COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *RC Limited Partner Inc. v. British Columbia,* 2024 BCCA 86

Date: 20240227
Docket: CA49197

Between:

RC Limited Partner Inc.

Appellant
(Appellant)

And

His Majesty the King in Right of the Province of British Columbia

Respondent
(Respondent)

Before: The Honourable Justice MacKenzie
The Honourable Mr. Justice Willcock
The Honourable Madam Justice Fenlon

On appeal from: An order of the Supreme Court of British Columbia, dated June 12, 2023 (*RC Limited Partner Inc. v. British Columbia*, 2023 BCSC 1010, Vancouver Docket S228360).

Oral Reasons for Judgment

Counsel for the Appellant:	J.A. Nitikman, K.C.
Counsel for the Respondent:	G.N. Rudyk B.A. Gulka-Tiechko
Place and Date of Hearing:	Vancouver, British Columbia February 26, 2024
Place and Date of Judgment:	Vancouver, British Columbia February 27, 2024

Summary:

This is an appeal from the dismissal of a statutory appeal under the Property Transfer Tax Act. The statutory appeal of an assessment made against the appellant for what is commonly referred to as "Foreign Buyer's Tax", engaged a single question of statutory interpretation. The appellant says the judge erred in his interpretation of the Act; and specifically, in his interpretation of the phrase "a person to whom land is transferred", as situated in the definition of the term "transferee". Held: Appeal dismissed. The judge did not err. His interpretative approach was consistent with that required by the jurisprudence. The appeal is dismissed substantially for his reasons.

WILLCOCK J.A.:

Introduction

[1] 1041459 B.C. Ltd. and AP Six Holdings Ltd. jointly owned residential property on Elliot Street in New Westminster (the "Elliot Property"). By agreement dated February 15, 2018, and effective February 16, 2018, the companies amalgamated under the *Business Corporations Act*, S.B.C. 2002, c. 57, to form the appellant RC Limited Partner Inc. ("RC"). The Registrar of Companies issued a certificate of amalgamation to RC.

[2] On June 7, 2018, RC applied under s. 191(4) of the *Land Title Act*, R.S.B.C. 1996, c. 250, to change the name of the registered owner of the Elliot Property to RC by filing a Form 17 (change of name-amalgamation of companies) in the Land Title Office.

[3] The numbered company, AP Six Holdings Ltd. and RC are all controlled by Yuk Sui Lo, who is not a Canadian citizen or a permanent resident. They are "foreign entities" as defined by s. 2.01 of the *Property Transfer Tax Act*, R.S.B.C. 1996, c. 378 [*Act*], and potentially subject to additional property transfer tax on transactions involving residential property located in a "specified area" as defined by s. 2.01 of the *Act.* The Elliot Property is such a property.

[4] On March 23, 2021, an auditor, acting on behalf of the administrator appointed under the *Act*, concluded that RC owed additional property transfer tax as a result of the filing of the Form 17. She issued a notice of assessment to RC for tax

in the amount of $1,629,200, 20% of the June 7, 2018, fair market value of the Elliot Property ($8,146,000).

[5] On June 18, 2021, RC filed a notice of objection to the assessment under s. 19(1) of the *Act.* The appeals officer, who reviewed the objection, recommended to the Minister that the assessment be affirmed. By letter dated August 30, 2022, the Deputy Minister of Finance accepted that recommendation and affirmed the assessment.

[6] RC's appeal under s. 21 of the *Act*, of the decision first made by the administrator, was dismissed by Mr. Justice Kirchner for reasons indexed at 2023 BCSC 1010.

[7] The appeal before Kirchner J. focused upon a question of statutory interpretation. The appellant now says the judge incorrectly interpreted the provisions of the *Act*. For substantially the reasons of the judge, I would dismiss the appeal.

The Statutory Scheme Establishing the Foreign Buyer's Tax

[8] The *Act* imposes a tax on "taxable transactions", as defined in s. 1. A general property transfer tax ("Transfer Tax") of between 1–5% is assessed on the fair market value of real property that is the subject of a taxable transaction.

[9] Additional property transfer tax ("Foreign Buyer's Tax") of 20% of the value of the property is assessed on taxable transactions of residential property in a "specified area" of British Columbia when the transferee is a "foreign entity" or a "taxable trustee".

[10] Both Transfer Tax and Foreign Buyer's Tax are imposed on the "transferee", defined in s. 1(1) of the *Act* as "a person to whom land is transferred under a taxable transaction …".

[11] The definition of “taxable transaction” in s. 1(1) includes a transaction:

> …
>
> (f) that consists of an application under section 191 of the *Land Title Act* in respect of an amalgamation referred to in section 191 (4) of that Act,

[12] Section 191(1) of the *Land Title Act* concerns applications by registered owners of land in fee simple who legally change their names and apply to have their interest in land registered in their new legal name. It provides that, on such an application, the registrar of land titles must cancel the existing indefeasible title and register a new indefeasible title in the changed name.

[13] Section 191(4) of the *Land Title Act* provides for the issuance of a new indefeasible title in the name of an amalgamated company for an interest in land that was held by one or more of its predecessor companies before the amalgamation. An application to change the name of the registered owner of land subsequent to an amalgamation is a “taxable transaction” under the *Act*. That is not contested.

[14] Certain taxable transactions are exempted from the Transfer Tax. The exemptions are described in s. 14. That section provides in part:

> 14
>
> …
>
> (4) If a taxable transaction entitles the transferee, on compliance with the *Land Title Act*, to registration in a land title office, that transferee is exempt from the payment of tax if the taxable transaction is a transfer within any of the following descriptions:
>
> …
>
> (u) a transfer referred to in paragraph (f) of the definition of “taxable transaction”, if
>
> (i) the amalgamation was effected under Division 3 of Part 9 of the *Business Corporations Act*, under sections 181 to 186 of the *Canada Business Corporations Act* (Canada) or under similar provisions of an enactment of Canada or of a province, and
>
> (ii) the continuing corporation files a certificate of amalgamation with the administrator, at the request of the

> administrator and within the time period specified by the administrator;
>
> [Emphasis added.]

[15] This exemption does not apply to the payment of Foreign Buyer's Tax on changes to registration to reflect amalgamations. Section 14(2.1) provides:

> (2.1) Despite … [the exemption described above] a transferee is not exempt from the payment of tax under … [the Foreign Buyer's Tax] in respect of a taxable transaction that is a transfer described in subsection … (4)(u) of this section.
>
> [Emphasis added.]

[16] The *Act* unmistakably refers to the registration of a change in the registered ownership effected as a result of an amalgamation effected under the *Business Corporations Act* as a transfer referred to in paragraph (f) of the definition of "taxable transaction".

[17] It also unmistakably refers to the registration of a change in the registered ownership effected as a result of such an amalgamation as a transfer described in s. 14(4)(u) of the *Act.*

[18] When RC applied under s. 191(4) of the *Land Title Act* for a new indefeasible title following the amalgamation, it also applied for, and was granted, an exemption under s. 14(4)(u) for the Transfer Tax, because the amalgamation was effected under the *Business Corporations Act*. However, as I have noted, it was assessed $1,629,200 as Foreign Buyer's Tax because, by operation of s. 14(2.1), the s. 14(4)(u) exemption is inapplicable to that tax payable upon an application under s. 191 of the *Land Title Act* in respect of an amalgamation.

Judgment on the Statutory Appeal

[19] On the statutory appeal of the assessment, the judge noted that none of the foregoing propositions (other than the Minister's conclusion that the Foreign Buyer's Tax was payable) was in dispute. RC acknowledged:

a) its application under s. 191(4) of the *Land Title Act* was a taxable transaction as defined by s. 1 of the *Act*;

b) the exemption under s. 14(4)(u) of the *Act* relieved it only of the requirement to pay the Transfer Tax;

c) s. 14(2.1) expressly preserved the application of the Foreign Buyer's Tax to a transaction under s. 191(4) of the *Land Title Act*; and

d) the Legislature intended that an application under s. 191(4)—the very application it made—would be subject to the Foreign Buyer's Tax.

[20] The question posed of the judge by the appellant was whether an amalgamated company making application under s. 191(4) of the *Land Title Act* is a "transferee" against whom a property transfer tax can be assessed. RC argued that ss. 18 and 2.02 of the *Act* provide that property transfer taxes may be assessed on a "transferee", which is defined as a "person to whom land is transferred under a taxable transaction …" (my emphasis). It argued there was no transfer of land to it under the amalgamation and thus it was not a transferee. An application under s. 191(4) to have the name of the registered owner of the land changed from the original companies to RC's name, it contended, is not a transfer as that term is commonly understood and interpreted in the jurisprudence.

[21] Justice Kirchner held that, because it was not disputed that the Legislature intended to impose the Foreign Buyer's Tax on a foreign entity applying to register a change in the name of the registered owner under s. 191(4) of the *Land Title Act*, it stood to reason that the Legislature considered the entity making that application to be a "transferee" as defined by the *Act*.

[22] He held that even if the ordinary meaning of “transferee”, “transferred” or “transfer” does not capture a s. 191(4) transaction, the words of the relevant provisions must be read “harmoniously with the scheme of the *Act*, the object of the *Act*, and the intention of [the Legislature]”. The scheme of the *Act*, the object of the *Act*, and the intention of the Legislature weighed more heavily in the interpretation of the *Act* than the ordinary meaning of the word “transfer”.

[23] Construing “transferee” so as to exclude an amalgamated company applying under s. 191(4) would lead to an absurd result: that an application under s. 191(4) is a taxable transaction that can never be taxed.

[24] In my view it should also be noted that if an application pursuant to s. 191(4) of the *Land Title Act* subsequent to an amalgamation is not a “transfer” within the meaning of the *Act*, both the statutory provision excluding statutory amalgamations from the transactions subject to Transfer Tax (s. 14(4)) and the exception to that exclusion (s. 14(2.1)) are unnecessary provisions.

[25] The judge expressed the opinion that the policy of taxing transactions under s. 191(4) of the *Land Title Act* “leaps out from the pages of the [*Act*]”. That is apparent when the *Act* is considered as a whole, and in light of the specific provisions relating to the imposition of the Foreign Buyer’s Tax on certain transactions and transferees, in particular:

a) the definitions of “taxable transaction” and “transferee” (s. 1(1));

b) the definitions in relation to the additional property transfer tax (s. 2.01);

c) the provision for imposing the additional property transfer tax (s. 2.02); and

d) the types of transactions the legislature intended to be exempt from the payment of property transfer tax (s. 14).

[26] The judge acknowledged that characterizing an application under s. 191(4) as a “transfer” could make paragraph (f) of the definition of “taxable transaction” redundant. Subsection 1(1)(a) defines a “taxable transaction” to include a

transaction purporting to "transfer or grant" an estate in fee simple "by any method". That being the case, the specific inclusion of an application under s. 191(4) in the definition of taxable transactions is unnecessary. The judge concluded that there would be no redundancy if the words "transfer or grant" in s. 1(1)(a) might have a narrower meaning than the word "transfer" where it is used elsewhere in the *Act*. He recognized: "This may run counter to the presumption that the same words in a statute will have the same meaning. However, as the Province argues, this is merely a presumption (though perhaps a strong one)": at para. 73.

[27] The fact the redundancy was created by a series of amendments provided some justification for not applying the presumption in this case. The judge concluded:

> [75] In this case, the ambiguity RC has seized upon arose through an amendment. In a section of its argument entitled "To err is human", RC suggests that when para. (f) was added to the definition of taxable transaction, "transferee" was already defined in the [*Act*] and the draftsperson "forgot or did not realize that the existing definition of 'transferee' was not broad enough to capture a change of name resulting from an amalgamation." RC argues the amendment adding para. (f) should have but did not amend the definition of "transferee" to refer to the new para. (f). RC contrasts this to the definition of "fair market value" in the [*Act*] which was amended by adding para. (g) specifically to capture a change of name on an amalgamation.
>
> [76] In my view, this does not mean that "transferee" should be strictly construed in accordance with what may be its ordinary meaning, but contrary to the context and purpose of the *Act* as a whole. Rather, a contextual interpretation is called for to read the word consistently with the clear legislative intent.
>
> [77] In my view, an interpretation of "transferee" that includes an applicant under s. 191(4) of the *Land Title Act* may not be ideal but it is plausible. It creates a potential redundancy but not a contradiction. It does not mislead the taxpayer since the intention to tax s. 191(4) transactions is clear. It is also the only interpretation that is consistent with the scheme of the *Act*, the object of the *Act*, and the intention of the legislature.

The Present Appeal

[28] Before us, RC contends the *Act* imposes a tax when three prerequisites are met: there is a taxable transaction, as defined by the *Act*; the transaction is registered in a Land Title Office (this is, it says, a "registration based tax"); and there is a transferee liable to pay the tax.

[29] It contends the judge erred in holding that RC's filing of the Form 17, and the issuance of a new indefeasible title, amounted to RC receiving a "transfer of land" within the meaning of the definition of "transferee" in s. 1(1). It notes there is no definition of a "transfer" in the *Act*, and says the word cannot reasonably bear the meaning that must be ascribed to it in order for tax to be payable on a s. 191 application subsequent to an amalgamation. The meaning of the word is clear: it requires that an existing property must pass from one person to a different person. Not only was there no transfer of land, the title did not move to a new person because the corporation continuing from a statutory amalgamation of two predecessor corporations is not a new corporation, but is the same corporation as and a continuation of the predecessors. It says:

a) a "transfer of land" means that the same land passes from one person to a different person; here, the old title simply disappeared and a new, different, piece of "land" that never existed before, being the new title, was created;

b) under corporate law, RC is not a new corporation; it is the same as and a continuation of the predecessors; and

c) the predecessors did not "transfer" their property to RC, their property simply "became" RC's property.

[30] It argues when the words of a tax statute are precise and unequivocal, it is neither necessary nor permissible to look at the context or purpose, as the judge did in this case. The words should just be given their plain meaning: the context and purpose cannot be used to give a word a meaning that it cannot reasonably bear. In support of this proposition it relies upon the decision of the New Brunswick Court of Appeal in *Imperial Oil v. Her Majesty the Queen, in right of the Province of New Brunswick, as represented by the Minister of Finance*, 2009 NBCA 20.

[31] It notes that Kirchner J. (at para. 64) concluded that the cancelation of the old indefeasible title and registration of a new indefeasible title in the changed name upon the amalgamation was not a "transfer" within the ordinary meaning of that

word. It says it was an error of law for the judge to examine whether the context and purpose of the *Act* gave rise to a different meaning of "transfer". It argues that doing so is contrary to the principle that, in a tax statute, one should apply the clear and unequivocal meaning of a word without giving it some secondary meaning based on context and purpose.

[32] While it refers to "contextual clues" against Kirchner J.'s inference that the Legislature intended to include changes in the name of registered owners of property upon amalgamation within the ambit of the term "transfer" in the definition of transferee, the appellant "stands by" its agreement that the Legislature intended a change of name following an amalgamation to be taxable. It acknowledges the Legislature would not have added paragraph (f) to the definition of "taxable transaction" in s. 1(1) if it did not intend it to result in tax. However, it submits:

> … [T]hat does not mean that "transfer" in the definition of "transferee" should be given a meaning that it cannot reasonably bear, just to ensure that tax is payable. That would be contrary to the principles of statutory interpretation set out above. … [E]ven if one knows with absolute certainty that the Legislature intended a change of name to be taxable, that alone cannot change the clear and plain meaning of "transfer".

[33] The respondent says the judge correctly interpreted "transferee" to include an amalgamated company that applies to change the name on title to property following the amalgamation. It says the judge properly applied the modern approach to statutory interpretation and reached the conclusion that is best supported by the statutory context and legislative intent.

[34] In my opinion, it was not an error for the judge to determine whether the appellant was a "transferee" subject to paying the Foreign Buyer's Tax by reading the words of the *Act* 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 the Legislature. He was required to do so. The interpretative task must be seen in light of specific directions given in *Placer Dome Canada Ltd. v. Ontario (Minister of Finance)*, 2006 SCC 20 at para. 22, to "undertake a unified textual,

contextual and purposive approach to statutory interpretation" (citing *Canada Trustco Mortgage Company v. Canada*, 2005 SCC 54 at para. 47).

[35] In *Thermo Design Insulation Ltd. v. British Columbia*, 2019 BCCA 213, Harris J.A. adopted the description of the proper approach to the interpretation of tax statutes described by Groberman J.A. in *Zimmer Canada Limited v. British Columbia*, 2010 BCCA 64. I can do no better than to describe the approach that should be taken as set out by Groberman J.A. in *Zimmer*:

> [8] At least since *Stubart Investments Ltd. v. Canada*, [1984] 1 S.C.R. 536, 10 D.L.R. (4th) 1, it has been clear that taxation statutes are subject to the same principles of statutory interpretation as other statutes. In *Stubart*, the majority of the Court agreed that the "modern rule" of statutory interpretation is applicable, quoting, at 578, from Professor Driedger's *Construction of Statutes* (2nd ed. 1983) at 87:
>
> > 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.
>
> [9] In *Canada Trustco Mortgage Company v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601, 259 D.L.R. (4th) 193, the Court reiterated that the "modern rule" applies to the interpretation of taxation statutes, and added the following comments, at para. 10:
>
> > The interpretation of a statutory provision must be made according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole. When the words of a provision are precise and unequivocal, the ordinary meaning of the words play a dominant role in the interpretive process. On the other hand, where the words can support more than one reasonable meaning, the ordinary meaning of the words plays a lesser role. The relative effects of ordinary meaning, context and purpose on the interpretive process may vary, but in all cases the court must seek to read the provisions of an Act as a harmonious whole.
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> [10] The Court further elaborated on the approach to interpreting taxing statutes in *Placer Dome Canada v. Ontario (Minister of Finance),* 2006 SCC 20, [2006] 1 S.C.R. 715 at paras. 21-23, 266 D.L.R. (4th) 513. After citing the "modern rule", the Court continued:
>
> > ... [B]ecause of the degree of precision and detail characteristic of many tax provisions, a greater emphasis has often been placed on textual interpretation where taxation statutes are concerned. Taxpayers are entitled to rely on the clear meaning of taxation provisions in structuring their affairs. Where the words of a statute are precise and unequivocal, those words will play a dominant role in the interpretive process.

> On the other hand, where the words of a statute give rise to more than one reasonable interpretation, the ordinary meaning of words will play a lesser role, and greater recourse to the context and purpose of the Act may be necessary.
>
> [Citations omitted.]

[36] The appellant, citing *Canada v. McLarty*, 2008 SCC 26 at para. 75 and *Csak v. The King*, 2024 TCC 9 at para. 69, reminds us that the court is not the protector of government revenue. It urges us not to give effect to the perceived purpose of the *Act* rather than its wording (referring us to *D & D Livestock Ltd. v. The Queen*, 2013 TCC 318 (among other cases)). These propositions are not controversial, but are unhelpful if we conclude, as I do, that the words of the *Act* clearly impose a tax on the transaction in question in this case. As Groberman J.A. noted in *Zimmer*:

> [13] In my view, the pre-*Stubart* rules for the interpretation of taxing statutes have no application, even as tie-breakers in the event that the ordinary rules of interpretation do not resolve the issue. Several authoritative cases support the appellant's view that where the ordinary rules of interpretation do not favour one view over the other, the court must adopt the interpretation that is most favourable to the taxpayer: *Québec (Communauté urbaine) v. Corp. Notre-Dame de Bon-Secours*, 1994 CanLII 58 (SCC), [1994] 3 S.C.R. 3 at 19-20, 171 N.R. 161; *Placer Dome* at para. 24. It must be emphasized, however, that the use of that presumption will be exceptional. It is only where ordinary principles of interpretation do not favour one interpretation over another that the presumption in favour of the taxpayer will apply.

[37] The respondent says in its opening statement:

> This case is not about what "transfer" means in the abstract. Nor is it about whether an amalgamation or an application to change the name on title following an amalgamation involves a "transfer" for the purposes of other statutes. The question is what the Legislature meant when it used the words "transferred" and "transfer" in the relevant … provisions. The Legislature cannot have intended to use these terms in the narrow sense advocated by the appellant.
>
> Justice Kirchner correctly rejected the appellant's position. The statutory context — which includes provisions explicitly granting tax exemptions for transactions the appellant says are not subject to tax in the first place — supports a broader interpretation. The appellant's interpretation renders key provisions meaningless and is inconsistent with the broad sense in which "transfer" is used elsewhere in the [*Act*]. Under a proper interpretation, the appellant is a "transferee" and is liable for [the Foreign Buyer's Tax].

[38] I agree in substance with these submissions, and with Justice Kirchner's analysis of the relevant provisions of the *Act*. In my view, his approach to statutory interpretation was consistent with the proper approach described in the jurisprudence. Despite the able submissions of Mr. Nitikman, I would dismiss the appeal, substantially for the reasons of the judge.

[39] **MACKENZIE J.A.**: I agree.

[40] **FENLON J.A.**: I agree.

[41] **MACKENZIE J.A.**: The appeal is dismissed.

"The Honourable Mr. Justice Willcock"