SC 237 AA12 v. Kebet Holdings Ltd.

ASSESSOR OF AREA 12 - COQUITLAM

v.

KEBET HOLDINGS LTD.

Supreme Court of British Columbia (A870737) Vancouver Registry

Before: MR. JUSTICE CUMMING (In Chambers)

May 14, 1987

Blair T. MacDonell for the Appellant
David L. Vaughan for the Respondent

Classification - Industrial- Meaning of "for the purpose of transporting" - s. 5, B.C. Reg. 438/81 - Mixed Classification

The Assessment Appeal Board classified land used for the unloading, loading and sorting of goods shipped by truck between points in Vancouver and other cities as Class 6, Business and Other, because it held that the subject lands were not used or held for the purpose of transporting any products.
HELD:
The Board misinterpreted s. 5 of the Regulation by applying too narrow an interpretation to the words "used for transporting". Transportation includes the successful taking up and setting down of goods. The Respondent argued that the Board was not entitled to make an Order splitting the classification for the same land and improvements. The Judge held that this was not a question raised by the Stated Case.

Reasons for Judgment May 25, 1987

THE CASE

This matter comes forward by way of a case stated by the Assessment Appeal Board pursuant to Section 74 (2) of the *Assessment Act* R.S.B.C. 1979, Chapter 21 at the requirement of the Assessment Commissioner seeking the opinion of the Supreme Court on the following questions:

> 1. Did the Assessment Appeal Board err in law when it failed to hold that the subject land and improvements were either "used or held for the purpose of transporting any product" within the meaning of Section 5 of B.C. Reg. 438/81 made pursuant to the *Assessment Act* R.S.B.C. 1979, Chapter 21?
>
> 2. Did the Assessment Appeal Board err in law when it failed to classify the subject land and improvements as Class 5, Industrial classification, pursuant to Section 5 of the B.C. Reg. 438/81 made pursuant to the *Assessment Act* R.S.B.C. 1979, Chapter 21?

The case stated sets out the following material facts:

1. The property in question is at 2200 Taft Avenue, Coquitlam, British Columbia, being on Folio No. 12-43-305-06792-006 on the 1986 Assessment Roll.

2. Upon the recommendation of the parties to the appeal, the Board ordered that part of the property be valued and classified as follows:

Land (part only)	$354,000 (Class 6)
Buildings (part only)	$158,175 (Class 6)

3. Also upon the recommendation of the parties, the Board ordered that the remaining land and buildings (the classification of which is in issue) be valued as follows:

Land	$336,900
Buildings	$150,925

4. The land and building in dispute is part of a single parcel of land having a total land area of 5.48 acres. The zoning is M-1, light industrial, allowing a variety of industrial and commercial uses, including the present use of the property.

5. The total land area of 5.48 acres is improved with two buildings and paved parking areas. The two buildings are separated by a fence and are each leased to separate tenants, one of which is the tenant of the land and building in dispute (the "site").

6. The site is used for the collection of freight from points in the Lower Mainland of British Columbia. The freight is sorted and loaded onto intercity transport trailers for shipment to other cities in Canada. The reverse process also occurs.

7. The local truckers bring to the premises loads of goods from other companies wishing to have those goods shipped to one or more other cities in Canada. The goods are offloaded from the local trucker at the premises and are subsequently re-loaded onto trailers destined for another city or cities within Canada. After a trailer for a particular destination is loaded, it is then connected with a tractor which then takes these goods, received from several different companies, and transports the goods to the desired destination. The reverse process also occurs where a tractor trailer assembly arrives at the premises from another city in Canada with goods which are then unloaded and sorted and subsequently loaded onto local trucks for delivery within the Lower Mainland.

8. Administration, dispatch and sales of the service offered by the tenant of the site, as well as servicing of the tenant's own trailers, takes place at the site.

9. The site is not used for the storing of products.

10. The Board found that the tenant of the site is in the business of transporting products, and that the unloading, sorting and loading of products at the site is a necessary part of a chain for the transporting of products.

11. The Board found that the products unloaded, sorted and loaded are not transported at the site.

12. The Board found that the land and buildings at the site are not used or held for the purpose of transporting any products.

In its decision dated January 29, 1987 the Assessment Appeal Board stated its conclusion as follows:

> "There is no issue as to the facts in this case. It appears clear to the Board that the tenant of the subject premises is in the business of transporting products. It is not the business of the occupier of the premises, however, that is being assessed or classified. The land and improvements are what require classification. Although it is true that the unloading, sorting and loading of products on the subject premises is a necessary part of a chain for the transporting of products the Board concludes that the land and building under appeal are not, themselves, used or held for the purpose of transporting products. Accordingly, the Board orders that the land and building referred to herein as Site A and Building A receive Class 6, Business & Other Classification."

DUTY OF THE COURT

In *Crown Forest Industries Limited* v. *Assessor of Area 6-Courtenay* (1985), B.C. Stated Cases, Case 210, Southin, J. said, at page 1191:

> "So long as the Assessment Appeal Board which must, in deciding appeals to it, apply the Act does not:
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> > 1. misinterpret or misapply the section-see *Pacific Logging Co. Ltd.* v. *The Assessor* [1977] 2.S.C.R. 623 adopting the dissenting judgment of McIntyre, J.A. in the Court of Appeal 12th November, 1976 (unreported);
> >
> > 2. misapply any applicable principle of general law . . . , or
> >
> > 3. act without any evidence or upon a view of the facts which could not reasonably be entertained
>
> this Court has no power to intervene.
>
> On the third proposition, which is fundamental to the appellant's case, see:
>
> > (a) *Edwards* v. *Bairstow* [1956] A.C. 14 (H.L.) at 29:
> >
> > For it is universally conceded that, though it is a pure finding of fact, it may be set aside on grounds which have been stated in various ways but are, I think, fairly summarized by saying that the court should take the course if it appears that the commissioners <u>have acted without any evidence or upon a view of the facts which could not reasonably be entertained</u>. (Underlining mine)."

A further extract from the speech of Lord Radcliffe in the *Bairstow* case warrants citation:

> "When the case comes before the court it is its duty to examine the determination having regard to its knowledge of the relevant law. If the case contains anything ex facie which is bad law and which bears upon the determination, it is, obviously, erroneous in point of law. But, without any such misconception appearing ex facie, it may be that the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal. In those circumstances, too, the court must intervene. It has no option but to assume that there has been some misconception of the law and that this has been responsible for the determination. So there, too, has been error in point of law. I do not think that it much matters whether this state of affairs is described as one in which there is no evidence to support the determination or as one in which the evidence is inconsistent with and contradictory of the determination, or as one in which the true and only reasonable conclusion contradicts

> the determination. Rightly understood, each phrase propounds the same test." (At page 36).

PRELIMINARY OBJECTION

Mr. Vaughan raised the preliminary objection that both Questions 1 and 2 in the stated case are not questions of law only as required by Section 74 (2) of the *Assessment Act* and that, accordingly, this Court is without jurisdiction to hear and determine the questions posed. He relied upon the following authorities as the basis for his preliminary objection: *The Municipal Corporation of the Township of Tisdale* v. *Hollinger Consolidated Gold Mines Limited* (1933) S.C.R. 321 at page 323; *City of Vancouver* v. *The Corporation of the Township of Richmond*, B.C. Stated Cases, Case 14 at pages 57 to 58; *Provincial Assessors of Comox, Cowichan and Nanaimo* v. *Crown Zellerbach Canada Limited and Crown Zellerbach Building Materials Limited* (1963),42 W.W.R. 449 (B.C.C.A.) at 458.

The first part of Section. 5 of the above noted Regulation is as follows:

> "5. Class 5 property shall include only land or improvements, or both, used or held for the purpose of extracting, processing, manufacturing, transporting or storing of any products, . . ."

It was Mr. Vaughan's contention that the answer to Question 1 involves, firstly, a question of law as to the meaning of the word "transporting" as used in Section 5 of the Regulation and, secondly a question of fact as to whether, on the facts, the use of the land falls within the proper meaning in law of that word. Likewise, under Question 2, the Court is asked to determine the proper interpretation of Class 5 and then to decide, on the facts, whether the subject land and improvement fall into Class 5. Put another way, the Court is asked to give an opinion as to the correctness of the Board's classification, an issue which involves a question of mixed law and fact.

Counsel were in agreement that, if Question 1 is properly before the Court and answered in favour of the Assessor, Question 2 need not be answered.

Mr. Vaughan agreed that if Question 1 were recast along the following lines:

> "Did the Assessment Appeal Board err in law in its interpretation of the words 'for the purpose of . . . transporting' in Section 5?"

it would, indeed, raise a question of law only. In my opinion that issue is at the heart of the question posed in the stated case. I am satisfied that Question 1 of the stated case properly raises a question of law only. The preliminary objection is therefore dismissed.

THE MERITS

Pursuant to Section 26 (8) of the *Assessment Act*, the Lieutenant Governor in Council prescribes classes of property for the purpose of administering property taxes and defines the types or uses of land or improvements, or both, to be included in each class. The applicable regulations are the Prescribed Classes of Property Regulation (B.C. Reg. 438/81). The issue before the Board was the classification of land and a building used in the loading, sorting and unloading of goods that are being shipped by inter-city truck and trailer haul.

No definition is provided in the *Assessment Act* or the Regulation of the term "transporting". It should therefore be given its ordinary meaning.

"Transport" means "[t]o carry, convey, or remove from one person or place to another" (The Shorter Oxford English Dictionary, Third Edition, page 2233).

"Transportation" implies the "taking up of persons or property at some point and putting them down at another" (see *Gloucester Ferry Co.* v. *Pennsylvania* (1884), 114 D.S. 196 at 203, cited in *Rex* v. *McMyn*, [1941], 3 W.W.R. 337 at 340; and *Ottawa-Carleton Regional Transit Commission et al* v. *Gala Hospitality (International) Inc., c.o.b. Gala Tours* (1982) 19 M.P.L.R. 153 at 156).

The Board was not called upon to make a finding upon conflicting evidence: there was, as noted, no issue as to the facts in this case. The Board has erred in restricting unduly the ordinary meaning of the term "transporting", inferring as it did, that the place where goods or persons are picked up or deposited cannot be a place where transporting occurs. Transportation, by its very nature, requires that there be a place where the goods or persons can be successfully taken up and set down. To carry the Board's approach to its logical conclusion would result in a finding that all the facilities or premises along a route or at the beginning or end of a route that are used to facilitate transportation along it are not themselves used for transportation. Such facilities as a deep sea port, a bus station, a weigh station, an airport or a railway yard would be held not to be used for transportation. According to the Board's interpretation, only the highway, the ocean or the airspace could be considered as being used for transportation, but never the end place or starting place or even intermediate places along the way that serve as links between two modes of transportation or as vital and necessary facilities to handle or service the goods or people in transport. Such a narrow interpretation of the words, "used for transporting", could not have been intended.

The Board stated, correctly, that "[i]t is not the business of the occupier of the premises. . . that is being assessed or classified. The land and improvements are what require classification". Quite so, but the business of the occupier (in this case, transportation) is what dictates the purpose for which the premises are used or held.

The Board has therefore, in my opinion, misinterpreted Section 5 of the Regulation and has arrived at its conclusion upon a view of the facts which could not reasonably be entertained. As a result of its misconception of the law, it has fallen into error.

CONCLUSION

In response to the questions set out in the case stated for the opinion of the Court, I set out my opinion in the following answers:

> *Question 1:* Yes.
>
> *Question 2:* Unnecessary to consider and not answered.

In accordance with Section 74 (6) of the *Assessment Act* these reasons will be remitted to the Board as the opinion of the Court.

OTHER MATTERS

Mr. Vaughan sought to support the decision of the Board on another ground which was not argued before it, did not form part of its decision and is not the subject of the questions set forth in the stated case. Shortly put, his contention was that the single parcel of land, the subject matter of these proceedings, cannot be apportioned into two classes under the Regulation and that, as part of the land and building had by agreement been classified as Class 6, so the "site" in dispute must also fall into that Class. As the legislation under consideration is a taxing statute, the interpretation most favourable to the taxpayer must, he says, be applied: (see *Reginald R. Orr* v. *City of Vancouver*, (1955) B.C. Stated Cases, Case 1 at page 11).

His argument runs thusly:

> If land is to be apportioned and placed in two or more classes, there must be statutory authority for doing so and there is now no longer any such authority.

Prior to January 1, 1984, Section 12 in Part 2 of B.C. Reg. 438/81 provided:

> "Property within more than one class
>
> 12. Where a property includes more than one of the classes defined in Part 1 the assessor shall determine the proportion of the actual value of the property contributed by the property in each class and shall assess the portion of the actual value so determined at the percentage of actual value fixed for that class as set out in Schedule A."

B.C. Reg. 485/83, deposited December 19, 1983, and taking effect January 1, 1984, repealed Part 2 and Schedule A of B.C. Reg. 438/81 and enacted the following provisions with regard to improvements:

> "Exemptions
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> 2. Improvements on a parcel of land which are classified as Class 5 or 6 under the regulations under the *Assessment Act* are exempt from property tax levies under the Acts listed in the schedule to a maximum of $10,000 of their assessed value.
>
> Mixed Classification
>
> 3. Where the improvements on a parcel of land are partially classified as Class 5 and partially classified as Class 6, the exemption under section 2 shall be applied first against the assessed value of the portion classified as Class 5, and any remaining part of the exemption shall be applied against the portion classified as Class 6."

The general authority to apportion land into two or more classes found in Section 12 (supra) having been repealed, the authority to do so must be found in the wording of the Regulation defining the class itself. For example, Class 2, relating to utilities, specifically exempts "that part of land or improvements or both" used for certain purposes, clearly authorizing a division of the property into two or more classes. No such wording is found in Class 5.

He makes a similar, though somewhat more tenuous argument, with respect to the classification of improvements.

However, in view of the fact that these interesting arguments were, as already noted, not before the Board the issues they raise do not form part of the stated case and are not before me. I think it therefore proper that I say no more about them. I mention them only as I have done so that they will be before the Board when the matter comes back to it for reconsideration.