

Court of King's Bench of Alberta

Citation: Cavendish Farms Corporation v Lethbridge (City), 2024 ABKB 768

Date: 20241220
Docket: 2306 00876
Registry: Lethbridge

Between:

Cavendish Farms Corporation

Applicant

- and -

City of Lethbridge and Lethbridge Composite Assessment Review Board

Respondents

**Memorandum of Decision
of the
Honourable Justice J.C. Kubik**

I. INTRODUCTION

[1] When does a freshly harvested potato become a frozen French fry and which steps along the production line constitute “processing” for the purposes of municipal assessment and taxation?

[2] Owing to the preferential tax treatment accorded to machinery and equipment, these questions have been hotly contested between the Applicant, Cavendish Farms Corporation (Cavendish), and the City of Lethbridge (City) resulting in this second Judicial Review of the decision of the Lethbridge Composite Assessment Review Board (CARB) relating to the 2020 and 2021 tax assessments rendered.

II. BACKGROUND FACTS and HISTORY OF PROCEEDINGS

[3] Cavendish Farms Corporation is a multi-national corporation headquartered in Prince Edward Island. In 2019 it opened a potato processing plant in Lethbridge, Alberta (the “Plant”).

[4] The Plant processes freshly harvested raw field potatoes into frozen potato products for worldwide shipment. For the purposes of this decision, I have referred to French fries, which was the exemplar product described during the proceeding.

[5] When raw field potatoes arrive at Cavendish, they are unloaded onto a conveyor system (the “Unloading Equipment”). Because raw field potatoes are dirty, they initially go through a dry-cleaning process. They are shaken to remove loose dirt, vines, rocks and other material. These potatoes are then wet cleaned and thereafter conveyed to an elevated platform, where they are sized. Once sized, the potatoes are steam peeled and scrubbed. The peel material moves through waste augers into a waste tank (the “Waste Augers”) and the potatoes are sorted, softened and cut into French fries. After cutting, defects and irregularities are removed, and the French fries go on to be blanched. The blanched potatoes are treated and dried, battered and fried. Once fried, the French fries are flash frozen to a temperature in the range of 8 to 15 degrees Fahrenheit. At this stage, the French fry is partially frozen. These loose, partially frozen French fries pass through a final quality assurance process and are then weighed and bagged. The bagged French fries are boxed, and the boxes are palletized (the “Packaging Equipment”). The pallets travel into the Automated Storage and Retrieval System (the “ASRS”) where they are deep frozen for 24 hours. Finally, they are shipped to market by refrigerated truck.

[6] In 2019, Cavendish received its first comprehensive tax assessment for the 2020 calendar year. It unsuccessfully appealed the assessment to the CARB. The issue between the Parties related to the question of which improvements were machinery and equipment and which improvements were building and structure. In its initial decision, the CARB determined that only those improvements which caused a material change to the raw potato fell within the definition of machinery and equipment. The CARB concluded that none of the improvements at issue were machinery and equipment. This decision was upheld on Judicial Review but overturned on appeal. The Alberta Court of Appeal, in reasons issued September 30, 2022, held that the CARB failed to provide sufficient reasons: *Cavendish Farms Corporation v Lethbridge (City)*, 2022 ABCA 312 [*Cavendish #1*]. The 2020 tax assessment was remitted back to the CARB.

[7] In the meantime, Lethbridge had issued the 2021 tax assessment. It was formulated on the same basis as the 2020 tax assessment, had been appealed to the CARB and the CARB decision was awaiting judicial review. Given the Court of Appeal decision, the Parties agreed that the CARB re-hearing would consider both the 2020 and 2021 tax assessments.

[8] The second CARB hearing occurred in June 2023. The disputed improvements for the purposes of that hearing were the Unloading Equipment, Waste Augers, Packaging Equipment and ASRS.

[9] The CARB found that Cavendish was engaged in processing. Relying on *Wheatland County v Federated Co-Operatives Limited*, 2019 ABCA 513 [*Wheatland*] it accepted that “processing” requires a change in nature or form, not merely preparation for market.

[10] The CARB concluded that while the Unloading Equipment and Waste Augers were not engaged in changing the raw potato to a French fry, they were integral to the operational unit

engaged in that processing. Effectively, it found that the unloading, cleaning and peeling of potatoes was integral to the processing of a potato into a frozen French fry.

[11] With respect to the Packaging Equipment and ASRS, the CARB concluded that the raw potato was transformed into a frozen French fry prior to being boxed, stored and deep frozen. As a result, the CARB held that the Packaging Equipment and ASRS were not improvements which formed an integral part of an operational unit intended for processing. The CARB determined that processing was complete at the point the frozen French fry was bagged. As a result, it concluded that the Packaging Equipment was related to logistics and distribution of the product and did not meet the definition of machinery and equipment. The CARB also determined that the ASRS was associated with storage and that any further freezing that occurred in the ASRS was related to quality, not processing. As a result, the ASRS did not meet the definition of machinery and equipment.

[12] The CARB went on to consider whether the Packaging Equipment and ASRS were structures and concluded they were and thereby assessable.

III. POSITION OF THE PARTIES

[13] This Judicial Review focuses on the reasonableness of the CARB finding that the Packaging Equipment and ASRS are not machinery and equipment, but rather taxable as building and structure.

[14] Cavendish argues that the CARB interpreted the *Matters Relating to Assessment and Taxation Regulation, 2018*, Alta Reg 203/2017 (*MRAT*) too narrowly, unreasonably analyzed the lay and expert evidence in relation to processing and failed to provide sufficient reasons to explain its decision.

[15] Lethbridge, on the other hand, argues that the CARB provided transparent and intelligible reasons explaining how it interpreted and applied the *MRAT*, and justifying its evidentiary findings and ultimate decision.

IV. STANDARD OF REVIEW

[16] Consistent with the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the Parties agree that the standard of review is reasonableness.

[17] As that case notes, the reasons of a tribunal serve to justify its decision. Reasons must be transparent, intelligible and have regard to the evidence before the tribunal, its governing statutory scheme and guiding statute, interpreted in accordance with principles of statutory interpretation and common law. A reasonable decision is one based on an internally coherent and rational chain of analysis.

[18] A reviewing court is required to examine the reasons to determine whether the tribunal has justified its decision in a transparent and intelligible manner which demonstrates its reasoning process and the outcome, in accordance with the facts and law and its own specialized knowledge and expertise. A tribunal which has done so is entitled to deference.

[19] When the matter for Judicial Review involves statutory interpretation, a reviewing Court must analyze the decision as a whole to determine whether it reflects an interpretation of the

statute consistent with modern principles of statutory interpretation, having regard to the text, context and purpose of the legislation: *Vavilov*, at paragraphs 115 and 116. While adjudicators are not required to “engage in formalistic statutory interpretation in every case”, it is expected that they will interpret the law in a manner consistent with those principles: *Vavilov*, at paragraphs 119-121.

[20] Modern principles of statutory interpretation require courts (and administrative decision makers) “to take a unified, textual, contextual, and purposive approach to this task... a Court must consider not only the textual wording of the statutory provision in dispute, but also the purpose of that provision and all relevant context. That includes the legislative scheme of which the provision forms a part.” (Ruth Sullivan, 6th Edition (Markham: LexisNexis Canada, 2014) [Sullivan] at 7-8; *Alberta v ENMAX Energy Corporation*, 2018 ABCA 147)

[21] The Supreme Court of Canada in *Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27, stated:
...statutory interpretation cannot be founded on the wording of the legislation alone. 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.

[22] This is consistent with the objects of sections 9 and 10 of the *Interpretation Act*, RSA 2000, c I-8.

[23] I have received extracts from Alberta Hansard reflecting debate on the legislative amendments to the *Municipal Government Act* RSA 2000 c M-26 (*MGA*) which created preferential tax treatment for machinery and equipment, as well as extracts from a 1998 meeting of the Economic Development Subcommittee relating to the economic impact of these amendments.

[24] This evidence assists in my consideration of the purpose and scope of the amendments to the *MGA* and serve as useful interpretive aids to understanding legislative intent.

[25] Finally, with respect to expert evidence, the Alberta Court of Appeal in *Wheatland* held that both the qualification of an expert and the assessment of the probative value of the expert’s evidence are evidentiary issues, about which the tribunal is entitled to deference.

V. DECISION

[26] The CARB reasons meet the test articulated in *Vavilov* and address the concerns raised by the Alberta Court of Appeal in *Cavendish #1*. The reasons define the issues, set forth the competing evidence and arguments, make findings of fact and draw conclusions which are justified on the record. The articulated reasons consider the statutory language and common law precedent and provide a chain of analysis which is supported by the record, including the lay and expert testimony and the arguments advanced by the Parties.

VI. ANALYSIS

a) Statutory Interpretation

[27] The purpose of a municipality is, amongst other things, to provide good government, foster the economic development of the municipality and to provide services, facilities and other things that are necessary or desirable for all or part of a municipality: *MGA* s 3.

[28] The *MGA* authorizes a municipality to assess taxes on an annual basis. Each assessment rendered by a municipality must reflect the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed and the valuation and other standards set out in the *Regulations*.

[29] In the case before me, to be assessable, a disputed item must be an “improvement.” For the purposes of this judicial review the relevant definition of an improvement is: (i) a structure, (ii) any thing attached or secured to a structure, that would be transferred without special mention by a transfer or sale of the structure...(iv) machinery and equipment: *MGA*, s 284(1)(j).

[30] As a result of legislative amendments, improvements characterized as “machinery and equipment” receive preferential tax treatment. The purpose of the amendments was to diversify the Alberta economy by attracting value-added manufacturing and processing industries, thereby creating high-wage, high-skilled employment opportunities for Albertans.

[31] Section 2(1)(g) of the *MRAT* defines “machinery and equipment”. For the purposes of this judicial review, the relevant portions of the definition are as follows:

...materials, devices, fittings, installations, appliances, apparatus and tanks, other than tanks used exclusively for storage, including supporting foundations, footings and any other thing prescribed by the Minister that forms an integral part of an operational unit intended for or used in

- (i) manufacturing,
- (ii) processing...

whether or not the materials...are affixed to land in such a manner that they would be transferred without special mention by a transfer or sale of the land.

[32] “Processing” has been defined to require a change in nature or form, and not merely preparation for market: *Wheatland*. As such, any reading of the definition of machinery and equipment is guided by the common law definition of processing.

[33] A large, liberal and purposive reading of the relevant sections of the *MGA* and *MRAT* indicates that in order to be classified as machinery and equipment, the improvement in question must be one which forms an integral part of an operational unit used in manufacturing or processing. Not all machinery and equipment will meet the definition; only those improvements which are integral to an operational unit engaged in manufacturing or processing. This requires that tax assessors delineate operational units and make determinations about which improvements are engaged in or integral to manufacturing or processing. Such assessments must be fair and equitable to the taxpayer, and in relation to other comparable properties or businesses in the same municipality.

[34] If an improvement does not meet the definition of machinery and equipment, it may be assessable as a “structure.” A “structure” means a building or other thing erected or placed in, on, over or under land, whether or not it is so affixed to the land as to become transferred without special mention by a transfer or sale of the land: *MGA*, s 284(1)(u).

b) Processing

[35] The CARB determined that Cavendish was engaged in processing because a raw potato was undergoing a change in nature into a frozen potato product. It followed precedent and

applied the accepted definition of processing as set out in *Wheatland*. It rejected Cavendish’s argument that the production line was a single operational unit and instead analyzed each disputed improvement to determine whether it was engaged in processing or was integral to processing. The decision defines four categories of disputed improvements and considers whether each is integral to an operational unit engaged in processing. This is responsive to the deficiencies identified in *Cavendish #1*. It is also consistent with the language of the statute and subsequent case law interpreting it.

c) Machinery and Equipment

[36] The CARB provided a clear rationale for finding that the Unloading Equipment and Waste Augers were integral to processing a raw field potato into a frozen French fry and therefore machinery and equipment. This rationale is not disputed by either party and will not be discussed further.

[37] The CARB found that the Packaging Equipment, while necessary to shipping and distribution, was not engaged in processing. The CARB reasons clearly explain that the transformation of raw potato to frozen French fry is complete upon bagging and that the boxing and palletizing of the bagged French fries results in no change to the nature or form of the potato. This is consistent with the definition of processing in *Wheatland*. Furthermore, the determination that packaging for the purposes of distribution and shipping are activities in preparation for market is justified on the record.

[38] With respect to the ASRS, the CARB analyzed the evidence of lay and expert witnesses to resolve the primary dispute between the parties as to whether the deep freezing which occurs in the ASRS effects a process on the potato or merely cools an already frozen French fry to a lower temperature. The CARB preferred the evidence of the City’s expert Dr. Thompson that deep freezing was an issue of quality, not process. This conclusion is available on the record, particularly when one considers the evidence of Cavendish’s expert, Dr. Yada, who, in his witness statement noted the following:

“The process that is employed in freezing a potato product has significant effects on the quality of the product. The freezing process affects the product’s texture, has an impact on the rate of spoilage, and its shelf life. As such, freezing is a key factor in preserving the quality of the product and maintaining the product’s safety.” (underlining added)

[39] The CARB was entitled to delineate where processing began and where processing ended. In accepting Dr. Thompson’s evidence, it concluded that once flash frozen the raw potato was transformed to a frozen French fry. It accepted that deep freezing, while contributing to quality control prior to shipping, did not change an already frozen French fry into something different. Effectively, the CARB drew a distinction between operational units which were related to processing, and those which were related to marketability.

[40] This conclusion is reasonable as it is consistent with the definition of processing as set out in *Wheatland* and a host of other cases which have considered where a material transformation or change in the nature or form of the raw product occurs. Examples include: *Wheatland County Composite Assessment Review Board*, CARB Board Order 0349 001/2014; *El Dorado Vegetable Farms Ltd v Cypress (Municipal District No 1)*, MGB Board Order No 3; *Ag Pro Grain Management Services Ltd v Lacombe (County)*, MGB Order No 053/08; *Lilydale*

Foods v Lethbridge (City), MGB Decision No DL 027/04; *Parmalat Dairy & Bakery v Lethbridge (City)*, CARB Decision No DL 023/04; *Canbra Foods Ltd v Lethbridge (City)*, MGB Decision No 052/03; *PepsiCo Canada ULC v Lethbridge (City)*, CARB Decision No 0203-0008/2017.

[41] This conclusion is also in keeping with a purposive reading of the definition of machinery and equipment in *MRAT*. The overall purpose of municipal tax legislation is to ensure that all businesses fairly contribute to the cost of municipal infrastructure and services. As previously noted, the preferential tax treatment afforded to machinery and equipment is intended to drive industrial development and investment in the Alberta economy by attracting manufacturing and processing operations. It is the machinery and equipment which is entitled to preferential tax treatment and not the overall operation of the investor. The CARB's delineation of processing activity from activities associated primarily with other aspects of the investor's business – distribution, marketing and quality control- strikes a reasonable balance between the benefit of preferential tax treatment afforded to investors and the need of municipalities to generate tax revenue from its citizens.

d) Building and Structure

[42] Upon concluding that the Packaging Equipment and ASRS were not machinery and equipment, the CARB went on to consider whether the disputed improvements fell within the definition of structure. Its reasons are clear. It was satisfied that these two groups of disputed improvements were attached to the structure or were fixtures which would transfer on sale without special mention.

[43] The record discloses that the Packaging Equipment is anchored to the floor of the building by bolts and that the ASRS is a 115-foot high, 40,000 square foot structure. While Cavendish witnesses MacLeod and Grier testified that both would be removed upon a sale of the building, the CARB, in applying the common law fixtures test as set out in *ABS Trucking Ltd v Edmonton (City)*, 2011 ABCA 353 [*ABS*], concluded that the subjective intention of Cavendish was irrelevant to the analysis of whether the improvement was a structure or a fixture. As noted in *ABS*, once a chattel is attached to the land, however slightly, a rebuttable presumption is raised that it is a fixture. The sole ground to rebut the presumption is the object or purpose of the annexation, the test being whether the chattel was attached to enhance the land (leading to the conclusion that a fixture exists) or for better use of the chattel as a chattel: para 9. The CARB concluded that in both cases the annexation enhanced the working operations of the facility and were therefore fixtures.

[44] The CARB's application of this test was entirely consistent with the common law test for fixtures enunciated in *Edmonton (City) v Alberta Assessment Appeal Board*, 1992 ABCA 59. As a result, the CARB did not import a new test for the determination of a fixture as argued by Cavendish.

VII. CONCLUSION

[45] For all of these reasons I am satisfied that the CARB decision was reasonable. The application for Judicial Review is dismissed.

[46] Should the parties be unable to come to terms with respect to costs within 30 days, they may contact the Court Coordinator to schedule a costs hearing.

Heard on the 22nd day of August, 2024.

Dated at the City of Lethbridge, Alberta this 20th day of December, 2024.

J.C. Kubik
J.C.K.B.A.

Appearances:

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Gwendolyn Stewart-Palmer, K.C.
for the Respondent, Lethbridge Composite Assessment Review Board