The following version is for informational purposes only

TAKLA FOREST PRODUCTS LTD.

v.

ASSESSOR OF AREA 26 - PRINCE GEORGE

Supreme Court of British Columbia (A862179) Vancouver Registry

Before: MADAM JUSTICE SOUTHIN

Vancouver, October 24, 1986

A.W. Carpenter for the Appellant
J.S. Fowles for the Respondent

Reasons for Judgment November 20, 1986

This is a taxpayer's appeal by way of stated case from the judgment of the Assessment Appeal Board dated 17th January, 1986, determining the value to be entered into the assessment roll for 1985 of the appellant's sawmill at Fort St. James as:

Land	$94,250
Improvements	5,423,000
Machinery & Equipment	7,725,000
Total	$13,242,250

The value so determined for improvements, machinery and equipment was, in total, approximately $2.8 million less than the values determined by the Court of Revision.

In what it called the Preamble to its reasons, the Board said this:

> In valuing large industrial plants (such as the subject plant), the assessor has his work cut out for him. The plant is built for a single purpose. The machinery and equipment is specially designed to produce a given item or product. Usually a number of employees are required to operate the plant. Despite the best efforts of the operator, the plants over a period of time sometimes suffer from depreciation and obsolescence.
>
> For a number of years the assessor merely took the original construction costs of the plant and machinery and placed these values on the roll. Thereafter he would add on any new construction reported to him and delete improvements demolished. He would also apply a factor for depreciation and another for inflation and adjust the values each year. This had the effect of increasing the value of the plant and machinery automatically.
>
> * * *
>
> While times were good no one seemed concerned with this method of placing values on the roll for industrial plants.
>
> Commencing in the early 1980's however, with the onslaught of a serious recession, various industrial property managers began taking a close look at their tax positions and

especially the values placed on the assessment rolls for their plants and found them to be unrealistic.

There have been many recent appeals by the forest industry from land assessments. I know of seven which have vexed the judges of this Court, at least one of which is going to vex the judges of the Court of Appeal.

But from the perspective of this judge, the real difficulty lies in the *Assessment Act* which I described in *Crown Forest Industries Limited* v. *Assessor of Area 6 Courtenay*, Supreme Court of British Columbia (A843031) Vancouver Registry, B.C. Stated Cases 210 as a "fleshless skeleton of a statute". Why the Legislature does not do something about the statute, I do not know. Perhaps it looks on assessment appeals as a growth industry. It is well known that British Columbia is in need of growth industries.

The stated case is in these terms:

> THIS CASE STATED by the Board, pursuant to section 74 (2) of the *Assessment Act*, at the requirement of Takla Forest Products Ltd., seeks the opinions of the Supreme Court on the questions of law set out below in respect to which the following are the material facts:
>
> 1. The appellant, Takla Forest Products Ltd. ('Takla') owns a sawmill at Fort St. James, B.C. (the 'Property'). Takla appealed the 1985 assessment of the Property to the Assessment Appeal Board (the 'Board').
>
> 2. One of the grounds of appeal to the Board was that the Property should be granted an allowance for economic (external) obsolescence.
>
> 3. The Property had previously been granted a 10% allowance for economic obsolescence. It was not granted any allowance for economic obsolescence in its 1985 assessment.
>
> 4. In giving his evidence during the hearing of the appeal, Mr. Harrison, the Deputy Assessor for Assessment Area #26, stated that he had written to all of the owners of industrial plants in the assessment area informing them of his intention to withdraw the previously granted 10% economic allowance and asked them for reasons why the allowance should not be removed and that he had received no replies of a substantive nature.
>
> 5. The Board found that 'Save for the evidence of Mr. Patterson on sawmills going into bankruptcy in the United States, the appellant adduced no evidence whatsoever of such an adverse change in circumstances to require the Board to apply any allowance whatsoever.'
>
> 6. Mr. Harrison also stated, in giving his evidence, that economic allowances may have been granted in other areas of the Province, but on being cross-examined, stated 'I do not agree that economic allowance should be given to the sawmills in our area.'
>
> 7. The Board's decision, dated January 17,1986, is attached and marked Schedule 'A'.
>
> THE QUESTIONS on which the Board is required to ask for the opinions of the Supreme Court are:
>
> 1. Did the Board err in law in finding with respect to the Deputy Assessor for Area #26's letters to the owners of industrial plants in the assessment area informing them of his

> intention to withdraw the previously granted 10% economic allowance that Mr. Harrison 'received no replies of a substantive nature'?
>
> 2. Did the Board err in law in finding that 'Save for the evidence of Mr. Patterson on sawmills going into bankruptcy in the United States, the appellant adduced no evidence whatsoever of such an adverse change in circumstances to require the Board to apply any allowance (for economic (external) obsolescence) whatsoever'?

The Board valued the mill on a cost basis. For various reasons, it rejected discounted cash flow analysis as a means of determining the value of the mill. It held that there was no sufficient evidence of sales of comparable properties. No appeal is taken, nor could it have been successfully taken, in light of the Board's reasons, from its reliance on cost to determine value. It is open to the Board where the evidence justifies it to consider cost. See s. 26 (3) of the *Assessment Act*, R.S.B.C. 1979, c. 21:

> S. 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,

As to the first question, the evidence shows (Transcript of Proceedings, p. 517) that the assessor did receive a reply from the appellant's parent company giving reasons why the economic allowance should be maintained. That reply can only be described as of a substantive nature. But not every misstatement of the evidence constitutes an error of law. Such a misstatement may, if it is fundamental to the decision, lead to a finding by an appellate tribunal that the lower tribunal came to a conclusion to which no reasonable man could come. If it does, then the principle of *Edwards* v. *Bairstow* [1956] A.C. 14 (H.L.) will apply. This misstatement was not fundamental. It led, in fact, nowhere.

Thus, the answer to the first question is "No",

The second question is more troubling.

There was a great deal of evidence of the present miseries of the forest industry. But present miseries are not of themselves conclusive of economic (external) obsolescence. Although the phrase "economic obsolescence" is not defined in the Act, it means in appraisal theory and, I find in this Act, "the diminished utility of the subject of assessment due to negative influences from outside the site." It does not mean temporary diminished utility because of the ups and downs of the economy. The word "obsolescence" means "the process of becoming obsolete" and "obsolete" means "That is no longer practised or used; discarded; out of date", (Shorter Oxford English Dictionary, Vol. 11 p. 1430). In 1910, a factory constructed especially for building hansom cabs and which could not be used for other purposes was suffering from economic obsolescence. In the 1930's, a factory for building motor cars may have been unprofitable but it was not afflicted by economic obsolescence.

Whether on the whole of the evidence the forest industry in general and this mill in particular is suffering from obsolescence which is a condition, if not permanent, at least more than temporary, is a matter for the Board whose duty it is to weigh the evidence. The Board has weighed it and it is not for the Court to substitute its view of the evidence for that of the trier of fact.

The Board did not say that there had been no adverse change in circumstances. What it said was that there was no evidence of *such* an adverse change *as to warrant an allowance for obsolescence.* By this, I understand the Board to have concluded that the present miseries of this appellant are cyclical and not permanent. This statement does not disclose an error of law.

It follows that the answer to the second question is also "No".

If there is no legal impediment to costs being awarded to the assessor, the assessor shall have costs against the appellant.