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ASSESSOR OF AREA 10 - BURNABY-NEW WESTMINSTER

v.

CHEVRON CANADA LIMITED

Supreme Court of British Columbia (A870163) Vancouver Registry

Before: MR. JUSTICE MEREDITH

Vancouver, March 13, 1987

J.K. Greenwood for the Appellant
S.B. Armstrong for the Respondent

Reasons for Judgment March 25, 1987

This appeal by way of Stated Case concerns the categorization of 33 blending tanks and two "asphalt" tanks installed as part of an oil refinery owned by Chevron in Burnaby. The question before the Board was whether the tanks were assessable for general purposes as storage tanks or whether they fell within the exception contained in the definition of improvements set forth in the Interpretation Section of the *Assessment Act*. The definition reads in part as follows:

> "'improvements' [for general municipal and Provincial taxation purposes. . .] includes
>
> > (a) all buildings, fixtures, machinery, structures and similar things erected in, on, under or affixed to land or to a building, fixture, or structure in, on, under or affixed to land and, without limiting the generality of the foregoing, includes aqueducts, tunnels other than mine workings, bridges, dams, reservoirs, roads, transformers and storage tanks of whatever kind or nature, <u>but does not include those fixtures, machinery and similar things, other than buildings and storage tanks as, if erected or affixed by a tenant, would, as between landlord and tenant, be removable by the tenant as personal property</u>;"

I have underlined the words contained in the exception.

The board found first that the tanks were not storage tanks. That finding covered both the blending tanks and the "asphalt" tanks. That finding was a finding of fact. It cannot be and is not challenged by the Appellant. There was evidence upon which the Board could reach this conclusion in the case of both types of tanks.

Although it seems to me to be irrelevant, the Board went on to find secondly that the tanks were structures. No Appeal was taken from that finding.

The Board then went on to hold that in effect the tanks remained the "personal property" of Chevron as being machinery or alternatively fixtures removable by Chevron as if it were a tenant on the land. If I correctly interpret the Board's reasons, the Board was persuaded that the tanks were machinery because the purpose of installation was to make them an integral part of "a homogeneous well-defined refinery". I think it is implied in the reasons that the tanks as machinery could be removed if Chevron were a tenant.

Next the Board found that if the tanks were not machinery, they were fixtures "removable as between landlord and tenant". Thus they remained the property of Chevron as if a tenant. In coming to this conclusion, the Board seems to have adopted the reasoning of Meredith, C. J. in *Stack* v. *Eaton* 4 O.L.R. 335, that the intention of Chevron (to retain title I suppose) may be taken into account but only by way of presumption "from the degree and object of the annexation". But the Board seems also to have considered the degree of annexation. And it seems fortified by actual evidence of the ease of removal of the entire refinery. In a case decided in 1955, oddly styled *Municipal Act* v. *District of Burnaby*, Mr. Justice Wilson concluded that a similar oil refinery in Burnaby (perhaps the same one) comprised "trade fixtures". That decision it seems to me is not only compelling but is binding. If the tanks in question here are not as a matter of fact storage tanks, then they, with the other equipment, must be trade fixtures.

I do not think any purpose would be served by answering directly the many questions posed in this Stated Case. The answer that the tanks are trade fixtures resolves the issue.

But I would add that I think the exception contained in the definition defies rational analysis because it is probably based on a faulty premise. The premise is that some things placed on vacant land by a tenant could automatically somehow or other become the property of the landlord. Apparently even buildings and storage tanks would not necessarily, as the exception implies, automatically become the "personal property" of the landlord. That premise rests on the further premise that what is placed on the vacant property will benefit the site. But what if it does not? Or what if the landlord thinks it does not? If the refinery were held to belong to a landlord as having been more securely fixed to the land, would it automatically be the property of the landlord if it were obsolete? That is to say if it were a liability. Could not the landlord say: "This is your property take it away?" Then can title depend on what the landlord thinks? I think not.

Thus it must be inappropriate to decide the question of title ("personal property") on ancient principles dealing with questions as to whether the material is used in a trade, or comprises chattels, and to consider the degree of annexation or the degree to which the land will be disturbed by removal. Short of contamination, today vacant land can surely be restored substantially to its original condition at whatever cost to the tenant. Thus what is put on vacant land by a tenant under a "bare lease" must remain the property of the tenant. And right to title must carry with it not only the right to removal but the obligation to remove if the landlord so requires.

This reasoning leads to an absurd conclusion in that much of what is contained in the opening definition of improvements for general taxing purposes in the *Assessment Act* would *ipso facto* be excluded by the excluding clause. For instance, an aqueduct or dam placed on vacant land by a tenant pulp mill would remain its property as subject to removal at the instance of the landlord and thus not taxable. However, no doubt, the section contemplates that aqueducts and dams be taxed for general purposes.

Finally I would observe that the section may be adequate to define what will and what will not be taxed if the question has to do with what may be contained in or has been added to a building.

The answers to the questions will be answered in accordance with these reasons.

The respondent is entitled to its costs.