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QUADRA VENTURES INDUSTRIAL LODGE (TUMBLER RIDGE) LTD.

v.

ASSESSOR OF AREA 27 - PEACE RIVER

Supreme Court of British Columbia (87/2714) Vancouver Registry

Before CHIEF JUSTICE ALLAN McEACHERN

Vancouver, July 6, 1988

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

Reasons for Judgment

July 6, 1988

I am satisfied, as a consequence of the amendments contained in the Miscellaneous Statutes Amendment Act (No. 1), 1986, that the "structures" described in the Stated Case are mobile homes which are not exempted from the application of the Mobile Home Tax Act, R.S.B.C. 1979, c. 282 as amended. It follows that Question No. 4 must be answered in the affirmative.

I have no doubt that the Assessor was acting properly and lawfully within his jurisdiction in issuing the supplementary assessment notice. I adopt the arguments set out by Mr. Considine on pp. 1 - 1 to 1 - 3 of his argument, with which I am in respectful agreement.

In my view, Question No. 3 must be answered in the negative because the said mobile homes are clearly improvements. I think there is no escape from the 1986 amendments which make these units mobile homes which classifies them as improvements and assessable as such.

I find that, as the units in question are "mobile homes" and "improvements", it follows that they are assessable for the purposes of real property assessment and taxation. I adopt with respect Mr. Considine's submissions contained on pp. 5 - 1 to 5.4, and I answer Question No. 5 in the affirmative.

There will be judgment accordingly. Costs will follow the event.

Submissions with respect to Questions No. 1 and No. 2

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?

1. Section 10 of the Mobile Home Tax Act was enacted and in force on June 17, 1986. That section states as follows:

10. For the purpose of giving effect to the amendments to this Act contained in sections 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.

2. Sections 14, 15, 16 and 37 of the Miscellaneous Statutes Amendment Act (No. 1), 1986, are the sections dealing with the amendments to the Mobile Home Tax Act with respect to the definition of mobile homes and sections 2 and 3 of the Mobile Home Tax Act which deem mobile homes to be improvements under a number of Acts including the Assessment Act. Section 37 (2) of the Miscellaneous Statutes Amendment (No. 1) 1986 makes these amendments retroactive in their effect. The section states:

"37. (2) Sections 14 to 16 shall be deemed to have come into force on September 29, 1985 and are retroactive to the extent necessary to give them effect on and after that date."

3. The issue with respect to these two particular questions is the applicability of section 10 of the Mobile Home Tax Act and section 11 of the Assessment Act. Pursuant to the direction under section 10 of the Mobile Home Tax Act, the Assessor of Area 27 - Peace River prepared a supplementary assessment roll for the property in question in order to reinstate the mobile homes on the roll. The supplementary assessment was issued in September of 1986 and was applicable for the year 1986. The supplementary roll was required to be completed under section 11 of the Assessment Act. Section 11(1) of the Assessment Act states as follows:

11.(1) Where, subsequent to the completion of an assessment roll, the Assessor finds that any property or anything liable to assessment

(a) was liable to assessment for the current year, but has not been assessed on the current roll;
or

(b) has been assessed for less than the amount for which it was liable to assessment, he shall assess the property or thing on a supplementary roll, or further supplementary roll, subject to the conditions of assessment governing the current assessment roll on which the property or thing should have been assessed.

4. Pursuant to section 26 of the Assessment Act, the Assessor is to determine actual value of the land and improvements as of July 1, had the land and improvements been in the state and condition that they are in on September 30. In the case at bar, the value is to be determined as of July 1, 1984 as that is the valuation date, pursuant to section 2(1) of the Assessment Act, for the assessment rolls for 1985/1986. In 1986, the assessment roll depends upon the existence of land and improvements as they were on September 30, 1985 as this is the date in 1986 the revised assessment roll refers to pursuant to section 2 (1.1) of the Assessment Act. Thus, it is land and improvements which are in existence and assessable on September 30, 1985 which are relevant to the case at bar. Here, the mobile homes in question were, for the 1986 assessment roll, in existence and assessable on September 30, 1985, whereas they were not assessable pursuant to the Angus Catering Case (1982) Limited et al. v. Assessor of Area 27 - Peace River (1985) Stated Case 205, until the change in the legislation. As noted in paragraph 2, the legislation in question is retroactive to September 29, 1985 to allow for a supplementary roll in 1986.

5. It is submitted that the Mobile Home Tax Act deems the mobile homes in question to be improvements for the purpose of assessment under the Assessment Act. On September 30, 1985, the mobile homes were deemed to be improvements. In fact, the mobile homes were deemed to be improvements from September 29, 1985 as noted in paragraph No. 2.

6. Section 10 of the Mobile Home Tax Act directs that a supplementary assessment roll must be prepared. It is submitted that even without the authority of section 10, the Assessor could have properly issued a supplementary assessment roll based upon the change in legislation. Section 10 of the Mobile Home Tax Act only reinforces the validity of the supplementary assessment roll.

7. Section 11 of the Assessment Act provides the authority for a supplementary roll where, as here, there is property or an improvement which is liable to assessment in the current year, but has not yet been assessed. In such a case, the property or improvement may be assessed pursuant to supplementary roll. The mobile homes in question had not been assessed on the current 1986 roll because of the decision in Stated Case 205.

8. It is submitted that the 1986 supplementary assessment roll has been properly issued pursuant to section 11 of the Assessment Act and is neither illegal nor ultra vires. Not only is the 1986 supplementary assessment proper pursuant to section 11 of the Assessment Act alone, but it is further substantiated by the direction that it be issued pursuant to section 10 of the Mobile Home Tax Act.

9. In his submissions, Mr. Lakes indicates that section 11 does not allow a supplementary assessment that contradicts an order of the Assessment Appeal Board. It is submitted that no order of the Assessment appeal Board has been contradicted in that the issue was not addressed by the Assessment Appeal Board. At the time of the Board decision, the Mobile Home Tax Act as it stands now, did not exist. A decision of the Assessment Appeal Board is not final if there is a change in the legislation which makes something assessable for the current year which was not assessable when the Assessment Appeal Board was looking at the issue. Although the Assessment Appeal Board decision applies to assessments in both 1985 and 1986, that does not preclude a change in the legislation from affecting the assessment. Had the legislation provided an exemption starting in 1986, it would have applied no matter the fact that the Assessment Appeal Board had, in 1985, placed the property on the assessment roll.

10. In his submissions, Mr. Lakes refers to section 11(2) of the Assessment Act which is not applicable to the case at bar. That section deals with assessment in a previous year which is not the case here. Here we are dealing with a supplementary assessment in 1986 which was created in 1986. Thus, section 11(1) is the governing section.

11. It is submitted that the 1986 supplementary assessment roll has been properly issued and is neither illegal nor ultra vires.

12. It is submitted that the answers to questions No. 1 and No. 2 are no.

Submissions with respect to Question No. 5

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

1. The Mobile Home Tax Act was amended retroactively to September 29, 1985. Sections 2 and 3 of the Mobile Home Tax Act were amended to read as follows:

2. Subject to sections 3 and 4, a mobile home, whether or not it falls within the definition of an improvement under the Assessment Act, Municipal Act, School Act, Taxation (Rural Area) Act, Vancouver Charter, or any other Act, is deemed to be an improvement for the purpose of real property assessment and taxation under the relevant Act and, except as provided in section 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.

3. (1) Notwithstanding section 2, where a mobile home is situated within a mobile home park and the owner of the mobile home is not the owner of the mobile home park, the mobile home shall be assessed and taxed under section 2 in the name of the owner of the mobile home and, for this purpose, the owner of the mobile home is deemed to be an owner of an improvement within the meaning of the Assessment Act, Municipal Act, School Act, Taxation (Rural Area) Act, or the Vancouver Charter, as the case may be, and is liable for the taxes imposed under the relevant Act.

2. The definition of improvements under the Assessment Act was amended as of August 7, 1986. The definition does not specifically include mobile homes. The Mobile Home Tax Act specifically deems mobile homes to be improvements under the Assessment Act. It is argued that pursuant to *Angus Catering et al. v. Assessor of Area 27*, Stated Case 205, the units in question are chattels and not affixed to the land in the relevant sense. Thus, it may be argued that they are not improvements, for pursuant to the definition of improvements, subsection (n), some items which are personal property of a tenant or which are chattels are not assessable. It is submitted that subsection (n) of the improvement definition does not apply as it specifically refers to paragraphs (a), (b) and (f) which do not apply to the situation at bar. It is submitted that the Mobile Home Tax Act has enlarged the definition of improvements for the purposes of the Assessment Act.

3. There is no exclusion available in the Assessment Act which would preclude the Mobile Home Tax Act from expanding the definitions under the Assessment Act. The Assessment Act is not an act to be dealt with entirely on its own wording without reference to other legislation. Under section 11(1.1), the Mobile Home Tax Act is referred to. Other Acts referred to in the Assessment Act include the Assessment Authority Act, the Emergency Program Act under section 26(6) and the Municipal Act under section 28(4). The Assessment Act is an expansive act which incorporates references to other acts and is itself referred to in numerous acts which affect its applicability. The Mobile Home Tax Act is one of those acts which the legislature has deemed necessary to apply to the Assessment Act.

4. It is submitted that section 2 and 3 of the Mobile Home Tax Act are intra vires and applicable in the appropriate case. As such, one must then consider the case at bar and determine whether or not the units here are improvements and assessable.

5. It is submitted that pursuant to section 2 of the Mobile Home Tax Act, and following our argument with respect to question No. 4, the trailer units are, in fact, mobile homes and as such deemed to be improvements for the purpose of real property assessment and taxation. The relevant Act in question is the Assessment Act and pursuant to the Assessment Act, the improvements are to 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.

6. It should be noted that the property in question is currently held by the provincial Crown. With respect to this matter, at all relevant times, the District of Tumbler Ridge owned the property in question and leased the land to Quadra Ventures Industrial Lodge. Although for the purposes of these questions, we are referring to the municipality as the legal owner of the property in question, Quadra would be an owner by occupation whether the property is owned by the municipality or the province.

7. It is submitted that pursuant to the Assessment Act, an owner by definition includes someone occupying land in the manner referred to in section 34 of the Assessment Act. Quadra Ventures Industrial Lodge leases the land from the District of Tumbler Ridge and they are assessable as occupiers pursuant to section 34 of the Assessment Act. As such, the company is the owner of the land and assessable for the mobile home improvements which existed on the relevant date. Section 2 of the Mobile Home Tax Act states that mobile homes "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 the assessment under the relevant Act"

8. The words "owner of the land" are not defined under the Mobile Home Tax Act. It is conceded that the legal owner of the property in question is the Municipality of Tumbler Ridge and Quadra Ventures is only an occupier of the land. Quadra Ventures is assessed for its interest in the land pursuant to section 34 of the Assessment Act. An owner is defined under the Assessment Act, to include an occupier pursuant to section 34 of that Act.

9. It is submitted that the owner of the land, as those words are used in the Mobile Home Tax Act, take on the meaning of the relevant Act. Section 2 of the Mobile Home Tax Act states that the units are deemed to be improvements for the purpose of real property assessment and to be assessed in the name of the owner of the land under the relevant Act. Thus, you have to look at the relevant Act to see who the owner of the land is. As the relevant Act in question is the Assessment Act, one must look to that Act to see who the owner of the land is.

10. You will note that the owner of the land is different under the different Acts referred to in section 2 of the Mobile Home Tax Act. The owner of the land is defined differently under the Assessment Act than the Municipal Act. Because the Mobile Home Tax Act refers to numerous different Acts, it is only appropriate that one must go to the relevant Act to determine who the owner of the land would be. Indeed, this is what the section instructs one to do.

11. In section 2 of the Mobile Home Tax Act, there are two references to assessment and taxation under the relevant Act. The first part of the section indicates that mobile homes will be deemed to be improvements under the relevant act and the second part of the section indicates that the assessment will be in the name of the owner of the land as determined under the relevant Act. One must look at each Act in question to see who the owner of the land is.

12. In the alternative, it is submitted that section 3 of the Mobile Home Tax Act is relevant to the case at bar. Section 3 deals with situations where the mobile home is situated on a mobile home park. A mobile home park is defined as "and used or occupied by a person for the purpose of providing space for the accommodation of one or more mobile homes and for imposing a charge or rental for the use of that space."

13. The land in question is leased from the Municipality of Tumbler Ridge for a charge and is used to provide space for mobile homes. If the property is leased from the Municipality for a fee and for the accommodation of mobile homes, then it is submitted section 3 is applicable.

14. Section 3 provides that in the appropriate case, the mobile homes will be assessable in the name of the owner of the mobile home. The owner of a mobile home is then deemed to be the owner of an improvement within the meaning of the Assessment Act. Section 3 also indicates that the owner of the mobile home will be liable for taxes imposed under the relevant Act.

15. Thus, if reliance upon section 3 is necessary, Quadra Ventures would be assessed for their interest in the land as occupiers under section 34 of the Assessment Act and for their interest in the mobile homes pursuant to section 3 of the Mobile Home Tax Act.

16. Pursuant to section 26 of the Assessment Act, the assessor is to determine actual value of the land and improvements as of July 1, had the land and improvements been in the state and condition that they are in, on September 30. Thus, if there are mobile home improvements in existence on September 30 of the applicable year, they will be assessed.

17. It is submitted that the trailer units in question, by law, are assessable as improvements under the Assessment Act, or for that matter, under any of the other Acts referred to in the Mobile Home Tax Act.

18. It is argued that based upon the Angus Catering case, the mobile homes in question are chattels and not assessable as improvements. It is submitted that it is no longer a question of whether or not the units are chattels. It is submitted that the units have been specifically defined as improvements and thus there is no other choice but to assess them as such. The Angus Catering case is inapplicable to the issues at bar due to the fact that the legislation has substantially changed, not only with respect to the definition of improvements under the Assessment Act, but also with respect to the specific changes to the Mobile Home Tax Act.

19. It is submitted that the trailer units in question are assessable as improvements for the purpose of real property assessment and taxation due to the specific requirement that they be so assessed as prescribed under the Mobile Home Tax Act.

20. It is submitted that the answer to question No. 5 is yes.