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**STE. MICHELLE WINES, A DIVISION OF T.G. BRIGHT & CO. LIMITED
FORMERLY KNOWN AS JORDAN & STE-MICHELLE CELLARS LTD.**

v.

ASSESOR OF AREA 14 - SURREY-WHITE ROCK

Supreme Court of British Columbia (A872712) Vancouver Registry

Before: MR. JUSTICE SHAW

Vancouver, January 11, 1988

D.G.S. Rae and A.P. Seckel for the Appellant
J.E.D. Savage for the Respondent

Reasons for Judgment

February 23, 1988

This case involves the assessment for property tax purposes of various tanks used in the wine and cider making processes at the appellant's winery in Surrey, B.C.

The main issue involves the approach by the Assessment Appeal Board to the classification of certain tanks as "storage tanks" within the two definitions of "improvements" in s. 1 of the *Assessment Act*, R.S.B.C. 1979, c. 21. The applicable parts of the definitions read:

"improvements" for general municipal and Provincial taxation purposes under the *Municipal Act*, *Vancouver Charter* and *Taxation (Rural Area) Act* 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, 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;

. . .

"improvements" for purposes other than for general municipal and Provincial taxation purposes under the *Municipal Act*, *Vancouver Charter* and *Taxation (Rural Area) Act* includes

(a) all buildings, fixtures, machinery, structures and similar things erected or placed 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 and fixtures, machinery and similar things of a commercial or

industrial undertaking, business or going concern operation so erected, affixed or placed by a tenant, except those exempted by regulation;

(emphasis added)

The Assessment Appeal Board ruled that some of the appellant's tanks were "storage tanks" and some were not. The Board ordered that the storage tanks include, generally, all those tanks which are not used for fermentation, final blending and filtration, bottling, or sherry baking. The Board further ordered that the Assessor prepare, from his inventory, an analysis of those tanks which fall into each category, and return to the Board for a further hearing (if necessary) and a final order or determination.

The appellant has appealed to this Court by way of stated case under s. 74 of the *Assessment Act*. Such an appeal is on questions of law only.

Question No. 1

1. Did the Assessment Appeal Board err in law when it concluded that certain of the appellant's tanks were storage tanks within the meaning of the definition of "improvements" found in Section 1 of the *Assessment Act*, R.S.B.C. 1979, c. 21?

A definition of "storage tanks" used in similar provisions in the *Municipal Act*, R.S.B.C. 1960, c. 255, was given by Davey, J.A. (as he then was) in *Re Trans Mountain Oil Pipe Line Co.* (1966), 58 D.L.R. (2d) 97 (B.C.C.A.) at 100-101:

In my opinion, "storage" in this context means something more than holding, although in some other contexts it may mean no more than that; see the definition of the verb "store" in the *New Oxford Dictionary*, item 3. Item 2 of that definition defines the word: "To keep in store for future use; to collect and keep in reserve; to form a store, stock or supply of; to accumulate, hoard." The dates given in the dictionary of first appearance of the word in a particular sense show that "store" has long been used as in item 2, but its use as a synonym of "hold" is comparatively recent, dating from 1911. Certainly in general usage it introduces the concept expressed in item 2. In a taxing statute, I think it must receive the older and more restricted meaning it bears in general use, unless the Legislature has indicated a contrary intention, of which I find no evidence.

In short, to be storage tanks they must be used primarily to store oil in the meaning of item 2.

I said primarily, because the Legislature has chosen to classify the tanks by a word that expresses their function. Most of the tanks perform more than one function, and accordingly their assessability as improvements must be determined by their primary function. It also follows that is the principal or predominant use, not their capacity for another use to which they are not presently being applied as contended by respondents, that determines whether they are storage tanks.

Although the judgment of Davey, J.A. was a dissent as to the outcome, neither of the other two members of the Court defined "storage tanks" or expressed an opinion contrary to that given by Davey, J.A. on this point. In my opinion, the ruling of Davey, J.A. is correct and I accept it.

I will first consider this appeal as it relates to the tanks used in the appellant's wine-making process, and will then address the appeal in respect of the tanks used by the appellant to make apple cider:

Tanks Used in Wine-Making Process

The Board in its decision exercised judgment to decide which tanks used in the wine-making process were used primarily for the production of wine and which were primarily used for storage. The particular tanks in dispute were used in part for maturation of the wine and in part as a means of storage to accommodate and await the demands of the marketing of the wine.

The appellant submitted that the Board erred in doing so. The appellant says that these tanks are not storage tanks because they are used as an integral part of the winemaking process. The position of the appellant is summarized in its written submission, as follows:

The question of whether the Ste. Michelle Wines production tanks are storage tanks is determined by their use, as it is the primary function of the tanks which is important. This determination is related to the submission that the tanks are machinery or similar things. They are an essential part of the production facilities at the winery. In the process of achieving a potable product the liquid that will become wine is transferred through the tanks according to a system. To look at anyone stage of that process in isolation and say that the tanks at that stage are storage tanks is to ignore the systematic process that is ongoing. Only at the completion of the process is there a potable product worth storing. At all other times the wine is in production.

Counsel for the appellant cited *Hiram Walker & Sons Ltd. v. Town of Walkerville*, [1933] 3 D.L.R. 433 (S.C.C.). Smith, J., for the Court, while addressing a different issue, said at pp. 435-436:

I am of opinion that maturing and aging is part of the process of manufacture of the whisky, as the liquor is not in condition to be placed upon the market until the process is completed. . .

While the observation of Smith, J., makes eminent sense, and is no doubt equally valid for the wine-making process (and cider as well), I do not think it is determinative of the issue the Board had to decide. The Board had to determine the primary usage of the various tanks. Primary means the most important use; it does not preclude other uses: *Cominco Ltd. v. Assessor of Area #21 Nelson-Trail* (unreported), Vancouver Registry No. A870801, February 5, 1988, and *Rayonier Canada (B.C.) Limited v. Assessment Area of Vancouver* (1979), Stated Case No. 127, p. 755 (B.C.S.C.). It follows that a tank may be used as an integral part of the wine-making process and at the same time be used for storage. The decision as to what is the primary use is a matter of evidence and the weighing of that evidence.

If there was some evidence before the Board which rationally supports its decision, then its findings should not be disturbed on appeal to this Court. This is because the appeals to this Court under s. 74 of the *Assessment Act* are on questions of law only. On reviewing the transcript of the proceedings before the Assessment Appeal Board, I am satisfied that there was some evidence to support the findings of the Board as to the disputed tanks in the wine-making process.

The appellant led evidence to support its position. Mr. L. Bradshaw of I.C. & I Assessment Review Ltd. said in his evidence on behalf of the appellant:

Anytime the wine may spend in storage during processing is purely coincidental, as the primary purpose of the tanks is as noted: to ready the wine for bottling. Since these tanks play an integral part in the production of wine and are not used for storage. . .

(Transcript: p. 10)

Mr. J. Fletcher, another witness for the appellant, said:

We have for cold stabilization, which is the removal of the potassium bitartrate crystals, we have a cold stabilization process whereby We artificially refrigerate the wine, store it

in small insulated tanks then filter it off. So, it's an in-line process versus a wait, see, type process.

(Transcript: p. 19)

However, there were some significant passages in the evidence of Mr. Fletcher when he was questioned by one of the Board members, Mr. M. A. Carpenter, as follows:

Mr. Carpenter: Do you store your product in bottles while it's waiting to go into the liquor stores and be sold?

A: We carry approximately a 6 week overall inventory of case goods against a sales forecast. We want to bottle to order.

Mr. Carpenter: So, in effect, you receive your raw material over a 6 week period.

A Yes.

Mr. Carpenter: You market over a 12 month period.

A Yes.

Mr. Carpenter: With peaks and valleys -

A Yes.

Mr. Carpenter: In that period, in cycle.

A Yes.

Mr. Carpenter: You maintain about a 6 weeks forward stock, if I [sic] can, in bottles.

A Yes.

Mr. Carpenter: And the remainder of the product is drawn as required to meet market demands over that 12 month period.

A That's correct.

Mr. Carpenter: And in the interim, is held someplace in some form for some purpose.

A Yes, sir.

Mr. Carpenter: And there may be more than one - there may be a benefit in addition to a holding that occurs during that time.

A Oh, yes, sir

(Transcript: pp. 113-114)

Mr. Carpenter: And you keep 6 weeks supply on hand in bottles and so, assuming all of your '85 crop was used up at the end of January, the last of it would be bottled in mid-December, am I correct?

A Perhaps even going into January.

Mr. Carpenter: Okay, but I mean

A Around that point. As –

Mr. Carpenter: At the earliest it would be 6 weeks.

A Yes.

Mr. Carpenter: And so, from April until December, you keep it somewhere.

A Mmhum.

Mr. Carpenter: And it is being retained until the market requires it and hopefully something good is happening to it, as well.

A Mmhum.

(Transcript: pp. 116-117)

The implication that may be taken from the above questions and answers is that storage of the wine to await the demands of the market was a major consideration while the wine was being held during the maturation process. In view of this evidence I think it was open to the Board to find that the primary purpose of the subject tanks was to store the wine until the market was ready to receive it.

I therefore hold that there was evidence upon which the Board's rulings on primary usage of the disputed tanks in the wine process as storage tanks should be upheld.

It follows that the Board did not err in law when it concluded that certain of the appellant's tanks in the wine-making process were storage tanks within the definitions of "improvements" in s. 1 of the *Assessment Act*.

Tanks Used in Cider-Making Process

The approach by the Board to tanks used in the cider-making process differed from that used for the wine tanks. In respect to the wine tanks, the Board exercised its judgment in weighing the processing use against the storage-for-market use and came to conclusions as to which was the more important use. To a significant extent, the Board did not do this for the tanks used in the cider-making process. The Board said, at p. 4 of its decision:

In the instance of the subject the evidence is also that a significant component of the throughput, about 50%, consists of apple cider; and that apples are received and processed for nine months of the year as compared to twelve months sales. The Board sees no distinction in principle. Whether it is necessary to reconcile six weeks, or 36 weeks, of supply with fifty-two weeks of delivery, is purely a question of degree; and the statute does not differentiate based on the extent of use for storage. The Board sees no basis for distinguishing those tanks used for apple processing from those used for wine with regard to the storage function.

In my opinion, the Board erred in holding that the Statute does not differentiate based on the extent of use for storage. On the face of the cited figures it is apparent that a much smaller adjustment is needed in the cider-making process to have 36 weeks of apple supply meet a 12 month cider market than in the wine-making process to have six weeks of grape supply meet a 12 months wine market. The Board, in treating the two as being the same in principle, excluded a major consideration for concluding that the principal use of tanks was for cider processing and their less-than-principal use was the storage of cider for market. In doing this, in my view, the Board erred in law by failing to exercise its judgment in accordance with the above-quoted interpretation of "storage tanks" of Davey, J.A., as accepted in this judgment.

I conclude therefore that the Board erred in law when it held that certain of the appellant's tanks used in the cider-making process were storage tanks within the definitions of "improvements" in s. 1 of the *Assessment Act*.

Answer to Question No. 1

No, in respect of the tanks used in the wine-making process;

Yes, in respect of the tanks used in the cider-making process.

Question Nos. 2 and 3

Question Nos. 2 and 3 read:

2. Did the Assessment Appeal Board err in law when it concluded that the tanks were not machinery within the meaning of the definition of .. improvements" found in Section 1 of the *Assessment Act*, R.S.B.C. 1979, c. 21?
3. Did the Assessment Appeal Board err in law when it concluded that the tanks were structures within the meaning of the definition of "improvements" found in Section 1 of the *Assessment Act*, R.S.B.C. 1979, c. 21?

These questions raise an issue of the distinction between "machinery" and "structures" in the first of the two definitions of "improvements" which were quoted earlier in this judgment. The general part of the first definition includes both "machinery" and "structures", whereas the exception for landlord and tenant-type fixtures uses the word "machinery" but not "structures". The potential issue arising from this apparent anomaly is, in my view, rendered immaterial to this appeal because of a finding of the Board that all the appellant's tanks are landlord and tenant-type fixtures. Because "storage tanks" are expressly excluded from the "landlord and tenant" exception and are expressly included in the general part of the definition of "improvements", "storage tanks" are assessable whether or not they are defined as "machinery" or "structures". As for those tanks which are not "storage tanks", they are not assessable because of the Board's finding that they are landlord and tenant-type fixtures. Therefore, nothing turns on any distinction there might be between "machinery" or "structures",

The issue of the distinction between "machinery" and "structures" has no application to the second definition of "improvements". It is common ground that the tanks that are "storage tanks" under the second definition are assessable, and those which are not "storage tanks" are not assessable.

SUMMARY

Question No. 1

Did the Assessment Appeal Board err in law when it concluded that certain of the appellant's tanks were storage tanks within the meaning of the definition of "improvements" found in Section 1 of the *Assessment Act*, R.S.B.C. 1979, c. 21?

Answer: No, in respect of the tanks used in the wine-making process;

Yes, in respect of the tanks used in the cider-making process.

Question No. 2

Did the Assessment Appeal Board err in law when it concluded that the tanks were not machinery within the meaning of the definition of "improvements" found in Section 1 of the *Assessment Act*, R.S.B.C. 1979, c. 21?

Answer: It is not necessary to answer Question No. 2.

Question No. 3

Did the Assessment Appeal Board err in law when it concluded that the tanks were structures within the meaning of the definition of "improvements" found in Section 1 of the *Assessment Act*, R.S.B.C. 1979, c. 21?

Answer: It is not necessary to answer Question No. 3.

As required by s. 74 (6) of the *Assessment Act*, I order that this opinion be remitted to the Assessment Appeal Board.

As each side was partially successful on this appeal, I order that there be no costs.