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HERBERT W. ROMM

v.

THE BRITISH COLUMBIA ASSESSMENT AUTHORITY

and

THE CORPORATION OF THE TOWNSHIP OF ESQUIMALT

Supreme Court of British Columbia (98-3377) Victoria Registry

Before the HONOURABLE MR. JUSTICE MELVIN

Victoria, May 4, 2001

H. Romm appearing on his own behalf
J. Savage for B.C. Assessment Authority
G. McDannold for The Corporation of the Township of Esquimalt

Reasons for Judgment (Oral) May 4, 2001

THE COURT: Mr. Romm has commenced proceedings in this court seeking a number of items of relief in his statement of claim, and I am looking at the amended statement of claim issued on February the 22nd, 1999, a number of portions of which he referred to in his submissions today.

Factually, the attack is with reference to the *Assessment Act* in the Province of British Columbia. The complaints are that the Assessors did not assess in accordance with the statutory obligations imposed upon them by the statute in terms of actual values, and he seeks in that respect a declaration of this court that certain sections of the *Act* are unconstitutional. He refers to s. 15 of the *Charter of Rights and Freedoms*. He seeks a declaration that the taxes imposed by the Corporation of Esquimalt are calculated on assessments that are misrepresentations and do not comply with the requirements of the *Assessment Act*, are therefore unauthorized, erroneous and unlawful, and, as a result, he is entitled to a return of the monies that he paid under protest in relation to the erroneous, unauthorized and unlawful assessments. And that is the key to the application here. It is the allegation on behalf of Mr. Romm that the Assessors failed to comply with the law. I think that is as simple as I can put his rather extensive argument which he has touched on now on two separate occasions.

Insofar as the *Charter* is concerned, in my view it has absolutely no application in terms of s. 15 or s. 7, as is suggested by Mr. Romm. Insofar as s. 15 is concerned, the equality sections, of course the statute applies to the assessment, it applies throughout the Province of British Columbia. It does not purport to single out any group or agency, or however one wants to describe it, in such a fashion that may be contemplated to be in conflict with s. 15 of the *Charter*. I just wish to refer to it for a moment.

> **15.** (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law ...

> Etcetera.
>
> ... [no] discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Well, there is no suggestion here that the Assessment Authority does not apply equally to every individual, every corporate entity, for that matter, and corporate entities are not protected by the *Charter* in that sense. There is no suggestion that it applies unequally or unfairly with reference to anyone in the Province of British Columbia. The concern is, I think, clearly stated by Mr. Romm, is they made a substantial legal error in the interpretation of the statute in relation to their obligation to assess his property with reference to actual value, and, as a result, he has suffered the imposition of inappropriate, unlawful or erroneous tax.

As far as s. 7 may be considered as a provision:

> Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

The principles of fundamental justice would, perhaps, come into play in a situation such as the case at bar if an individual has no remedy. But this individual has a remedy. All individuals in British Columbia have a remedy under the provisions of the *Assessment Act*.

If there is a challenge as to the procedures used by the assessment staff, assessment personnel, or there is a challenge to their calculation, if I can use that expression, of the assessed value of the property, the potential taxpayer has the right to enquire, to challenge, to appeal in the legislation, on being advised of the existence of the offensive tax assessment. And even if one could argue there is a violation of s. 15 and s. 7, and I cannot for the life of me see how such could ever occur, applying the *Oakes* (1986), 24 C.C.C. (3d) 321 test in relation to s. 1, any violation of *Charter* would not, in my view, carry the day.

That leads us to a consideration of the statute, and the statute provides in s. 11 that:

> The completed assessment roll as confirmed and authenticated by the court of revision is, unless changed or amended under certain sections of the act, valid and binding on all parties concerned ...
>
> That is, the municipality, the taxing authority and the taxpayer.
>
> ... despite any omission, defect or error with respect to the roll, despite any defect, error or misstatement in any notice, or despite the omission to mail a notice.

The long and the short of it is that the assessment roll, as confirmed and authenticated, is the basis upon which the tax structure of a municipal organization is based. They cannot function without knowing what the assessed value of the properties are in order to determine a mill rate, in order to determine taxation, in order to determine the funds that are required, in order to conduct their inordinate expenditures.

Be that as it may, what does that section mean and how does it tie in with the Supreme Court of Canada decision in *Wilkes* v. *Interlake Tissue Mills Co.* (1969), 9 D.L.R. (3d) 20 (S.C.C.) that is relied on by Mr. Romm, and, more importantly, how does it tie into the decision of the Court of Appeal in this Province in *Noel Developments Ltd.* v. *Vancouver (City)*, (1994), 52 B.C.A.C. 306 (B.C.C.A.)? I agree, and I have looked at *Wilkes (supra)*, and I asked counsel to comment on it

again this morning, *Wilkes* is different. *Wilkes* is based on a statutory provision that does not exist now. That is one of the reasons *Wilkes* is not even referred to in *Noel* (*supra*).

And *Noel* is a decision of this Province in December of 1994. The allegation, looking now at the opening of the passage of the reasons for judgment:

> The substantive allegation in the statement of claim is that the value of the appellant’s property in Vancouver is improperly assessed for property taxes.

And the court deals with the legislation. It deals with what was then s. 10, is now s. 11, and states in dealing with the *Act*:

> There is a series of provisions with time limits which provide for complaints and appeals against assessments. It is common ground that the appellant did not ...

In that case, not necessarily the case at bar:

> ... take any of the steps available to it under the statutory complaints and appeal provisions. Regardless of how the appellant chooses to describe their cause of action, the substantive issue is whether in a review of s. 10 ...
>
> Now s. 11:
>
> ... of the *Assessment Act* it is plain and obvious that the action could not succeed at trial.

And that is what Mr. Romm referred to a moment ago in dealing with, I think it was a comment by Mr. Justice Estey. The plain and obvious aspect of it in terms of Rule 19.

The court stated in terms of these statutory provisions:

> Section 10 ...

Now 11:

> ... of our Act contemplates defects, errors, omissions or misstatements, the existence of which will not effect the validity of the assessment roll.
>
> Skipping down.
>
> It is probably inevitable from time to time some errors will creep in, regardless of how carefully the assessment work is done. But if the city is to function there must come a time when the assessment roll is frozen, so to speak, so that the city can proceed with the subsequent steps to the end of obtaining as many millions of dollars of property tax revenue it requires. Section 10 ...
>
> Now 11:
>
> ... performs the necessary freezing function. That is not to say ...
>
> In my view this is important:

> That is not to say that the taxpayer has no remedy. He has a self help remedy through the statutory complaints and appeals procedure. The act, as does many others, casts upon the taxpayer the onus of taking care of his own interests. If he does not do so by the means and within the time set and s. 10 clicks in, he will have forfeited his remedy through his own negligence or oversight. That is what occurred here ...
>
> Referring to *Noel*:
>
> ... and to adopt the words of Duff, J. it would be manifestly unjust to the taxpaying community as a whole if he could come along two or three or more years after the event and open up the assessment roll. Section 10 ...
>
> Now 11:
>
> ... is designed to prevent that from occurring.

The Court of Appeal stated in terms of the language of the section, as to whether or not it is a drastic provision and whether or not one is forced to strain the language:

> No extending of the plain words of s. 10 is required here. When I apply those plain words to the facts and circumstances before us, I reach the same conclusion as the trial judge. Section 10 of the *Assessment Act* is a complete answer to the plaintiff's case against the defendant.
>
> Mr. Justice Gibbs refers to the fact that:
>
> There is nothing unusual about claims otherwise maintainable being barred by statutory provisions.

Counsel pointed out to me the much earlier decision of the Supreme Court of Canada on appeal from the appellate division of the Supreme Court of Alberta in *Macleod (Town)* v. *Campbell* (1918) 57 S.C.R. 517 (S.C.C.), where Mr. Justice Idington stated:

> I have long entertained the opinion that the only remedy which a rate payer complaining about an assessment being excessive has is to pursue such remedies as the *Assessment Act* may furnish for the redress of such a grievance.

Considering all the authority, and I can appreciate the frustration on behalf of the taxpayer, Mr. Romm, and his reliance on the *Wilkes (supra)* case, I am bound by the decision of the Court of Appeal of this Province. I said the other day when the matter was adjourned to this date for the finalizing of argument that Mr. Romm was going to have to convince me that the Court of Appeal had changed its mind. The Court of Appeal apparently has not. I am satisfied that the application by the defendants must succeed as a matter of law. The plaintiff's action is dismissed.

Costs follow the event, Scale 3. I think under the circumstances one scale of costs would be appropriate.

We are adjourned.