

The following version is for informational purposes only

CHEVRON CANADA LIMITED

v.

ASSESSOR OF AREA 9 - VANCOUVER

Supreme Court of British Columbia (A860099) Vancouver Registry

Before: MR. JUSTICE WOOD

Vancouver, February 11, 1986

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

Reasons for Judgment

February 11, 1986

THE COURT: (Oral) This is a stated case from the Assessment Appeal Board requesting the court's opinion on three questions: 1. Did the Board err in law in finding that the appeal to the Board complied with the requirements of the *Assessment Act*? 2. Did the Board err in law in ruling that the appellant, Chevron Canada Limited, was entitled to proceed with its appeal on the assessed value of its land? 3. Does the Board have any jurisdiction to hear an appeal as to value if the appellant had abandoned its appeal to the Court of Revision below?

The facts are set out in the stated case. Chevron Canada Limited, the taxpayer, filed and then withdrew an appeal pursuant to Section 40 of the *Assessment Act*, relative to the assessment for tax purposes of certain real property in Vancouver. Later, and after the time for filing a complaint under Section 40 had expired, the taxpayer asked the Court of Revision to consider the value of the assessed property under Section 44 (1) (b) of the Act.

The action of the Court of Revision, taken in response to this request, is not entirely clear. The court apparently met or sat on November 22, 1984. By letter of the same date, H. R. Jones, the area assessor, through whom, I am told, one communicates with the Court of Revision, advised the taxpayer in the following language - I am reading the second and third paragraph of his letter of that date:

"The Court of Revision, in reviewing your late submission, has investigated your assessment under their powers in Section 44 (l) (b), a copy of which is attached.

As the court has chosen not to deal with your letter of appeal as it was out of time, you may wish to file an appeal to the Assessment Appeal Board. Attached are Sections 67 and 68 of the *Assessment Act* outlining the procedure, and I would point out that the required fee is five dollars for the first parcel and two dollars for each additional parcel"

If the Court of Revision investigated and adjudicated upon the fairness and the equity of the assessment under Section 44 (1) (b), then the taxpayer has the right of appeal to the Assessment Appeal Board under Section 67 (1) of the Act. If, on the other hand, there was a refusal of the Court of Revision to consider and to adjudicate upon the fairness and equity of the assessment then the taxpayer has no right of appeal under Section 67 (1) of the Act, because an appeal from a refusal by the court to make such an adjudication only lies where the taxpayer has filed a Section 40 complaint. This would appear to be the effect of the decision of Locke, J. in *Tibron*

Investments Inc. et al. v. The Assessor of Area #01 - Saanich-Capital, unreported, number 85-1105, June 14, 1985.

The taxpayer launched an appeal to the Assessment Appeal Board, which, after hearing evidence and argument, concluded that "the appeal complies with the requirements of the *Assessment Act*." Unfortunately, the Board gives no reason for that finding.

The only other information available on what the Court of Revision did on November 22, 1984, apart from the letter of that date, is found in paragraph four of the stated case which summarizes the evidence - or at least some of the evidence which the Board heard and took into account when it considered the issues now before me, in October of 1985.

"On November 22, 1984, the assessor brought the Chevron request to the attention of the Court of Revision. The Court of Revision noted that the letter of November 20, 1984 was too late for a complaint. The Court of Revision then made reference to its power of review under Section 44 (1) (b) of the *Assessment Act* and asked the assessor whether he knew of anything indicating an error in the valuation. The assessor said no. The taxpayer, Chevron Canada Limited, had not been given notice of this hearing before the Court of Revision and was not present to make any submissions on the question of valuation."

The answer to each of the three questions depends on my determination of what exactly occurred before the Court of Revision. I am satisfied on the material before me that the Court of Revision refused to hear the "appeal" of the taxpayer due to the fact that it was out of time. The question apparently put to the assessor by the court, namely, whether there was any indication of an error in valuation, may have been a request that the assessor make any report required by Section 9 of the Act, or it may have been a general inquiry made so as to enable the court to exercise its discretion whether or not to hear the late appeal. In any event, it was not an inquiry that amounted to a determination of the appeal on its merits, and it is my opinion that a determination on the merits is what is meant by the phrase "decision of a Court of Revision" in the second line of Section 67 (1) of the Act. The fact that the taxpayer was not notified of the hearing before the Court of Revision strengthens my view that the court did not purport to hear its appeal on its merits.

The wording of the second paragraph of Mr. Jones' letter of November 22, 1984 would, at first blush, suggest that the Court of Revision made a decision under Section 44 (1) (b), but I am satisfied that a mere investigation without an adjudication on the assessment or complaint, that is to say without a determination that the assessment in question is fair, equitable and fairly represents actual values within the municipal or rural area, does not amount to a decision as that term is used in Section 67 (1) of the Act.

Accordingly, it is my opinion that:

1. The answer to question one is yes, the Board erred in law in finding that the appeal to the Board complied with the requirements of the *Assessment Act*.
2. The answer to question two is yes, the Board erred in law in ruling that the appellant, Chevron Canada Limited, was entitled to proceed with its appeal on the assessed value of the land, and
3. The answer to question three is yes, the Board does have jurisdiction to hear an appeal as to value where the appellant has abandoned its appeal to the Court of Revision, if the Court of Revision, notwithstanding that abandonment, subsequently adjudicates on the merits of the assessment in question.

I must say that I hesitated to even answer question three because my understanding of the law has always been that the stated case question should be answered with a yes or no, and it is not

possible to answer question three in an unqualified way. So if counsel can agree to simply remove question three from the order, that suits me just fine.

MR. GREENWOOD: I think on several occasions your brothers have felt those qualify as an answer and we are quite satisfied I think.

THE COURT: All right. As to costs?

MR. GREENWOOD: I don't ask for costs.

THE COURT: Fine. There will be no order as to costs.