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ASSESSMENT COMMISSIONER OF BRITISH COLUMBIA

v.

FRASER VALLEY MILK PRODUCERS ASSOCIATION

Supreme Court of British Columbia (A882974) Vancouver Registry

Before THE HONOURABLE MR. JUSTICE LYSYK

Vancouver, November 28, 1988

R. S. Gill, Esq., Counsel for the appellant

S. B. Armstrong, Esq., Counsel for the respondent

Reasons for Judgment

November 28, 1988

THE COURT (Oral): This is an appeal by way of stated case on a question of law under s. 74 (2) of the Assessment Act.

The board framed the following three questions for the opinion of this court:

1. Did the board err in law in finding that the two raw milk tanks and the two pasteurized milk tanks were not storage tanks within the meaning of those words as used in the definition of "improvements" in section 1 of the Assessment Act ?
2. Did the board misdirect itself as to the meaning of the words storage tanks as used in the definition of "improvements" in section 1 of the Assessment Act ?
3. Was there any evidence, or any evidence upon which a board properly instructed as to the law, could reasonably find that the two raw milk tanks and the two pasteurized milk tanks were not storage tanks?

I would answer these questions as follows:

1. No.
2. No.
3. Yes.

The first of the three questions is the one of substance and is determinative. The second question essentially duplicates the first. As to the third, the facts are not in dispute and there was ample

evidence upon which the Board could determine, as it did, that these four tanks were not "storage tanks" within the meaning of the term "improvements" as defined in s. 1 of the Assessment Act.

In its findings, the Board referred to and treated as governing the reasons of Mr. Justice Shaw of this court in *Ste. Michelle Wines v. Assessor of Area 14*, (Jan. 11, 1988), Vancouver Registry No. A872712. That had to do with tanks used in the making of wine and cider. Mr. Justice Shaw there adopted a passage from the reasons of Mr. Justice Davey in the decision of our Court of Appeal in *Re Trans Mountain Oil Pipe Line Co.* (1966) 58 D.L.R. (2d) 97. The Trans Mountain case was concerned with tanks used in conjunction with an oil pipeline. The passage from the reasons of Mr. Justice Davey is found at pp. 100 - 101 and although given in dissent, his were the only reasons to address the meaning of the term storage tanks.

The passage, quoted and applied by Mr. Justice Shaw, reads as follows:

" In my opinion this passage shows that the Board considered the mere fact that the tanks were used to hold oil was sufficient to make them storage tanks in law. With deference, I am unable to agree. 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 it 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."

The undisputed evidence here was to the effect that raw milk is delivered into the raw milk receiving tanks prior to the pasteurization process. Afterwards it is transferred to the pasteurized holding tanks, from where it is moved to the packaging operation. Raw milk is held in the receiving tanks for no more than 24 hours and in the pasteurized tanks for no more than 12 hours. Prior to refilling the empty tanks they are cleaned with a caustic process. The Board noted evidence indicating that the receiving, pasteurizing, and packaging of milk is a continuous process, although part of the process goes on more quickly than the production line can handle. The subject tanks hold excess milk temporarily.

From the facts set out by the Board, it is apparent also that the tanks in question are not mere receptacles. Each contains a refrigeration unit and a mechanism to agitate the milk for maintaining optimum temperature during the relatively short period of time milk is held in the tank.

The Board decided that the subject tanks are not storage tanks within the meaning of the statute. It made the following findings:

1. The Board accepts that the Legislature has chosen to make storage tanks improvements by using a word that expresses their function, and accordingly, that their assessability as

improvements must be determined by their primary function (Ste. Michelle Wines) supra. This same judgment also advises the Board that the word "store" in a taxing statute must receive the older, general use meaning, and is not a synonym of "hold".

2. The New Oxford Dictionary defines "store" -- item 2 -- "To keep in store for further use; to collect and keep in reserve; to form a store, stock or supply of; to accumulate, hoard."

Webster's Dictionary defines "future" as "time to come, days, months, or years ahead," and "reserve" as "to set apart for later use, to store up."

3. The period of "storage" in the subject tanks is only to reconcile product supply with the operating requirements of the packaging plant, which is a continuous, year-round operation, subject only to shift and weekend shut downs.

4. The primary function of the subject tanks is to receive and hold the milk at an optimum temperature to prevent spoilage, prior to the pasteurization and packaging process.

They might more properly be termed "holding tanks".

The first two numbered paragraphs adopt the language of the Ste. Michelle decision and the dictionary definitions set out by Mr. Justice Davey in Trans Mountain, and paragraph 2 adds a similar definition from Webster's Dictionary. I find no basis for the suggestion that these findings are incorrect in law. Paragraphs 3 and 4 set out findings of fact. To the extent that paragraph 4 deals with a question of law when it concludes that the primary function of the tanks relates to a purpose other than storage, I am not prepared to conclude that the Board erred. The final observation that the tanks might more properly be termed "holding tanks" is simply surplusage.

The appeal is dismissed.

Costs will follow the event.