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DELTA BUILDING PRODUCTS LTD.,
and SEASIDE PAPER PRODUCTS LTD.

v.

GREATER VANCOUVER TRANSPORTATION AUTHORITY

SUPREME COURT OF BRITISH COLUMBIA (S056827) Vancouver Registry

Before the HONOURABLE MADAM JUSTICE BENNETT (in chambers)
Date and Place of Hearing: December 20, 2006, Vancouver, BC

J.W. Elwick for the Appellants
G.P. Holeksa for the Respondent

Reasons for Judgment (Oral) December 20, 2006

[1] THE COURT: Counsel have brought two assessment appeals before the court, *Delta Building Products Ltd. and Seaside Paper Products* v. the *Greater Vancouver Transportation Authority* ("*Delta*"), and *Riocan Property Services* v. the *Greater Vancouver Transportation Authority* ("*Riocan*"). These are the reasons in the *Delta* case. Separate reasons are provided as there are two appeals. Other than the facts, the reasons are identical.

[2] Each case involves the assessment of parking sites. On November 24th, 2005, the *Greater Vancouver Transportation Authority Act*, S.B.C. 1998, c. 30, referred to as the *GVTA Act*, was amended to include part 7. Part 7 permitted a parking site tax to be imposed on defined areas in the Greater Vancouver Regional District. Appeals from those assessments are made to the Property Assessment Appeal Board constituted under the *Assessment Act*, R.S.B.C. 1996, c. 20, and an appeal from that Board is to this court pursuant to s. 65 of the *Assessment Act*.

[3] Three appeals were heard before the Board that dealt specifically with the issues before me. Two of those cases are the *Delta Building Products* appeal and the *Riocan Property* appeal. The third was *Bentall Retail Services* v. *Greater Vancouver Transportation Authority*, 2006 PAABBC 20060850. This case is significant as the reasons in the *Bentall* decision were adopted and relied upon in the other two appeals which are before this court.

[4] The facts with respect to *Delta Building Products* case are summarized from the Stated Case as follows:

1. The Appellants are the owners of adjacent properties on Riverway in Delta.

2. Each of the Appellants operate warehouse businesses on these properties for trucks and tractor-trailers to load and unload merchandise at loading bays for a few minutes to a few hours.

3. The areas on each of the properties where this loading and unloading activity takes place include access areas to the loading bays and a manoeuvring area for the trucks and tractor-trailers. The area is that found primarily behind the warehouses. There is customer parking also at the warehouses, but it is not disputed that those are properly taxed as parking sites.

4. The Board held that the areas where loading and unloading occurred were taxable as parking sites.

[5] The relevant legislation is, first, part 7 of the *Greater Vancouver Transportation Authority Act*. Section 131 is the definition section and defines "parking site" as follows:

"parking site" means, in respect of land located in the areas of the transportation service region to which the parking tax under this Part applies, the part of the land and any improvements on the land that is used, available or designed for the parking of motor vehicles or for any purpose that is in any way related or ancillary to that parking, whether or not there is a fee for that parking and whether or not the parking is available to the general public, and includes, without limitation, any part of the land and the improvements on the land

(a) that provides access to the space used, available or designed for parking, including, without limitation, ramps, driveways, turning areas and places on which motor vehicles may be driven,

(b) that separates or marks parking spaces, lanes for driving and other spaces, whether by way of painted markings or by curbs, walls, columns, pillars or other objects,

(c) on which is constructed a booth or other improvement for the use or occupancy of one or more parking attendants, and

(d) on which is erected anything in any way related or ancillary to parking, including, without limitation, lighting for the parking site and machines or devices used, available or designed for one or more of the collection of parking fees, the provision of parking tickets and the insertion of parking cards ...

[6] Subsection 133 provides for the assessment of the parking tax, and I set out 133(1)(a) and (b) below:

133 (1) The authority may, by bylaw, assess a parking tax on one or both of

(a) the taxable parking area of parking sites located in the transportation service region, and

(b) the taxable parking spaces in parking sites located in the transportation service region.

[7] Section 136 deals with exemptions and is set out below:

136 (1) Despite any other provision of this Part, the following are exempt from assessment of a parking tax:

(a) property that falls into a single property class if that property class is 1, 7 or 9;

(b) if property falls into 2 or more property classes, the portion, if any, of the property that is determined in the prescribed manner to fall into a property class exempt under this section;

(c) property that is, under section 131 of the *School Act*, wholly exempt from taxation under that Act;

(d) in the case of property that is, under section 131 of the *School Act*, partially exempt from taxation under that Act, the portion of the parking site on that property that is determined in the prescribed manner to be exempt from the assessment of parking tax;

(e) subject to subsection (4) of this section, each of the following that is exempt by bylaw of the authority made under section 133 (2) (e), to the extent, for the period and subject to the conditions provided in the bylaw:

(i) land or improvements or both;

(ii) a property class;

(iii) a type of land or improvements or both.

(2) Property is not exempt from parking tax unless it is exempt under subsection (1).

(3) Nothing in a regulation referred to in subsection (1) (b) or in any determination made under that regulation affects the classification of property under the *Assessment Act* as it applies for the purposes of property taxation.

(4) An exemption created by a bylaw does not have any effect in a calendar year unless the bylaw creating the exemption came into force on or before October 31 of the preceding calendar year.

(5) For the 2006 calendar year only, the date in subsection (4) is December 31.

(6) For the purposes of subsection (1) (e) (iii), a type of land or improvements or both may be defined on any basis the authority considers appropriate, including, without limitation, the following:

(a) the person or class of persons that owns or occupies the property;

(b) the use of the property.

(7) A bylaw that creates an exemption ceases to apply to property the use or ownership of which no longer conforms to the conditions necessary to qualify for exemption, and, after this, the property is liable to assessment of parking tax.

[8] In the statute, the word "parking" is not defined. The argument before the Board on each of the appeals turned on the definition of "parking."

[9] The question stated by the Appellants is as follows: Did the Property Assessment Appeal Board err in law in its interpretation of the word "parking," as found within the definition of "parking site" in s. 131 of the *Act*, by purporting to use the common meaning or commonly accepted ordinary meaning of the term "parking," but failing to consider, as an element of that meaning, (a) the purpose of the stoppage of a vehicle and the time frame of that stoppage and purpose, and (b) other uses of the word "parking"?

[10] The questions referred to this court for an opinion may only be questions of law. This court's jurisdiction is stated in *Caldwell* v. *Stuart*, [1984] 2 S.C.R. 603 at page 613.

> ... the appellate court may not look beyond the stated case in order to make inferences of fact, nor to find new facts not in the case, or to weigh and consider the sufficiency of evidence ...

[11] The GVTA first submits that the question as posed by the Appellants is not a question of law alone.

[12] The issue of a question of law alone has been examined by this court in a number of cases. In *British Columbia (Assessor of Area No. 26 - Prince George)* v. *Cal Investments Ltd.*, [1993] B.C.J. No. 93 (S.C.), Ryan J., as she then was, said the following at paragraph 18:

> For purposes of the *Act* a "question of law" has been defined as follows:
>
> 1. A misinterpretation or misapplication by the Board of a section of the *Act*.
>
> 2. A misapplication by the Board of an applicable principle of general law.
>
> 3. Where the Board acts without any evidence.
>
> 4. Where the Board acts on a view of the facts which could not reasonably be entertained ...
>
> 5. Where the method of assessment adopted by the Board is wrong in principle.

[13] What constitutes a question of law was again considered by a five-panel court in *British Columbia (Assessor of Area No. 27 - Peace River)* v. *Burlington Resources Canada Ltd.* (2005), 37 B.C.L.R. (4th) 151 (C.A.). The court referred to the definition above in *Cal Investments* and commented at paragraph 27:

> I digress to observe that, while the description of questions of law set out in the *Cal Investments* decision, on which the chambers judge relied ... is a useful list of examples, questions alleging the misapplication of legal principle will not always be questions of law. Such questions must be examined carefully to determine whether they are actually questions of law or whether they are truly questions of mixed fact and law.

Earlier in those reasons at para. 24, the court had stated that:

> Questions that ask what are the applicable legal principles are questions of law.

Further, at para. 25:

> Questions that ask whether the facts satisfy the applicable legal tests are questions of mixed fact and law.

However, the court also recognized in paragraph 25 that if the application of legal principle to facts is of such a general nature as to affect the determination of other cases it will be a question of law.

[14] In the *Burlington Resources* decision, the court also concluded that the standard of review is that of correctness and there is no deference given to the Board as the appeal involved solely questions of law. It is within that framework that I approach the question posed by the Appellants. If there is an error of law, then the standard of review is correctness.

[15] The GVTA submits that this case is at best an error of mixed fact and law. The GVTA says that the Board has defined what "parking" is and then has applied the facts to that definition to conclude that the loading and the unloading areas constitute a parking site within the legislation.

[16] The GVTA submits that therefore, there is no error in law and that the answer to the question should be "No".

[17] The interpretation of a statute without the application of the facts does raise a question of law alone. The legal issue raised by the Appellants is not the findings of fact made by the Board, but whether the Board applied the correct definition of "parking." If the Board applied an incorrect definition of the term "parking," to the facts, then they have erred in law. That is the issue I need to decide in this case, which is an error in law.

[18] In order to decide the issue, it is necessary to review the correct principles of statutory interpretation. In *Bell ExpressVu Limited Partnership* v. *Rex*, [2002] 2 S.C.R. 559, the Court examined the principles of statutory interpretation, and at paragraph 26 said:

> In Elmer Driedger's definitive formulation, found at p. 87 of his *Construction of Statutes* (2nd ed. 1983):
>
> > Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.
>
> Driedger's modern approach has been repeatedly cited by this Court as the preferred approach to statutory interpretation across a wide range of interpretive settings: see, for example, *Stubart Investments Ltd.* v. *The Queen*, [1984] 1 S.C.R. 536, at p. 578, per Estey J.; *Quebec (Communaute urbaine)* v. *Corp. Notre-Dame de Bon-Secours*, [1994] 3 S.C.R. 3, at p. 17; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21; *R.* v. *Gladue*, [1999] 1 S.C.R. 688, at para. 25; *R.* v. *Araujo*, [2000] 2 S.C.R. 992, 2000 SCC 65, at para. 26; *R.* v. *Sharpe*, [2001] 1 S.C.R. 45, 2001 SCC 2, at para. 33, per

McLachlin C.J.; *Chieu* v. *Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 84, 2002 SCC 3, at para. 27. I note as well that, in the federal legislative context, this Court's preferred approach is buttressed by s. 12 of the *Interpretation Act*, R.S.C. 1985, c. I-21, which provides that every enactment "is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects".

The Court recognized that context played a significant role in statutory interpretation including the interpretation of the scheme of the *Act*. One needs to turn to other tools of statutory interpretation only if there is real ambiguity, that is "the provision is reasonably capable of more than one meaning." See paragraphs 27 to 29. These principles of statutory interpretation are applicable to the arguments below.

[19] The Board referred in its reasons to *Bell ExpressVu* when approaching the issue of statutory interpretation. In both the *Delta* decision and the *Riocan* decision, the Board relied on their findings in the *Bentall* case. The Board was given a number of dictionary definitions of the meaning of the word "park." These are from the summary provided to me by counsel:

(a) *Random House Unabridged Dictionary*, Second Edition, "park," "to place or leave a vehicle in a certain place for a period of time."

(b) *The American Heritage Dictionary*, Fourth Edition, under the heading "park," "1. to put or leave a vehicle for a time in a certain location," and "parking," "the act or practise of temporarily leaving a vehicle or manoeuvring a vehicle into a certain location."

(c) *Collins English Dictionary*, "park," "to stop and leave a vehicle temporarily."

(d) *Webster's Third New International Dictionary*, "park," "to bring to a stop and keep standing, as a motor vehicle, at the edge of a public way," "to leave temporarily on a public way or in an open space assigned or maintained for occupancy by automobiles," "to leave a vehicle in an accessible place."

(e) *The New Shorter Oxford English Dictionary*, "park," verb, "bring a vehicle to a halt in a stationary position intended to be clear of the flow of traffic especially in a car park or at a roadside."

(f) *Oxford Dictionary of English*, Second Edition, "park," verb, "with object to bring a vehicle that one is driving to a halt and leave it temporarily typically in a car park or by the side of the road."

(g) *Oxford English Dictionary*, "park," verb, "to place or leave a vehicle or the like usually temporarily in a park at the side of the road or elsewhere."

[20] The Board in the *Bentall* case said at paragraphs 26 through 28:

[26] Both parties agree that parking means the stopping and leaving of a motor vehicle. The dictionary definitions submitted support this meaning. The *Oxford English Dictionary* defines "park" as "to place or leave (a vehicle or the like)." *Webster's Third New International Dictionary* defines "park" as "to bring to a stop and keep standing (as a motor vehicle) at the edge of a public way ... to leave temporarily on a public way or in an open way assigned or maintained for the occupancy by automobiles". We note that the commonly accepted ordinary meaning of the word "park" is to stop and leave a vehicle, and that, as such, the Board may take "judicial" notice of this fact (see *Sullivan and Driedger on the Construction of Statutes*, 4th ed., page 24).

[27] As indicated, the Appellant agrees that park means to stop and leave a motor vehicle, but then argues that the purpose for the stopping and leaving of a motor vehicle is a factor in defining "parking." We do not accept that the purpose for which one stops and leaves a motor vehicle is part of the definition of parking. There may be many purposes for which one stops and leaves a vehicle and the leaving of a vehicle may vary from seconds to hours. The definitions of "park" and "parking" in the various bylaws submitted by the Appellant limit the definition to exclude minimal time periods or stopping for a specific purpose, such as loading. This however is a limitation or exclusion of a certain activity while parking, for

> the purpose of these bylaws. These bylaw definitions do not support incorporating a restriction into the meaning of the word "parking" for the purpose of this *Act*.
>
> [28] The undisputed evidence from both parties demonstrated that vehicles stopped and were left in place in Area 2 for varying periods of time. These vehicles were trucks and tractors with trailers left at loading bays, as well as vans and passenger cars that were left next to or near the loading bays. The purpose of the vehicles that are stopped and left in place at the loading bays is for the loading and unloading of goods. However, regardless of the purpose of the parking, the vehicles are still parked within the common meaning of that term.

As noted, the Board applied these reasons in *Bentall* to the two appeals that are before me.

[21] The Appellants submitted that the Board failed to consider the purpose for which the vehicles parked as part of the definition. The Board adopted the definition of parking, "to stop and leave a vehicle". As noted above, in paragraph 28, the Board noted the purpose for which the vehicles were stopped at the loading bays, which was for the loading and unloading of goods. However, the Board found that, regardless of the purpose, these vehicles were still parked within the common meaning of the term.

[22] The Appellants submitted that the Board should have taken into consideration the purpose or the reason for parking. The Appellants rely on the decision in *Speers* v. *Griffen*, [1939] O.R. 552 (C.A.), where, in an action for negligence, the Ontario Court of Appeal found that the word "park" or "leave standing" did not apply to a situation where a gravel truck pulled off to the side of the road for a matter of a few seconds to close the back of the truck. The Appellants submit that the court looked at the purpose of parking in reviewing the definition. The court in that case applied the facts to the definition and legislation and found stopping for 45 seconds did not fall within the definition. The Court was not defining the word "park," but applying the facts in that case to the definition found in the legislation.

[23] The Appellants also rely on various municipal bylaws which define the word "park." For example, the City of Burnaby defines park as "the standing of a vehicle, whether occupied or not, upon a roadway otherwise than temporarily for the purpose of and while actually engaged in loading or unloading merchandise, discharging or taking on passengers, or in obedience to traffic regulations or traffic signs or signals." The City of Surrey has a similar bylaw. The City of Vancouver bylaw does not include loading or unloading. The context in which these bylaws are drafted is important, and what these bylaws do is define the "prohibition of parking" as opposed to defining "parking."

[24] The Appellants submit that the Board should have taken into account the presumption of coherence, and suggest that this means that all of the statutes defining "parking" should be consistent. I respectfully do not believe that that is what the presumption of coherence means in this context. It does not mean that the language in each bylaw must be identical in terms of defining a term, and in particular, municipal bylaws which are prohibiting parking do not have to be in the same language as a bylaw, the purpose of which is for taxation. The term may be defined depending on the purpose for which it is contained in the statute.

[25] The principles of statutory interpretation suggest that statutes be given the wide and broad meaning consistent with the purpose of the legislation. The purpose of this legislation includes the generating of funds to build roads and transportation systems. Sections 1, 3, 4, ss. 17 to 20, and Bylaw 39(25) of the *Greater Vancouver Transportation Authority Act* show the extent of the roadwork that the Greater Vancouver Transportation Authority is involved in. Taxing parking sites is a way to generate revenue for these projects. Therefore, the context of the legislation is consistent with the definition which the Board applied.

[26] The Appellants also submitted that the legal definitions contained in *Black's Law Dictionary* and in the *Canadian Legal Dictionary* were not before the Board. It is true that these definitions had not been provided to the Board. These definitions are as follows. *Black's Law Dictionary*, Sixth Edition, 1990, page 116, says:

> "park," "Term 'park' as used in statutes or ordinances regulating parking, does not comprehend or include merely temporary or momentary stoppage but rather connotes a stoppage with intent of

> permitting vehicle to remain standing for an appreciable length of time. *Ford* v. *Stevens*, 280 Minn. 16, 157 N.W. 2d 510, 513."

[27] Counsel for the Respondents points out that this definition no longer appears in *Black's Law Dictionary*, and further, I note that this definition refers to the regulation of parking, not the taxation of the parking.

[28] In the *Dictionary of Canadian Law*, Second Edition, the following definition is contained:

> "park," verb, "1. The standing of a vehicle, whether occupied or not, except when standing temporarily for the purpose of and while engaged in loading or unloading."

[29] The Appellants submit that this definition supports the exclusion from the definition of "parking" a vehicle standing temporarily or for the purpose of loading or unloading. There is no authority cited for the definition and, indeed, it would be relevant to the regulation of parking, but I do not see how it could be applicable to the taxation of parking. Indeed, the other definitions define "parking" as a temporary stopping of a vehicle.

[30] The legislation specifically excludes some forms of parking. See s. 136 above. While the legislation also clarifies matters to be included within the definition section, those appear to be areas contained within a parking area such as a toll booth or a parking attendant booth, lighting and so on, which would prevent the taxpayer from taking out his measuring tape and measuring off bits and pieces of a parking area that should not be included in a larger parking site.

[31] I conclude that the Board correctly applied the principles of statutory interpretation to the meaning of the word "parking" when it included loading and unloading areas where the vehicles are parked. Therefore, the answer to the question is "No."

[32] Costs are awarded on Scale 3.

The Honourable Madam Justice Bennett