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QUADRA VENTURES INDUSTRIAL LODGE (TUMBLER RIDGE) LTD.

v.

ASSESSOR OF AREA 27 - PEACE RIVER

British Columbia Court of Appeal (CA009717) Vancouver Registry

Before MR. JUSTICE SEATON,
MR. JUSTICE LAMBERT
MR. JUSTICE TOY

Vancouver, October 13, 1989

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

Reasons for Judgment of Mr. Justice Seaton (Oral) October 13, 1989

This appeal is from the decision of a chambers judge who was answering questions raised in a stated case submitted by the Assessment Appeal Board. It was pursuant to s. 74 (1) of the Assessment Act, R.S.B.C. 1979, c. 21, so we are without the benefit of the views of that Board.

The facts are set out concisely in the stated case which is at pages 1, 2 and 3 of the Appeal Book. Rather than attempting to restate them I will ask that a copy of the stated case be attached to any copy of these reasons. The issues are also stated there though the answers are not.

I add to the background that prior to the amendments to the legislation these units would have been assessable for school purposes but not for general purposes. That is a result of the case of Angus Catering (1982) and Quadra Ventures Industrial Lodge (Tumbler Ridge) v. Assessor of Area 27 _ Peace River (1985), Stated Case 205.

I also observe that, absent special legislation, the assessor could not have made a supplementary roll as he did. This observation really introduces questions one and two.

A supplementary roll under s. 11 of the Assessment Act would not have been justified in these circumstances because neither s. 11 (1) (a) or s. 11 (1) (b) is applicable. The units were already on the roll for school purposes and they were there in an appropriate amount.

The supplementary assessment did not change that. The legislation in question, the amendment to the Mobile Home Tax Act, R.S.B.C. 1979, c. 282, which was in part retroactive, in s. 10 provided that for the purposes of giving effect to the amendments to this Act contained in s. 14, 15, 16 and 37 of the Miscellaneous Statutes Amendment Act (No. 1), 1986:

. . . each assessor shall prepare a supplementary assessment roll under section 11 of the Assessment Act.

The appellant's argument is that the words "under section 11" limit the provision to those cases in which s. 11 authorizes a supplementary roll. I have already said that s. 11 does not authorize a supplementary roll in this case. If the appellant's position is correct, s. 10 of the Mobile Home Tax Act is of no effect at all.

In my view, this section should be given an interpretation that gives it the effect which was obviously sought for it in the legislation. The words that the section starts with, "For the purpose of giving effect to the amendments . . ." shows that the purpose of the supplementary assessment roll is for neither of the purposes in s. 11. Furthermore, s. 10 directs the assessor to prepare the supplementary assessment roll and does not simply leave it open to him as s. 11 does.

I agree with the chambers judge that the proper answers to questions one and two are in the negative.

I turn then to question four which was answered in the affirmative by the chambers judge.

The issue is stated by the appellant in this way. Mobile home is limited to structures. The definition in s. 1 of the Mobile Home Tax Act starts, "'mobile home' means any structure . . ." The contention of the appellant is that these units are not structures. In support of that contention, the appellant refers to cases that define the word "structure" as limited to structures that have a permanent location.

Those cases, of course, interpreted the word in other contexts. In the context here, I think that we cannot limit the word in that way. The definition itself contemplates a lack of the permanence that the appellant says is part of the word "structure". It means units that are "designed, constructed, or manufactured to be moved from one place to another". It seems to me that you cannot couple with that language the conclusion that "structure" means a thing that is to be permanently in one place. Giving the legislation its only reasonable interpretation, I conclude that these units fall within the definition of "mobile home". Like the chambers judge, I think that the proper answer to question four is yes.

Questions three and five are interrelated. The argument is that the appellant is not the "owner" for the purposes of assessing these units. Tumbler Ridge should be assessed and taxed on the interpretation that the appellant puts on s. 2 of the Mobile Home Tax Act.

The section provides that, "Subject to sections 3 and 4, (I interject _ I assume for this purpose they are inapplicable) a mobile home . . . is deemed to be an improvement for the purpose of real property assessment and taxation under the relevant Act and, except as provided in s. 3, shall be assessed and taxed in the name of the owner of the land on which the mobile home is situated at the time of assessment under the relevant Act.

So the appellant says Tumbler Ridge is the owner of the land and the assessment should therefore be in the name of the owner, Tumbler Ridge.

There is a definition of "owner" in the Mobile Home Tax Act but it clearly applies to ownership of the unit itself. It merely extends the meaning of "owner" to include the person buying a mobile home under what used to be referred to as a conditional sales contract. That does nothing to assist in the meaning of "owner of the land" as that term is used in s. 2.

The conclusion of the chambers judge was that question three should be answered in the negative and question five in the affirmative because of s. 36 of the Assessment Act. There was a reference in the reasons to s. 34, but we are advised that that was a slip. Section 34 is an allied section _ it deals with land which is in the name of the Crown _ whereas s. 36 deals with land owned by a municipality, and that is this case.

Section 36 directs that land, the fee of which is in the municipality, held or occupied by others is liable to assessment and that it shall be entered in the assessment roll in the name of the holder or occupier.

The next reference that I would make to the Assessment Act is the definition of "owner" in that Act. It includes "where the real property is held or occupied in the manner referred to in sections 34, 35 and 36, the holder or occupier". I think that in the Mobile Home Act when it says "shall be assessed and taxed in the name of the owner of the land" it is reasonable to say that it means assessed and taxed in the name of the owner of the land as provided under the Acts which have just been referred to. I think that language cannot be taken without reference to the immediately preceding language referring to the Assessment Act, the Municipal Act, the School Act, the Taxation (Rural Area) Act, the Vancouver Charter.

In my view, to treat the word "owner" other than in accordance with those Acts would only be justified if the attempt was to make nonsense of the legislation. The land, it is conceded, is properly assessed and taxed pursuant to s. 36 with the appellant as "owner". In my view that is proper and it is equally proper that the mobile homes be assessed and taxed in the name of the appellant.

I agree with the chambers judge that the answer to question number three must be in the negative and question number five in the affirmative. I would dismiss the appeal.

Lambert, J.A.: I agree with the reasons given by Mr. Justice Seaton.

By way of clarification only, I observe that in the course of his reasons, Mr. Justice Seaton said that if s. 10 of the Mobile Home Tax Act had the effect contended for by the appellant, namely, that the supplementary assessment roll would only be permitted where the conditions under s. 11 of the Assessment Act existed for making such a supplementary assessment roll, then that s. 10 of the Mobile Home Tax Act would have no meaning. That is not quite how I understood the argument advanced on behalf of the appellant.

His argument was that s. 10 contemplated that a supplementary assessment roll could only be made where the conditions of s. 11 specifically contemplated that one could be made, namely, where paragraph

(a) of subsection 1 of s. 11 of the Assessment Act or paragraph (b) of subsection 1 of s. 11 of the Assessment Act was fulfilled.

On the basis of that argument, s. 10 of the Mobile Home Tax Act would have a meaning but a very restricted one. I add that point only by way of clarification because I agree entirely with the reasons given by Mr. Justice Seaton, and for those reasons, I would dismiss the appeal.

Toy, J.A.: I agree with both my brothers' reasons.

Seaton, J.A.: I agree with the observation of my brother. The appeal is dismissed.

STATED CASE (A872714) Oct. 7, 1987 This case stated by the Board, pursuant to section 74 (1) of the Assessment Act, at the request of Quadra Ventures Industrial Lodge (Tumbler Ridge) Ltd., seeks the opinions of the Supreme Court on the questions of law set out below in respect to which the following are the material facts:

1. The property on appeal is a temporary construction camp consisting of land leased by the appellant from the District of Tumbler Ridge on which manufactured trailer "units" were

established for sleeping, dining, kitchen, recreational and office purposes to accommodate construction workers during the construction of the townsite of Tumbler Ridge.

2. The original lease granted by the District of Tumbler Ridge provided that it would expire in June 1986 and that all improvements must be removed by that date. The District of Tumbler Ridge has granted an extension of the lease albeit it is still based on the premises being used as a temporary construction camp.

3. The trailer units are manufactured complete elsewhere and are wheeled or trucked onto the site and set on wooden blocks.

4. The trailer units were hooked up to electricity, water and sewer and are simply and readily dismantled and can be wheeled from the site within hours.

5. The trailer units can be moved from site to site for the purpose of affording accommodation, on a temporary basis, at construction camps.

6. On removal from the sites, the trailer units are complete and undamaged and the lands on which they were situate suffered no damage.

7. The trailer units are removable from the property at any time the owner of the trailer units desires.

8. Some of the trailer units that were originally set up on the site have been removed. Many of which are still on the site are not being used and many of them have had their waterline services disconnected.

9. The assessor assessed the property for 1986 in the amount of $431,500 (actual value) and issued a supplementary assessment for 1986 for the same actual value, namely $431,500, with the same classification, namely residential, which the appellant has appealed on the ground that it is illegal and ultra vires.

10. The assessor has determined the 1987 assessment on the basis that the trailer units are assessable, and the appellant is disputing the assessability of the said trailer units.

The questions on which the Board is required to ask for the opinions of the Supreme Court are:

1. Is the supplementary assessment notice illegal and ultra vires?

2. Has the assessor erred in law in issuing an alleged 1986 supplementary assessment notice?

3. Is the assessment for 1987 invalid to the extent that it includes the trailer units as being assessable?

4. Are the trailer units "mobile homes" within the meaning of the Mobile Home Tax Act, R.S.B.C. 1979, c. 282?

5. Are the trailer units in question assessable as improvements for the purposes of real property assessment and taxation?