ASSESSOR OF AREA 13 -- DEWDNEY-ALOUETTE

v.

B.C. TELEPHONE COMPANY

Supreme Court of British Columbia (A882573) Vancouver Registry

Before MADAM CHIEF JUSTICE McLACHLIN

Vancouver, January 19, 1989

James A. S. Legh for the appellant
J. R. Lakes for the respondent

Reasons for Judgment January 16, 1989

The issue in this case is whether certain "concentrator huts" owned by B.C. Telephone fall within the definition of "mobile home" under the *Mobile Home Tax Act*. The Assessment Appeal Board ruled that they did not with the result that they were not taxable. The Assessor now appeals from that decision.

The concentrator huts are manufactured weatherproof cabinets. After being built, they are taken by truck to rural sites, where they are used to house electronic telephone equipment. The huts are connected to telephone and electrical wires. No footings or concrete slabs are necessary for the placement of the concentrator huts, except for stability. They are serviced by a repair person on a monthly basis, but no one lives in them. Three of the huts are located on private land, over which easements have been granted to the telephone company. The fourth is located on a Department of Highways right of way.

"Mobile home" is defined in the *Mobile Home Tax Act* as follows:

> 1. In this Act "mobile home" means any structure, whether ordinarily equipped with wheels or not, that is designed, constructed or manufactured to be moved from one place to another by being towed or carried, and to provide
>
> (a) a dwelling house or premises,
>
> (b) a business office or premises, or
>
> (c) accommodation for any other purpose,

Section 2 of the Act provides that a mobile home within this definition is taxable to the "owner" as an improvement. The question is whether the concentrator huts here in issue fall within the definition of the Act.

Arguments were directed to three issues: (1) whether the huts are "structures" under s. 1 of the Act; (2) whether the huts provide accommodation under s. 1 (c) of the Act; and (3) whether the telephone company is taxable as "owner" under the *Mobile Home Tax Act*.

The Board found that the huts were "structures" within the Act. I agree with that conclusion and need not consider it further. The Board went on to find that the word "accommodation" should be given a restricted meaning applying only to accommodation for persons as opposed to accommodation for equipment. While it was not necessary to its decision, the Board indicated that had it been required to do so, it would have found that the telephone company was not an "owner" under the Act with respect to the three huts located on private easements.

Whether the Huts are Mobile Homes -- "Accommodation"

I have earlier set out the definition of "mobile home" in the *Mobile Home Tax Act*.

Counsel for the Assessor submits that the concentrator huts fall within s. 1 (c) of the definition of mobile home -- "accommodation for any other purpose". Counsel for the telephone company, on the other hand, maintains that the huts do not provide "accommodation" because they are not used for purposes related to the needs of people, such as for food and lodging.

The Board, in accepting the telephone company's position, stated:

> On the question on whether the concentrator huts are mobile homes as defined in the *Mobile Home Tax Act***,** the Board finds that although the word 'accommodation' as defined in the Oxford English Dictionary (1981). The Shorter Oxford English Dictionary (1944) and Webster's Third New International Dictionary (1971) and as the word is defined in the context of the *Bickford* case, can have a broad usage and can, therefore, be used as 'accommodation' for the housing of equipment or machinery, the Board finds that the use of the term in the manner in which it is defined under sub-section (c) of Section 1 of the *Mobile Home Act* [sic], '(c) accommodation for any other purpose' applies to accommodation for persons or as premises by reference to sub-paragraphs (a) and (b), being of the same kind, class or nature. Where general words follow an enumeration of persons or things by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same general kind or class as those specifically mentioned, which would not, in the Board's opinion**,** include the housing of equipment or other inanimate objects.
>
> The Board, therefore, finds that the particular concentrator units are not mobile homes, within the meaning of the *Mobile Home Tax Act* and cannot be defined as "improvements" for purposes of assessment under its terms.

The question is whether the Board erred in concluding that "accommodation" should be confined to uses for people. In my opinion, it did not.

"Accommodation" in s. 1(c) of the *Mobile Home Act* [sic] is ambiguous. it may be defined broadly as the provision of something for convenience or in satisfaction of needs, a definition capable of including the housing of inanimate objects. However, dictionary definitions of "accommodation" also include the more restricted meaning of lodgings or living premises. Both of these definitions are in common usage, and both are arguably applicable to s. 1(c) of the Act. In such a case, the Court must go beyond dictionary definitions and seek assistance from other aids to statutory interpretations *(see* Cote, *The Interpretation of Legislation in Canada,* 1984 at p. 199).

I turn first to the legislative history of the term "mobile home" in s. 1 of the Act. It is established that prior enactments may throw some light on the intention of the Legislature in repealing, amending, replacing or adding to it: *per* Pigeon, J. in *Gravel v. City of St. Leonard,* [1978] 1 S.C.R. 660; *see also Bell* v. *Bd. of Trustees of S.D.* 44 (1979) 16 B.C.L.R. 94 (B.C.S.C.).

The legislative history of the phrase “mobile home” suggests that the Board was right in confining “accommodation” in s. 1(c) to uses connected with human needs. The *Mobile Home Tax Act,* as enacted in 1973, contained the following definition in s. 1:

> “mobile home” means a dwelling unit that is designed to be mobile and to be used as a permanent or temporary residence.”

The Act replaced the *Mobile Home Park Fee Act,* 1971, c. 35, which contained the following definition in s. 1:

> “mobile home” means a single family dwelling manufactured as a unit or in units, intended to be occupied in a place other than of its manufacture, and designed so that it may be drawn or moved from place to place.”

This definition was changed in 1986 *(Miscellaneous Statutes Amendment (No. 1)* (1986), s. 14 to its present form by adding the references in ss. 1 (b) and 1 (c) to “business offices or premises” and “accommodation for any other purpose”.

The original Act provided a statutory scheme for the taxation of mobile dwelling structures for human occupancy, consistent with the meaning of “home” within the Act’s title. If “accommodation” is restricted to its colloquial use, as referring to lodging or dwellings for human occupancy, then the 1986 amendments to s. 1 can be viewed as extending the application of the Act to the related functions of portable office trailers and other business premises (s. 1 (b)), and to other human occupancy and usage, such as recreation facilities, cafeterias (s. 1 (c)). The new extended definition would remain consistent with the original scheme of the legislation.

If the interpretation urged by the Assessor is adopted, then the scheme of the Act is completely changed from one pertaining to mobile “homes”, to one pertaining to any mobile structure regardless of nature and function. The ambit of the Act would be radically altered, extending beyond mobile units used for purposes connected with human habitation and actually to any portable structure however used, ranging from prefabricated equipment huts such as those in issue here to barns and dog houses.

A further consideration is that if s. 1 (c) is given the broad meaning contended for, the reference to business offices or premises and to dwellings in s. 1 (a) and (b) are redundant, being subsumed in s. 1 (c). The 1984 amendment to specifically add the category of business offices or premises in s. 1 (b), or indeed the retention of the category of dwelling under s. 1 (a) would serve no purpose. Such a result runs counter to the well-known presumption that all words in an enactment are to be given meaning of at all possible: *Subilomar Properties (Dundas) Ltd.* v. *Cloverdale Shopping Center Ltd.,* [1973[S.CR. 596.

I also bear in mind that the *Mobile Home Tax Act* must be read in *pan materia* with the *Mobile Home Act, (see Hayes* v. *Mahood,* [1959] S.C.R. 568) which provides a scheme for the registration of title transfer and filing of security instruments on mobile structures used to accommodate people. The definition of “mobile home” contained in s. 1 is identical to that now contained in s. 1 of the *Mobile Home Tax Act.* To adopt the broad definition of “accommodation” contended for by the Assessor would lead to the absurd result of both statutes applying to any mobile structure regardless of nature or function, a result inconsistent with the object and scheme of both Acts. In order to achieve coherency between statutes covering the same field, the definition of “accommodation for any other purpose” in s. 1 (c) must be restricted to “accommodation” connected with human use or occupancy.

Finally, I cannot conclude that the Board erred in applying the principle of *ejusdem generis* to the *Mobile Home Tax Act. Ejusdem generis* refers to the rule “that general words may be restricted to the same genus as the specific words that proceed them”: (Driedger, *Construction of Statutes,* 2 ed., 1983 at 111 citing Lord Halsbury in *Thames & Mersey Marine Insurance Co.* v. *Hamilton Fraser*

& Co. (1887) 12 A.C. 484 at 490). As Lord Campbell stated in *Clifford* v. *Arundell* (1860) 1 DeGF&J 307:

> "Where, after a specific enumeration of different subjects" general words are added, the general words are to be confined to the subjects *ejusdem generis.*

In applying this doctrine, certain preconditions must be kept in mind: *see* Cote, *The Interpretation of Legislation in Canada,* 1984 at 242-251. First, there must be an enumeration of one or more specific terms which also contain a term of much broader meaning. Secondly, the specific terms must all fall within a common category. In the absence of such a category of genus, the rule cannot be applied: *Tillmans & Co.* v. *S.S. Knutsford Ltd.,* [1908] 2 K.B. 385; *Ferguson* v. *MacLean* [1930] S.C.R. 630. Finally, although *ejusdem genenis* is frequently applied by the courts as an aid in statutory interpretation, it is not mandatory and yields to contrary indication of legislative intent. If the act in context favours a liberal meaning for a general term, then other principles of interpretation may be applied.

These rules lead me to conclude that *ejusdem genenis* is applicable in this case. There is a combination of specific and more general terms falling within a common category. The terms "dwelling houses" and "business office or premises" in s. 1 (a) and (b) of the Act create a class of structure in which members have in common a predominant characteristic of human occupancy and usage, permitting the inference that "accommodation" in s. 1 (c) should be confined to the same genus or subject matter. Moreover, historical and contextual consideration of the term "mobile home" discloses no contrary intention in the Legislature. In the result, the principle of *ejusdem genenis* provides further support for the conclusion that s. 1 (c) of the Act should not be read as extending to the telephone company's concentrator huts.

CONCLUSION

I conclude that the Board did not err in restricting "accommodation for any other purpose" in s. 1 (c) of the *Mobile Home Tax Act* to uses involving human occupancy and in concluding that the telephone company's huts were not mobile homes under the Act.

Given this conclusion, I need not answer the final question of whether the owner of the huts in question would be liable for taxes imposed under the Act, pursuant to s. 3 of the *Mobile Home Tax Act*.

Questions 1, 2 and 3 of the stated cases are answered in the negative. It is unnecessary to consider Question 4.