ASSESSOR OF AREA 27 - PEACE RIVER

v.

MOBIL OIL CANADA, LTD.

Supreme Court of British Columbia (A873480) Vancouver Registry

Before MADAM JUSTICE SOUTHIN

Vancouver, April 21, 1988

Christopher M. Considine for the appellant
J. R. Lakes for the respondent

Reasons for Judgment April 25, 1988

This is a case stated by the Assessment Appeal Board pursuant to s. 74 of the *Assessment Act*, R.S.B.C. 1979, c. 21.

Mobile Oil Canada, Ltd., the respondent, holds by lease from the Crown, for the purpose of an airstrip, a thirty- three acre parcel of land northeast of Fort Nelson. The lease expires the 8th October, 1989. The rent is $1,152 per year.

When the Assessor prepared the 1987 assessment roll, he put this parcel upon it at $2,500 for land only. I infer that this had been the assessed value of the land for many years and that at no time was the actual value of the airstrip included on the roll.

By mistake, Mobile Oil, which was appealing many assessments of parcels over which its pipeline passed, appealed the assessment in issue.

When that appeal came on for hearing before the Court of Revision, Mobil Oil, for some undisclosed reason, was not present. The Assessor persuaded the Court of Revision to fix the assessment at $10,400 for the land and $500,000 for improvements. That amount has been found by the Assessment Appeal Board to be without foundation and arbitrary.

Mobil thereupon appealed to the Assessment Appeal Board.

At the hearing, the Assessor abandoned any attempt to support the assessment of the Court of Revision and asked the Board to fix an actual value as of 1st July, 1986 of $1,565,050 made up of land at $1,423,200 and improvements at $141,850.

In support of this submission he adduced an appraisal report.

For reasons open to it, the Board rejected that evidence. Neither the Assessor nor Mobil adduced any other evidence from which "actual value" could be determined.

The Board was thus in the rare, if not unprecedented, difficulty of having to decide an appeal with nothing at all in the way of evidence unless the assessment itself can be said to be evidence of "actual value".

The Board offered the Assessor an opportunity to obtain further evidence. I quote from the reasons:

Because of the lack of accurate cost information the Board is placed in a difficult position in trying to determine actual value. Realizing its duty to find actual value the Board, after hearing all the evidence of the parties and argument of counsel, suggested two alternatives to the Assessor: 1. The Board would consider permitting the Assessor to obtain further evidence of value by hiring the services of an independent engineer to inspect the Mobil air strip or, 2. The Board would consider ordering the Assessor to obtain the services of an independent engineer.

The Assessor declined to accept the first suggestion and opposed the second on the basis of having to bear the costs of obtaining that additional evidence. The Board has trouble in accepting that the cost of obtaining evidence justifies a determination of value which is unsubstantiated by evidence or arbitrary. Having addressed the question of the onus of proof, the Board said this:

The Board suspects that the airstrip has a substantial value. Even the rental under the lease of $1,152 per year suggests a value in excess of $2,500. No evidence of an appropriate capitalization rate was presented, however, and therefore, even a modest value based on the lease rental would be arbitrary. The Board, therefore, after considering all the evidence and arguments, concludes that for the 1987 Assessment Roll the actual value of the airstrip be its historical value on the Roll, before the arbitrary recommendation to the Court of Revision, of $2,500 for land and Nil for improvements. The stated case puts eight questions, one of which was amended at the hearing but the nub of the matter, as the case was argued by counsel, is in the second and third of those questions: 2. Did the Assessment Appeal Board err in law by failing to determine the actual value of the appealed land? 3. Did the Assessment Appeal Board err in law in failing to determine the actual value of the appealed improvements? Mr. Considine's syllogism is in this wise:

1. The Board has a duty to determine "actual value". See the Assessment Act, s. 26 (2) and (3) and such cases as Dreifus v. Royds (1920) 57 D.L.R. 44 (S.C.C.).

2. The Board has the power under s. 60 - 63 to obtain evidence ex mero motu. He cites from the judgment of Taylor, J. in St. Helen's Hotel v. The Assessor of Area #9 (1984) Stated Case 189; Vancouver Registry A841429, 6th September, 1984: Section 69 (1) confers on the Board all the powers of a Court of Revision and clause (6) of that sub-section specifically empowers the Board to deal with the classification of land and improvements. A consideration of the powers of a Court of Revision, enumerated in Part 4 of the Act and particularly in Section 44, shows that a Court of Revision is entitled to inquire into all assessments, whether complained against or not. Provided appropriate prior notice is given to the registered owner, a Court of Revision is empowered to change the classification which the assessor has assigned to property without any complaint having been made. The Court of Revision has a general jurisdiction over the roll, and a duty to remedy errors however they come to its attention, and is not a tribunal concerned simply with the resolution of disputes brought before it by others. Since the Assessment Appeal Board has the powers of a Court of Revision, it is apparent that, subject to proper notice being given, it may enquire of its own motion into any question relating to the correctness of the roll, without the need of any issue being raised by an assessor or taxpayer. It must follow from this that the Board can

resolve issues which have been raised before it as it sees fit, and is not bound by any agreement between the disputants.

3. The Board can and should do so where the evidence of actual value is unsatisfactory.

4. Here the Board itself knew there was no proper evidence of "actual value" as of 1st July, 1986. Thus, its adopting as "actual value" what plainly was not, i.e. the assessment entered in the assessment roll, was an error in law. Mr. Lakes replies thus:

1. The question of "actual value" is a question of fact.

2. The assessment itself is some evidence of "actual value" because the Assessor's duty in making up the assessment roll is to determine "actual value".

3. The Board, in the absence of other evidence, decided the question of fact by reference to the only evidence it had, namely, the assessment. It had a right to do so.

4. Thus, no question of law arises and the appeal must fail for want of jurisdiction.

5. Even if the Board has power to act on its own motion, it is not obliged to do so.

Each of these arguments is reasonable. The underlying philosophies are profoundly different. The philosophy of Mr. Considine's argument is that the Assessment Appeal Board owes a duty to the whole body of taxpayers to ensure that an assessment which comes before it is correct whereas the philosophy of Mr. Lakes' argument is that the Assessment Appeal Board is simply a judge between two contesting parties, namely, the Assessor and the taxpayer the assessment against whom is in issue.

For my part, I prefer the philosophy of Mr. Considine's argument. But Mr. Lakes' argument is more in keeping with the long-standing attitude of the law that if a man can legally get out of making a fair contribution to the public coffers, he may do so.

In my opinion, the Board did not err in law. What it did was fall back upon the procedural concepts of onus of proof and absence of evidence. The Board was not bound by the statute to this course. Equally, it was not bound by the statute to adopt the course which Mr. Considine says it should have followed.

That being so, my answer to all the questions is "no".

Costs to the respondent.