a present value of $207,339,200. There is an impressive difference of $108,000,000 which the Board was quick to recognize.

The Board dealt with the opposing opinions and methods of depreciation as follows:

> "The difference in depreciation by the parties is excessive to say the least, however, the parties have, in the opinion of the Board, both considered the appropriate factors to arrive at their independent opinions. The Board, therefore, takes no issue with the opinion or methods utilized by the appraisers. The Board has considered all the evidence and arguments advanced by the parties on the appropriate amount of depreciation and finds as a fact that the evidence of the respondent is to be preferred."

Question 4 of the stated case asks if the Board therefore simply made an arbitrary rather than a judicial choice between the two methods. The appellant says that if it did so that was an error of law.

The choice of method of assessment and the fixing of value are questions of fact for the Board to decide. They are therefore not appealable per se. See *Re Plateau Mills Ltd.* v. *Assessor of Area No. 26 - Prince George* (1981), 120 D.L.R. (3d) 377 and *MacMillan Bloedel Limited* v. *Assessor of Area 7 - Sunshine Coast* (1985), (B.C.S.C. Vancouver Registry No. A843323), B.C. Stated Case 206, p. 1151. In the latter case McKay, J. wrote at p. 1153,

> "It is to be emphasized that it is the Board that is the sole trier of fact - it is for the Board to consider, weigh and accept or reject the various items of evidence. It was, in short, for the Board to determine all questions relating to valuation including the appropriate approach to valuation. If it does so, without error of law, that is the end of the matter."

In my respectful opinion the Board has, however, a duty to make its decisions of fact in a judicial, not an arbitrary way. The reasons for judgment propounded by the Board are succinct indeed. With great respect, what it has done is to announce the result without indicating any reason at all. It is true there is no statutory duty on the Board to give reasons. Nor is there a common law requirement per se. But a failure to give reasons, while not itself an error of law, may give rise to the conclusion that some error of law lies behind the decision. The point is aptly put by Laskin, C.J. in *Macdonald* v. *The Queen*, [1977] 2 S.C.R. 665. He wrote at p. 672,

> "Mere failure of a trial judge to give reasons, in the absence of any statutory or common law obligation to give them, does not raise a question of law."

Then at p. 673 he continued,

> "It does not follow, however, that failure of a trial judge to give reasons, not challengeable per se as an error of law, will be equally unchallengeable if, having regard to the record, there is a rational basis for concluding that the trial judge erred in appreciation of a relevant issue or in appreciation of evidence that would affect the propriety of his verdict. Where some reasons are given and there is an omission to deal with a relevant issue or to indicate an awareness of evidence that could affect the verdict, it may be easier for an appellate Court or for this Court to conclude that reversible error was committed."

In that case the majority concluded that there was only one debatable issue before the trial judge and it was impossible to conclude that the judge was unaware of it or that he failed to appreciate it and decide upon it. In the case at bar the members of the Board clearly recognized the very significant differences between the appellant's and the Assessor's methods of depreciation and the difference between the values resulting therefrom. But without reasons to explain their choice it cannot be determined whether they analyzed those differences and chose one over the other for reasons which persuaded them that one was more applicable or more accurate than the other, or whether they simply picked the one in a non-judicial way without justifying it to themselves at all. While the choice of method and determination of value are issues of fact it is an error in principle not to choose them by a consideration of the evidence surrounding each method and value. Having rejected the discounted cash flow approach to valuation and there being no reliable market evidence the Board, on the evidence before it, was driven back to a reliance upon a cost approach at the heart of which lies the problem of an appropriate allowance for depreciation. Thus the very substance of the Board's decision was to make a choice between the competing theories offered before it. Simply to choose without explaining why is inappropriate. A failure to give reasons, if it frustrates a right of appeal statutorily accorded to a party is an error in principle. See *Minister of National Revenue* v. *Wrights' Canadian Ropes, Limited*, [1947] A.C. 109 at 122,

> "Moreover, unless it be shown that the Minister has acted in contravention of some principle of law the court, in their Lordships' opinion, cannot interfere: the section makes the Minister the sole judge of the fact of reasonableness or normalcy and the court is not at liberty to substitute its own opinion for his. But the power given to the Minister is not an arbitrary one to be exercised according to his fancy."

And at p. 123,

> "Their Lordships find nothing in the language of the Act or in the general law which would compel the Minister to state his reasons for taking action under s. 6, sub-s. 2. But this does not necessarily mean that the Minister by keeping silence can defeat the taxpayer's appeal. To hold otherwise would mean that the Minister could in every case, or, at least, the great majority of cases, render the right of appeal given by the statute completely nugatory."

See also *Mitro* v. *Mitro* (1977), 1 R.F.L. (2d) 382 per Dubin, J.A. at 383,

> "This court, on many occasions, has stressed the necessity of a trial judge to give reasons where the rights of the parties are dependent on conflicting issues of credibility. It is not necessary for such reasons to be elaborate or lengthy, but where there is a direct conflict of testimony on those issues of fact which determine legal rights, the parties are entitled to have the findings of the trial judge. In the absence of such findings this court is unable to properly determine the merit of the husband's appeal. Obviously, an appellant should not be deprived of a right of appeal by reason of the failure of the trial judge to give reasons. In some cases an appellate court could proceed in the absence of findings, but this is not such a case."

That was a case where, without findings of fact from the trial judge it was impossible to tell what principles of law he had applied and therefore whether he had made errors of law. In addition, it

was a case where there was a right of appeal on questions of fact. It is not the same as the case before me, but in this case, absent any reasons given by the Board for its choice of one method and value over another, it is impossible to tell whether the choice was based upon reason at all. The reasons to be given need not have been extensive but, with so major an issue to be decided, something was required to indicate that the Board had made its choice in a judicial way. Further authority for the need to give reasons may be found in *Re R.D.R. Construction Ltd. and Rent Review Commission* (1982), 139 D.L.R. (3d) 168, *Re Solicitor*, (1976), 3 C.P.C. 148, and *Norton Tool Co. Ltd.* v. *Tewson* (1973), 1 W.L.R. 45. There is a case in our Court of Appeal which restricts the requirement to give reasons. That is *Simpsons-Sears Limited* v. *Assessment Area of Surrey- White Rock* (1981), Stated Case 136 at p. 802. Lambert, J.A., speaking for the Court, wrote at pp. 802-5,

> "We were referred by counsel for the appellant to *S. A. DeSmith, Judicial Review of Administrative Action* at pages 207 and 208 and to the decision of the Manitoba Court of Appeal in *Re: Glendenning Motorways Inc.* (1976), 59 D.L.R. (3d) at 89. I think that both of these authorities support the proposition that unless the statute which sets up a Board or court specifically requires that Board or court to state all of its reasons, then it is not an error in law not to state all of their reasons. There may be exceptions to that general principle, but if there are, then they do not, in my opinion, apply to the Assessment Appeal Board. The Assessment Appeal Board is not required, as a matter of statute, to deal explicitly in its reasons with every piece of evidence and every argument put before it and either to accept it or reject it."

I would not wish to be seen as departing from what the Court of Appeal said there. It should be noted, however, that their remarks were not directed to the question of whether the Board should give some reasons for deciding the seminal issue before it. In that case Lambert, J.A. went on to find that the Board appeared, "to have given consideration to the submissions that were made to them and not to have followed merely one side or the other side. . .". By contrast, in the case at bar they were confronted with a hotly contested choice between two methods of depreciation. The Board specifically found no fault with either method or with the factors considered by either side, but nonetheless chose between them. In my respectful opinion that choice necessarily required the Board to find some fault with one method as contrasted with the other. Without doing that the choice was arbitrary.

The answer to Question No. 4 is; Yes.

The answer to Question No. 5 is; Yes.

Question No. 6:

> Did the Board act unreasonably and thereby err in law in using the "liability to replace" theory to calculate depreciation?

The answer to the sixth question necessarily follows upon the answer to Question 4. Although there was ample evidence before the Board upon which it might prefer "the liability to replace" theory of depreciation and although the choice of method is a question of fact for the Board the manner in which the Board chose that method, in the absence of reasons for the choice, can only be viewed as arbitrary. In that sense it was unreasonable. I emphasize, however, that upon a proper consideration of the competing theories of depreciation I do not purport to say that the "liability to replace" method ought not to be accepted by the Board.

The answer to Question No. 6 is; Yes.

Question No. 7:

> Was there any probative evidence to support the Board's use of market sales in its determination of actual value?

The seventh question has to do with the nature of the evidence of other sales before the Board. The question of whether there was any evidence is one of law. The question of weight to be given to that evidence is one of fact for the Board to decide. The seventh question as framed begins to trespass upon the Board's exclusive right to weigh the evidence and find the facts. Some degree of trespass is permitted if the question of whether there is any evidence at all is converted to the question of whether there was any evidence upon which the Board could reasonably have found the facts it did. That is the logical extension of the "no evidence" question contained in *Crown Forest Industries Ltd.* v. *Assessor of Area 6 - Courtenay* (supra). Accepting that that is a proper way of phrasing the test I think there was some probative evidence here. The Assessor put forward five different sales of pulp mills or related complexes. He rejected the first four of those himself and so told the Board. The fifth was a sale of a pulp mill in New Brunswick from Boise-Cascade Ltd. to Repap Enterprises Ltd. The Assessor in his evidence conceded the difficulty of comparing this sale to the Harmac property. The Assessor's conclusion about it was,

> "It is felt, however, that the use of the one sale of a pulp mill which is not a true comparison to the subject mill could not be considered as an attempt to find actual value by the market approach.
>
> Therefore the values shown above should either be rejected outright or at the very most, used as a scant support for the value derived by the cost approach."

Nonetheless, the Assessor had come up with a rough comparative value for the subject mill, based upon the sale of the New Brunswick mill, in a range of $269 million to $293 million. The appellant's evidence was that a number of significant discount factors had been ignored in the Assessor's rough equation. The Board dealt with the evidence of the five sales as follows,

> "The conclusion of value by the respondent Assessor is reinforced by his evidence of market sales, albeit the factual data on the comparables is admitted by Mr. Rundell not to be as detailed as desired to cause great reliance on the degree of comparability to the subject property appealed. However, the Board finds that the analysis of these market sales is sufficient evidence on which the Board may give weight to sustain the value determined by the respondent Assessor in his determination of actual value by the cost approach."

The appellant's complaint here is that there was only one actual sale which the Assessor tendered as in any way useful, but the Board refers to sales in the plural. It is suggested that is error in principle because it mistakes what the evidence was. I do not think the Board was mistaken. The evidence referred to sales in the plural. There was an analysis of all five sales even though four of them were then rejected by the Assessor. The Board's reasons do not suggest that it relied upon any of those four. Nor do they suggest that the Board relied upon the fifth sale, the New Brunswick sale, except to give some weight to sustain the value already determined by the Assessor from his cost approach. The value found by the Board was $246,641,950. That is a discount of $22.4 million from the lowest of the range suggested by the Assessor from the New Brunswick sale. Obviously the Board did not take the Assessor's evidence about that sale at its face value. Since the evidence was used to support a value found . from the cost approach in a manner which I have already determined contains an error of law, the favourable answer to Question 7 will not enable the Board's decision to be sustained here.

The answer to Question No. 7 is; Yes.

The result of this stated case is that I find the Board to have erred with respect to Questions No. 2 (a) and (b), 4, 5, and 6. The matter must be remitted to the Board with this opinion as required by s. 74 (6) of the *Assessment Act*.

Supplemental Reasons

MacMILLAN BLOEDEL LIMITED
v.
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J. E. D. Savage and B. T. MacDonell for the respondent

Reasons for Judgment September 10, 1986

Since filing my reasons for judgment herein on May 26, 1986 counsel have asked me to decide the question of which party, if either, should be awarded the costs of those proceedings. The appellant claims costs upon the basis that it was substantially successful. The respondent claims that each side should bear its own costs because success was divided.

Nine discrete issues were raised in the stated case in seven questions. Questions 2 and 3 were divided into two parts, thus giving rise to the nine issues. Five of the issues were decided in favour of the appellant and four, including Questions numbered 3(a) and 3(b) which I determined were not open to be decided on these proceedings, were decided in the way proposed by the respondent. So in strictly arithmetical terms the appellant won more than the respondent. I do not think the issue of costs here should be resolved upon that narrow arithmetic victory. The result of the application is that the matter must be remitted to the Board for a reconsideration. In that reconsideration I have required the Board to bear in mind the evidence, overlooked in their first proceedings, of the use of the discounted cash flow method of valuation by purchasers and vendors of industrial properties like the subject property. When the Board does that, it is still open to it to prefer the cost approach method to the discounted cash flow method of valuation. If it does that the result, in terms of the actual market value found, may differ little if at all from the Board's first decision. I have also required the Board to give reasons for preferring one method of depreciation over another. It is possible that on a reconsideration the Board may, having given proper reasons, still reach the finding it did at the first hearing. So it cannot at present be said that the arithmetic victory won by the appellant before me must necessarily be translated into any substantial change in the assessed value to be found. Moreover, the Board's error in failing to give reasons for judgment for preferring one method of depreciation over another, is not an error made because of the arguments advanced by the respondent during the first hearing. It is, with respect, an error made independently by the Board. Blame for it cannot be laid at the door of the respondent.

Under those circumstances this is an appropriate case to accede to the respondent's submission that each party should bear its own costs of the proceedings before me. It is so ordered.