GALLOWAY LUMBER CO.

v.

ASSESSOR OF AREA 22 - EAST KOOTENAY

British Columbia Court of Appeal (CA009486) Vancouver Registry

Before THE HONOURABLE MADAM JUSTICE SOUTHIN (in chambers)

Vancouver, B.C., October 18, 1988

John E. D. Savage for the Applicant
Peter D. Feldberg for the Respondent

Reasons for Judgment November 1, 1988

This is an application by the Assessor of Area 22 pursuant to s. 74 of the Assessment Act, R.S.B.C. 1979, c. 21 for leave to appeal from the judgment of the Honourable Mr. Justice Gow, pronounced the 3rd June, 1988, in which he held that the Assessment Appeal Board did not err in law in certain determinations made by it.

Under the Assessment Act, only questions of law can be brought to this Court.

The issue upon which the case was stated, broadly put, was whether a dry kiln with certain physical features was an "improvement" within the definition of s. 1 of the Act. For, if it was, then pursuant to s. 2, it must be included in the assessment roll.

By s. 1 "property" includes land and improvements.

Improvements are defined, in part, thus:

"improvements" means

(a) buildings, fixtures, structures and similar things erected on or affixed to land . . . and without limiting the generality of this, "improvements" includes

(b) machinery affixed to or forming part of anything referred to in paragraph (a) but notwithstanding the foregoing "improvements" does not, except for buildings and storage tanks, include

(o) machinery that is used to manufacture, process or repair anything or that is used principally to convey anything that is being manufactured, processed or repaired.

Mr. Savage describes the phrase "except for buildings and storage tanks" as an exclusion from an exception.

Because of the wording of the section it follows that, even if a dry kiln is in one sense machinery, so much of it as is a "building" remains an improvement and thus assessable.

As I understand the authorities, where the facts are not in dispute, the question of whether these facts fall within or without a statutory provision is a question of law.

What is crucial to this question is the meaning of the word "building" in the context of the statute. "Building" is an ordinary English word to which neither the Assessment Act nor the Interpretation Act, R.S.B.C. 1979, c. 206 gives any technical meaning.

It appears to me implicit in the Assessment Appeal Board's remarks on p. 8 that the ordinary man would call this thing a building:

The Board agrees that the facilities under review have the appearance of buildings. They have walls and a roof and seem to come within the legal definition of buildings or structures. The Board also agrees that if the sawmill closed, with minimum alterations these facilities could be converted to warehouses.

If that be so, then the next question is whether the natural and ordinary meaning of the word "building" is limited by other words of the statute.

What is really at stake in this appeal is whether an ordinary English word is to be given its ordinary meaning or it is to be given some restricted and artificial meaning that would, in my opinion, surprise the ordinary literate citizen.

What the Board has done, and Gow J. has said it did not err in so doing, is hold that a thing i.e. roof, walls and foundation that in common speech is a "building" is not a "building" within this statute when the roof, walls and foundation are an integral part of the process for which the thing was constructed.

I have not found it necessary to decide, in my own mind, whether or not the learned judge was right.

Whether leave is or is not to be granted under s. 74 should not depend on whether the judge hearing the application thinks the judgment below patently erroneous.

In my opinion, leave should be granted where the question of law, as here:

(a) has not been previously addressed by this Court,

(b) affects a substantial number of assessments, and, therefore, the taxation base,

(c) can be said to admit rationally of an answer different from that given below.

By this formulation, I do not exclude leave being granted in other circumstances but, as this application falls within that formulation, I need not address the question of other bases for granting leave.

Although this issue is of considerable importance to assessors (and, therefore, to the citizenry generally whom they, in a sense, represent) it is not of great importance, in terms of money, to this particular taxpayer. It is a test case but, not surprisingly, this taxpayer does not see why it should bear the costs of being, so to speak, a fiscal guinea pig. Nor do I. I inquired of counsel if I had power to impose terms if I granted leave. Both counsel took the position that I did.

Therefore, the Assessor will heave leave to appeal if he accepts:

1. if he succeeds, he will not claim costs in this Court;

2. if he fails, the respondent will be entitled to costs on a solicitor/client basis.

If the Assessor does not accept these terms, the application is dismissed.