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DISTRICT OF TAYLOR

v.

ASSESSOR OF AREA 27 - PEACE RIVER & WESTCOAST ENERGY INC.

British Columbia Court of Appeal (CA015062) Vancouver Registry

Before the HONOURABLE MR. JUSTICE MACFARLANE (in chambers)

Vancouver, March 5, 1992

B. Williamson for the Appellant
G.K. Macintosh for the Respondent, Westcoast Energy Inc.

Reasons for Judgment (Oral)

March 5, 1992

This is an application for leave to appeal.

The question raised on the appeal was stated by the Assessment Appeal Board for consideration by the Supreme Court of British Columbia. It is referred to and dealt with in the reasons for judgment of Mr. Justice Houghton, pronounced December 19, 1991 (A903146 Vancouver Registry). It is unnecessary for me to reproduce those reasons at pages five to seven.

The case involves the question whether Westcoast Energy Inc. is entitled to an exemption from taxation under s. 398(q.1) of the Municipal Act:

"land and improvements adapted or designed and exclusively used for the purpose of abating pollution by controlling waste substances, *but not including improvements used for the purpose of converting or treating waste substances with a view to producing from them any commercial or useful product*, provided that where land or improvements exempted under this paragraph are not exclusively used to abate pollution in the manner referred to in this paragraph, but are primarily so used, the assessment commissioner may, in his discretion, determine the portion of the assessed value of the land or improvements attributable to that abatement, and that portion is exempt."

(emphasis added)

The Assessment Appeal Board held that Westcoast Energy Inc. was exempted from taxation in respect to improvements used for the purpose of abating pollution by controlling waste substances.

The District of Taylor, the taxing authority, submitted to the Board and to Mr. Justice Houghton, and wishes to submit to this Court that the exception, the words I have emphasized contained in s. 398(q.1) applies.

The argument below concerned the interpretation to be given to the interpretation of the words "with a view to producing from them any commercial or useful product". In particular the words "with a view to" were in issue. Mr. Justice Houghton adopted the interpretation of those words

which the Board had found and which interpretation was the same as given to similar words. in *Re McIntosh- Marshal Equipment Ltd., Nash v. Western Rock Bit Company Limited* (1968), 12 C.B.R. 60 at 65. That decision was upheld by the Supreme Court of Canada, which, in brief reasons, said that it was in agreement with the decision of the appellate division in Alberta as to the interpretation of those words.

Justice Houghton also relied upon the meaning given to those words in the Oxford English Dictionary, Volume 1, p. 195, namely, "with the aim or object of attaining, affecting, or accomplishing something". Furthermore, the interpretation of those words had also been the subject of a ruling of the Assessment Appeal Board in 1988. Thus, this is the fourth time that the interpretation of these words in this statute have been looked at in this Province.

I should say that similar words contained in the Bankruptcy Act were interpreted by Mr. Justice Ruttan in *Re Blenkarn Planer Limited* (1958), 37 C.B.R. 147 at 148. Mr. Justice Ruttan said that in interpreting those words the intention of the company alone is to be considered.

In this case the Board found as a fact that the Taylor Sulphur Plant was designed and then used exclusively for the purpose of abating pollution by controlling waste substance. It also found that the sulphur plant is uneconomic and that the actual processing and sale of sulphur is a losing proposition. In effect, it held that if the intent of the company was not to produce an economic product the exception did not apply.

The findings of fact in this case dictate the decision which was reached. In my opinion, having regard to the authorities which were cited by Mr. Justice Houghton and to which I have referred and to the sense of the section itself in its proper context there is no reasonable prospect of this appeal succeeding. Furthermore, it is one of those cases where the matter had been dealt with sufficiently below, and in other cases, that it does not require the attention of a division of this Court.

I would refuse the application for leave to appeal.