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**COSTA VERDE HOLDINGS LIMITED**

**v.**

**ASSESSOR OF AREA 01 - CAPITAL**

Supreme Court of British Columbia (99 0284) Victoria Registry

Before the HONOURABLE MR. JUSTICE R.D. WILSON (in chambers)

Victoria, January 13, 2000

B. Clarke for the Appellant  
Guy McDannold for the Respondent  
N. Ries for the Attorney General of B.C.

**Reasons for Judgment (Oral)**

January 13, 2000

**(Excerpts only – see note at end of decision)**

On 15 July 1999, I dismissed an application, by the Appellant Costa Verde Holdings Limited, by way of Stated Case from a decision of the Assessment Appeal Board. On 12 August 1999, the Appellant made an application by way of notice of motion which I take to be an application for me to reconsider the decision I made on 15 July 1999. The order arising from that decision has not been perfected by entry.

After a discussion with Mr. Clarke, who speaks for the Appellant Costa Verde Holdings Limited, about the reasons for my determination, it appeared that the essential reason for the Appellant's appearance on the motion of August 12, 1999, was that provision of my decision which awarded the costs of the Stated Case proceedings to the Respondent Assessor, and the Attorney General for the Province of British Columbia.

As I understand Mr. Clarke's submission on the first aspect (that there was a factor in the decision of July 1999 which was worthy of a reconsideration), I am not persuaded that this is so. The matters I canvassed with Mr. Clarke during his submission seemed to me to be the same matters that were canvassed during the hearing of the Stated Case in July 1999.

The application to have me reconsider my ruling on the merits is refused. I will not reconsider that portion of the ruling on the merits.

I do not, however, have any recollection that there was any argument on the costs of the proceedings. Mr. Clarke is one of the principal officers and directors of the Appellant. He is not a legally-trained person. He is not conversant with the Rules of Court, certainly as they relate to the awarding of costs.

He has now spoken to the matter of costs. There are, as I understand him, essentially two grounds upon which he urges me to exercise my discretion, which I agree I undoubtedly have in an award of costs, and those grounds are these: First, that he, as a citizen of the Province of British Columbia, had legitimate questions in his mind (and when I say his, I refer to the

corporation Costa Verde Holdings Limited) about the administration of the *Assessment Act* in this province. He framed those questions. And, because the legislation sets out the procedures by which he is to have his grievances redressed, he followed them. He appeared before this court, and this court, essentially, refused to entertain the questions Mr. Clarke had framed for determination because this court, by my reasons, has not the power to make answer to the questions Mr. Clarke posed.

On that ground, my answer is this: The dispute which Mr. Clarke caused to be placed before this court eventually came down to whether or not this court had the jurisdiction to answer the questions he requested be stated. Although Mr. Clarke is in person, I think it is not improper for me, or for any judge of this court, to expect a self-represented litigant to understand the question that is being put before the court for answer before venturing into the proceeding. If Mr. Clarke did not understand the issue that essentially came to be the question to be addressed to the court, by the time he appeared, I would be surprised.

Mr. McDannold filed a written brief. That written brief cogently and concisely placed the issues to be determined before the court. Mr. Clarke knew or should have known that those were questions this court was to answer.

Any litigant takes the risk that a court will disagree. So, I do not find that the first ground is a ground for me to depart from the ordinary rule that costs follow the event.

The second ground is that the company is impecunious. Impecuniosity, in and of itself, in my opinion, is not a ground for the exercise of a judicial discretion to deny a successful party costs. The law is clear on that. Where there is a discretion, it must be judicially exercised. Mr. Clarke referred me to a decision of Mr. Justice Lambert, dealing with the matter of costs, in the *Oasis Hotel Ltd. v. Zurich Insurance Co.* litigation. Mr. Justice Lambert is also the author of an opinion which says that an exercise of a judicial discretion will be exercised unjudicially, if it is exercised in the face of authority which indicates that the decision being made is in conflict with that authority. I know there is authority in this province that impecuniosity in and of itself is not a reason to depart from the rule, and it would be, in my opinion, not a judicial exercise of the discretion to deny costs.

I will reconsider that portion of my order relating to costs, and having reconsidered it, I confirm it. The costs of the Stated Case will follow the event.

The costs of this application will also follow the event. They will be assessed on Scale 3, but they will be limited to a one-half day hearing.

**[Note:** Paragraphs 13 to 53 not published here as they deal with administrative matters related to dispensing with the Appellant's approval of the Court's order.]