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ASSESSOR OF AREA 23 - KAMLOOPS

v.

LAFARGE CANADA INC.

British Columbia Court of Appeal (CA028514) Vancouver Registry

Before the HONOURABLE CHIEF JUSTICE FINCH (in chambers)

Vancouver, September 24, 2001

G. McDannold for the Appellant
D.R. Bennett, M. Collett for the Respondent

Reasons for Judgment (Oral)   September 24, 2001

[1]   FINCH, C.J.B.C.: This is an Application for Leave to Appeal a decision of a judge in Chambers pronounced 20 April 2001. The Chambers judge dismissed an appeal on a Stated Case from a decision of the Property Assessment Appeal Board.

[2]   The issue before the Board and before the Chambers judge was whether a dust and a particulate matter eliminator utilized by the Respondent fell within the meaning of s. 339(1)(p) of the *Municipal Act* so as to be exempt from taxation

[3]   The device used by the Respondent is described as a "Clinker Building", which is said to be an A-frame corrugated steel building. This apparently, on the evidence, was a device that had not previously been used for dust and particulate elimination. Earlier devices had used mechanical or electrical components to achieve their purpose. The applicant Assessor says that the interpretation of the section should, therefore, be limited to devices, which include either a mechanical or an electrical component.

[4]   As I may have said, both the Board and the Court held that the Respondent's eliminator was within the meaning of the exempting legislation.

[5]   The learned Chambers judge canvassed the matter in some detail in lengthy written reasons and I find myself in general agreement with what he has said. In my view, on the plain meaning of the section there is no realistic prospect of success on the proposed appeal, and the applicant does not, in my respectful view, meet the test laid out in *Queen's Plate Development Limited* v. *Vancouver Assessor of Area 09* (1987) 16 B.C.L.R. (2d) 104.

[6]   I would therefore dismiss the Application for Leave to Appeal.