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ASSESSOR OF AREA 08 - NORTH SHORE/SQUAMISH VALLEY

v.

SCI CANADA LTD.

Supreme Court of British Columbia (A950806) Vancouver Registry

Before the HONOURABLE MR. JUSTICE K.C. MACKENZIE

Vancouver, September 7, 1995

G. McDannold for the Appellant
G. Snarch for the Respondent

Reasons for Judgment (Oral) September 7, 1995

This is an appeal by way of Stated Case from a decision of the Assessment Appeal Board of British Columbia.

In the decision under appeal, the Board concluded that the subject property referred to as Lot A was entitled to exemption from property taxation pursuant to section 398(1)(g) of the *Municipal Act* as "a cemetery" under the *Cemetery and Funeral Services Act*. The Assessor appeals that decision.

The questions stated for the Appellant by the Board to be answered by this court are as follows:

1. Did the Board error in law in its interpretation of section 398(1) of the *Municipal Act* when it granted an exception *(sic)* for Lot A without the required certificate of public interest and certificate of operation having ever been issued; and

2. Did the Board error in law by making an arbitrary finding which was contrary to the *Evidence Act* without any evidence or on a view of the facts which could not be reasonably entertained when it concluded that the required certificates existed but simply could not be located and that the required approvals must have been granted.

The Board concluded that Lot A was a cemetery as defined by section 1 of the *Cemetery and Funeral Services Act* as follows: "Cemetery" means land that is set apart or used as a place of interment together with any incidental or ancillary buildings.

Mr. McDannold does not take issue with the subject property as coming within that definition but he submits that simply "cemetery" as defined by the section 1 definition does not make the property a cemetery under the statute as required by the provision of the *"Municipal Act"*. In other words, Mr. McDannold contends that as defined "by" and "under" are not synonymous. The Board in its reasons for decision concluded:

"the board finds as fact that Lot A is used as a place of interment as that word is defined in the *Cemetery and Funeral Services Act* and thus fits the definition of cemetery in that *Act*.

The board is of the view that the definition of cemetery does not include the requirement for approval by the registrar under section 11. In the alternative, the board finds on a balance of probabilities that given the length of time that the facility has been operational on both lots that approval of some regulatory body was granted at some time in the past. The fact that the registrar of the cemetery branch cannot presently locate certificates is more likely to be the result of the administration by the various responsible bodies over the years than as a result of the lack of approval having been granted. The background to those conclusions are these findings of fact.

As Mr. McDannold noted, the predecessor legislation had provision for certificates to be issued before a cemetery could be established in law. He argued that since there is no apparent records of a certificate for Lot A, it cannot be found to be a cemetery under the *Cemetery and Funeral Services Act* and thus is not entitled to an exemption. He also stated that now that the appellant is aware of the lack of a certificate, an application could be made for the registrar to qualify the property for the next assessment roll.

Mr. Lount argued that the property fits within the definition of cemetery and regardless of certification it is therefore entitled to an exemption. He referred the board to a number of cases.

The board finds as fact that this facility covering lots 1 and A has been in operation for over 20 years with the knowledge of the municipality who originally leased the lands and the provincial authorities.

Mr. Golkey's (phonetic) uncontroverted evidence is that the registrar of the cemetery branch has been to the property a number of times to notice infractions or problems. The city has not been advised of any complaints.

The evidence shows that the lots were developed together with the rose garden burial mounds on Lot A being one of the first to be developed. The rose garden columbary is under the service burial vaults. The rest, except the whole of Lot A, lot one, is entitled to exemption including the rose garden columbary for which as Mr. Lott noted no certificate has been produced."

The Board concluded that the Respondent either assumed a certificate was issued but cannot presently be located or that a certificate is not necessary for each part of the facility. No issue is taken with respect to the exemption for lot one either here or before the Board even though the evidence disclosed that a certificate can be produced for part of lot one only and not the whole, which suggests certificate irregularities or perhaps a casual approach to certification under the prior regimen.

Dealing with question one first, in my view the Board was correct in law in determining that Lot A is a cemetery under the *Act* and entitled to the exemption as such. On the plain meaning of the statute, I am satisfied that certificate of public interest under section 11 and certificate of operation under the equivalent of section 14 in predecessor legislation are not essential to a cemetery being under the *Act*. Failure to have proper certificates may put the operator of a cemetery in breach of the provisions in the statute, but in my view, it does not take the cemetery outside the purview of the statute. The cemetery is therefore under the *Act* even though its operation may be technically in breach of certain provisions of the *Act*. I conclude that is a plain and ordinary interpretation of the statutory provisions. Even though an approach to interpretation of a taxing statute may be stricter than that to be attributed to other types of legislation, I am satisfied that this is the only reasonable interpretation open, whether or not the statutory provisions are strictly interpreted. I turn then to question No. 2 involving the conclusion of the Board that there was a certificate granted for Lot A in the past which cannot now be produced on the balance of probabilities.

Mr. McDannold contends that this conclusion by the Board is merely an arbitrary assumption based on no evidence and cannot stand in support of the Board's conclusion. I am satisfied that

there was a good deal of circumstantial evidence before the Board bearing on this question including the fact that the cemetery facilities on Lot A as well as on lot one were routinely inspected over the years since it was established first about 1970 and that the operators of the cemetery have made routine filings with the appropriate authorities and without any objection being taken. It is clear on the evidence that lot one and Lot A are indistinguishable in terms of their boundary and that the facility has been operated on both lots without any distinction on the ground referable to a boundary line between them.

The letter from the registrar's office in response to the inquiry as to whether there were proper approvals for Lot A received this response, a fax of August 30th, 1994 from the registrar marked Exhibit 6 before the Board referred to certificates for lot one and then concluded "this is all the information I can provide at this time". There was no information subsequently provided and no response to a letter from the Respondent requesting further information. That response is not definitive, to some degree it is equivocal and I am satisfied it is not conclusive evidence by any means that there was no certificate for Lot A, particularly in view of the changes in the regulatory regimen over the years.

Mr. McDannold also stressed the fact that the title in the land title office for lot one had the notation that it was subject to the *Cemetery Act* and that there was no similar notation with respect to the title to Lot A. I am satisfied that the filing of a notation in the land title office is dependent on an application to the registrar, therefore while I find that it is some evidence bearing on the question again, it is not conclusive.

The test to be applied in dealing with evidentiary issues in an appeal of this nature was canvassed by the Court of Appeal earlier this year in the case involving *Assessor of Area No. 08 - North Shore/Squamish Valley* and *International Paper Industries Ltd.*, unreported reasons of Carrothers J.A. Dated May 24th, 1995, under Vancouver Registry no. CA018305. At page 12 of the reasons Mr. Justice Carrothers observed:

"Nor can it be said that the Board acted upon a view of the facts that could not reasonably be entertained or that its conclusion was patently unreasonable".

I take that to be the test, namely, whether there is some evidence on which the Board could reasonably reach the conclusion that it did, so that its finding was not patently unreasonable on the evidence.

As indicated earlier, I think that the many circumstances surrounding the operation of the cemetery on Lot A for a number of years with routine inspections and filings in the absence of any objection, is circumstantial evidence from which the Board could reasonably conclude that the requisite approval had been granted at some point in the past.

While the evidence was certainly not all consistent, I think that there was evidence before the Board on which it could have reasonably reached the conclusion that it did. It is not for this court to substitute its opinion on the facts or that of the Board when there is some evidence to support the Board's conclusion.

In the result, therefore, I am satisfied that the Board was correct in its interpretation of the relevant statutes and I am also satisfied that there was a factual, evidentiary basis to support the Boards findings on the facts. Accordingly both questions stated for the Appellant by the Board must be answered in the negative. The four questions put by the Board on behalf of the Respondent are similarly answered in the negative.

Costs will be on a scale three.