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CROWN FOREST INDUSTRIES LIMITED

v.

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, ASSESSOR OF AREAS: 04 - NANAIMO/COWICHAN, 06 - COURTENAY, 08 - NORTH SHORE/SQUAMISH VALLEY, 09 - VANCOUVER, 11 - RICHMOND/DELTA, 12 - COQUITLAM, 14 - SURREY/WHITE ROCK, 19 - KELOWNA, 25 - NORTHWEST AND SURVEYOR OF TAXES

Supreme Court of B.C. (A891934) Vancouver Registry

Before MR. JUSTICE McKENZIE (in Chambers)

Vancouver, January 5, 1990

B. J. Wallace, Q.C. and A. W. Carpenter for the Appellant
G. E. McDannold for the Respondent Assessors

Reasons for Judgment January 19, 1990

The petitioner, an integrated forest products company, challenges the validity of revised assessment made in 1987 for the 1988 taxation year against the waterlots it leases from the Provincial Crown. It does not own the waterlots but is taxed as an occupier of them.

In 1986 the British Columbia Court of Appeal held that "land" which is the subject of assessment under the *Assessment Act*, R.S.B.C. 1979, c. 231, could only be assessed in the case of waterlots where the "land sought to be assessed has actually been reduced to possession and occupation by the potential taxpayer". The waterlots in question were used as log booming and storage grounds. The definition of "land" under s. 1 of the Act includes "land covered by water" but the Court of Appeal distinguished between the land and the surface of the water and held that occupation of the surface was not occupation of the land beneath. Only a "relatively infinitesimal area of the bottom [was] occupied by footings of any dolphin or piles". It found that most of the bottom was not occupied by the taxpayer under the definition of "occupier" as it then stood in the Act.

Rivtow Industries v. Assessment Commissioner of British Columbia (1986), 70 B.C.L.R. 194.

At the time of Rivtow the word "occupier" was defined in the Act in a variety of ways including this way:

"occupier" means:

> (a) a person who, if a trespass had occurred, in entitled to maintain an action of trespass.

The definition did not specifically direct itself to the special case of a waterlot and Rivtow so found. Consequently, the legislature extended the definition of "occupier" to include this:

"(e) a person who in entitled to possess or occupy the land, the water covering the land or the surface of the water covering the land pursuant to a license or lease in respect of land which

(i) is Crown land, land the fee of which is in a municipality of land the fee of which is in, or held on behalf of, a person who is exempted from taxation under an Act, and

(ii) in ordinary conditions

A. is covered by non-tidal water, or

B. sometime during a calendar year is covered by tidal water..."

This amendment was not put in place before the 1986 biennial assessment roll was prepared to cover the 1987 and 1988 assessment years so in deference to Rivtow the waterlots were given a relatively minor assessment or no assessment.

The reasoning was that a waterlot might be assessed because it included some dry land actually occupied by the petitioner or it might have wharves, pilings and such like having contact with the bottom. One such post Rivtow assessment showed the value of a waterlot at $19,750 but after the legislature amended the definition the assessed value rose to $444,300 for the second of the two years.

Historically an assessment roll was prepared in year one to cover year two. Starting in 1984 a biennial assessment scheme was introduced into the Act "to reduce the administrative costs associated with the assessment of properties" (Cassiar Mining Corp. v. Assessor Area 27 - Peace River (1989), 35 B.C.L.R. (2d) 322.

The biennial idea was enshrined within s. 2 (1) of the Act and a number of following subsections dealt with a revised assessment roll. I will reproduce only those parts of s. 2 which might have some possible reference to the issues under consideration here.

"2. (1) The assessor shall, not later than September 30, 1984 and September 30 in each even numbered year after that, complete a new assessment roll in which he shall set down each property liable to assessment within the municipality or rural area and give to every person named in the assessment roll a notice of assessment, and in each case the roll of completed shall, subject to this Act, be the assessment roll for the purpose of taxation during the following calendar year.

(1.2) Subsection (1.1) applies only in cases where

(a) land or improvements that are liable to assessment by the operation of section 34, 35, 36 are not entered in the assessment roll or where land or improvements that have ceased to be liable under those sections are shown on the roll.

(a.1) a restriction, not previously taken into account pursuant to section 26 (3.2) and 3.3), affects the value of land and improvements that are liable to assessment under section 34, 35, or 36,

(b) the actual value, determined under this Act in relation to a revised assessment roll, is not the same as the actual value entered in the assessment roll by reason of:

(i) an error or omission,

(ii) new found inventory

(iii) the permanent closure of a commercial or industrial undertaking, business or going concern operation,

(iv) new construction or new development to, on or in the land or improvements or both, or

(v) a change in any of the following:

(A) physical characteristics;

(B) zoning;

(C) the classification referred to in action 28 or 29;

(D) entitlement to assessment in accordance with section 26 (4),

(c) there has been a change in any of the following:

(i) ownership;

(ii) legal description;

(iii) the classification referred to in section 26 (8):

(iv) the eligibility for, or the amount of, an exemption from assessment or taxation;

(v) municipal boundaries."

I have emphasized the pertinent words to which I will later have specific reference.

The petitioner and respondent are divided here on the question of whether the legislature, by extending the definition of "occupier" intended to allow a revised assessment to be issued under the authority of the pertinent words of s. 2 (1.2) (a) or s. 2 (1.2) (c) (iv). For convenience I will quote s. 34 (1) and emphasize the significant word:

"34. (1) Land, the fee of which is in the Crown, or in some person on behalf of the Crown, that is held or occupied otherwise than by, or on behalf of, the Crown, is, with the improvements on it, liable to assessment in accordance with this section."

That language took on a new meaning after the definition of "occupier" was extended.

In their respective briefs counsel framed the issue in different ways:

Counsel for the Petitioner:

"Were the respondent assessors authorized by the Act to re-open the assessment roll in mid-term to reflect the change in the definition of "occupier" in s. 1 of the Act?"

Counsel for the Respondent:

"Was the assessor entitled upon amendment of the Act to issue a revised assessment roll to add properties not previously assessed for improvements only?"

To render down the biennial assessment scheme and the revision scheme to their basic essentials, the biennial scheme began in 1984 with the assessor completing the two year roll to apply to 1985 and 1986 but to be subject to revisions in 1985 to apply to 1986. The process of creating a two year roll would continue every even numbered year thereafter with revisions created every odd numbered year.

The revised assessments contested here were made in 1987 to apply to 1988.

The Petitioner says that the legislature's intention was to make the extended definition of "occupier" operative only for the next biennial assessment which would be made in 1988 to cover 1989 and 1990 subject to any revision made in 1989 for 1990. The petitioner argues that the legislature never intended to allow a revised assessment to be made in 1987 to apply to 1988. The respondent contends that the revised assessments for 1988 were authorized by the 1987 amendment.

In support of its argument the petitioner says that under s. 2 (1.2) (a) revised assessments, at most, are limited to "land or improvements... that are not entered on the assessment roll or ... have ceased to be liable." That excludes any that were in fact already entered on the assessment roll.

With respect to those lands or improvements which were entered on the assessment roll the petitioner mounts a different argument saying that it would be "absurd and inequitable" to assume that the legislature intended those lands and improvements not entered in the assessment roll to be liable to revised assessment while those lands or improvements already on the roll would not be so liable. Such an intention by the legislature would be contrary to the object and purpose of the Act. The petitioner refers to s. 44 which expresses the power of the Court of Revision, among which are:

"(b) to investigate the assessment roll and the various assessments made in it, whether complained against or not, and subject to subsections (4) and (4.1), to adjudicate on the assessments and complaints so that the assessments shall be fair and equitable and fairly represent actual values within the municipality or rural area.

On this aspect of its argument I agree with the petitioner. I believe that s. 2 (1.2) (a) was intended to take care of lands or improvements liable to assessment which for some reason or other were overlooked for entry when the assessment roll was prepared or which, for some reason, had ceased to be liable.

I do not believe that the language of s. 2 (1.2) (c) (iv), I must consider whether the legislative amendment changed the petitioner's "eligibility for .... an exemption from assessment taxation.

The respondent maintains that Rivtow made the waterlots exempt from assessment or taxation and the amendment removed that exemption and thus made the waterlots eligible for taxation.

Rivtow's reasons for judgment do not use the word "exempt" but rather employ the words "not assessable". Are these alternative ways of saying the same thing or does each have a distinct meaning with the context of the Act?

Neither "exemption" or "exempt" is defined in the Act but "assessment" is defined in s. 5.1:

"assessment" means a valuation of property for taxation purposes.

"Exemption" is defined in the shorter Oxford English Dictionary as: immunity from a liability, obligation, penalty or law.

The Act at different places uses these terms:

Exempt

Exemption

Exemption from assessment

Exempt from taxation

Exemption from assessment or taxation

Liable to assessment.

"Exempt" is used in the various forms to convey a negative idea while the expression "liable to assessment" is used to convey a positive idea. That is understandable grammatically as it would be an awkward double negative to employ "not exempt".

As a rule of interpretation the words of an Act are to be read in their entire context. Stubart Investments Ltd. v. The Queen [1984] 1 S.C.R. 536 at 578:

While not directing his observations exclusively to taxing statutes, the learned author of Construction of Statutes (2nd ed. 1983), at p. 87, E.A. Dreidger, put the modern rule succinctly:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

My view is that in holding that waterlots were "not assessable" under the former definition of "occupier" the Court of Appeal was not creating an exemption but rather it was discerning, after an analysis of the language in the Act, that waterlots were not embraced by the definition. In other words, waterlots were exempted from assessment and taxation by the absence in the Act of any appropriate language making them liable to assessment or taxation. In short they were "non-assessable".

Accordingly, I hold that the amendment changed the waterlots "eligibility for ... an exemption from assessment or taxation" under s. 2 (1.2) (c) (iv) by making them no longer eligible for an exemption from assessment or taxation.

So far as timing is concerned, I do not detect any yearning on the part of the legislature to postpone the intake of revenue or to deviate from the provision of s. 3 (1) of the Interpretation Act. R.S.B.C. 1979, c. 206 which reads:

3.(l) The date of commencement of an Act or of a portion of it for which no other date of commencement is provided in the Act is the date of assent to the Act.

The amendment was assented to on May 26, 1987, well in time for the making of the revised assessments.

My final conclusion is that the waterlots are not assessable under s. 2 (1.2) (a) but are assessable under s. 2 (1.2) (c) (iv) and the petition is therefore denied.