COURT OF APPEAL FOR ONTARIO

CITATION: Young Men's Christian Association of Greater Toronto v. Municipal Property Assessment Corporation, 2015 ONCA 130
DATE: 20150225
DOCKET: C59084

Rouleau, van Rensburg and Pardu JJ.A.

BETWEEN

The Young Men's Christian Association of Greater Toronto ("YMCA")

Applicant (Appellant)

and

Municipal Property Assessment Corporation ("MPAC")

Respondent (Respondent)

Jack Walker, Q.C., and Courtney Toomath-West, for the appellant

Donald G. Mitchell, for the respondent

Heard: February 4, 2015

On appeal from the judgment of Justice Paul M. Perell of the Superior Court of Justice, dated June 16, 2014, with reasons reported at 2014 ONSC 3657, 121 O.R. (3d) 34.

By the Court:

[1] The appellant appeals from an order dismissing its application for an exemption from property taxation for premises it occupies in four buildings located in the City of Toronto. The appellant seeks a declaration that all space used and occupied by the Toronto YMCA in respect of the subject properties is

exempt from property taxation for 2012 and all subsequent taxation years, for as long as the facts and circumstances remain the same.

[2] The appellant's claim for an exemption from property taxation is based on s. 10 of *The Toronto Young Men's Christian Association Act, 1923*, S.O. 1923, c. 106 (the "*YMCA Act*"), which provides as follows:

> The buildings, lands, equipment and undertaking of the said association so long as and to the extent to which they are occupied by, used and carried on for the purposes of the said association are declared to be exempted from taxation except for local improvements.

[3] The parties agree that the question before the application judge and before this court is one of statutory interpretation. The issue is whether the buildings and lands leased, occupied and used by the Toronto YMCA in the City of Toronto are exempt from municipal taxation under the *Assessment Act*, R.S.O. 1990, c. A.31, as amended, by virtue of s. 10 of the *YMCA Act*.

[4] The appellant contends that the application judge erred in restricting his analysis of the exemption in s. 10 of the *YMCA Act* to the meaning of the word "of", in reference to the "buildings and lands … of the said association", and in not taking a broad and liberal approach in interpreting the exemption, in light of the overall purposes of that Act.

[5] We would not give effect to these grounds of appeal. We would uphold the decision of the application judge, but for different reasons.

[6] First, it is essential to consider the broad context of the municipal property tax scheme, of which s. 10 of the *YMCA Act* forms a part: see *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, at para. 27. The appellant is, after all, claiming an exemption from property taxes for the premises it leases. The scheme of municipal assessment and taxation is that land is the subject matter of assessment and that owners of land are liable to assessment and taxation: *Assessment Act*, ss. 3 and 17. A person with a leasehold interest in land is not an "owner" within the meaning of the *Assessment Act*: *Carsons' Camp Ltd. v. Municipal Property Assessment Corp*., 2008 ONCA 17, 88 O.R. (3d) 741, at paras. 14-15.

[7] The *Assessment Act* provides for a number of exemptions from taxation. Some exempt property that is "owned, used and occupied" by certain entities, for example public educational institutions and philanthropic organizations. Other exemptions, such as those for public hospitals and children's treatment centres, do not require ownership, but merely use and occupation. In each case the exemption applies to the "land" and not the taxpayer.

[8] The appellant contends that the lands in question enjoy a similar exemption, but under the provisions of a private statute, the *YMCA Act.*

[9] The question is whether the leased premises are buildings or lands of the Toronto YMCA occupied and used for its purposes, and therefore exempt from municipal property taxation by virtue of s. 10.

[10] First, we observe that the appellant's leased premises are not "land", because a tenancy does not qualify as "land"; it is an interest in land. Accordingly, "lands … of the [Toronto YMCA]" would not ordinarily include lands that the Toronto YMCA leases.

[11] Second, we reject the appellant's argument that "land" as used in the *YMCA Act* has a different, and expanded meaning, to include leasehold interests. The appellant points to s. 5 of the *YMCA Act*, dealing with the power to acquire and dispose of real estate. The first clause of s. 5 recognizes the association's power to acquire and dispose of "real property or any estate or interest therein … by purchase, lease, gift, devise or bequest", while the second clause of s. 5 provides a limit for how long the "land at any time acquired" shall be held after it ceases to be required for the association's purposes. The appellant contends that "land at any time acquired" in the context of this section must include real property or any estate or interest therein, and that this expanded meaning should be carried into the interpretation of s. 10.

[12] We disagree. Section 5 has a particular function in the statute. It deals with the Toronto YMCA's power to acquire and dispose of real estate. Although, as

noted, the first clause clearly distinguishes between ownership and leasehold interests, it is far from clear that the second clause groups together all interests in land acquired by the association. Further, the two sections of the statute operate for different purposes.

[13] Third, the appellant contends that the court should apply a purposive interpretation of s. 10, which furthers the philanthropic objects of the association by recognizing its need to use its assets to fund its activities. As such, s. 10 should be interpreted to apply to all buildings and lands whenever they are used and occupied by the Toronto YMCA.

[14] This interpretation however is inconsistent with the plain meaning of the words used in s. 10 as it takes no account of the words “of the said association”. The appellant is, in effect, arguing that the exemption from taxation is for “the buildings, [and] lands … of the said association so long as and to the extent to which they are occupied by, [and] used … for the purposes of the said association” but that the portion “of the said association” be either ignored or be given the same meaning as the latter part of that sentence. It is a principle of statutory interpretation that every word that is used in a statute is to be given meaning and that “when a court considers the grammatical and ordinary sense of a provision, that ‘[t]he legislator does not speak in vain’”: *Bell ExpressVu*, at para. 37. If all of the words of s. 10 are to be given meaning, then “buildings, [and]

lands … of the said association" must mean something other than property that the association occupies or uses.

[15] Indeed, the term "property of" in the context of exemptions from taxation under the *Assessment Act* has been interpreted as connoting an ownership interest, and to not include a leasehold interest. In *Re the Town of Walkerville and Walker*, [1935] O.W.N. 168, at p. 169, this court held that a leasehold interest did not come within the words "the property of" under the statutory exemption from taxation for "property of a children's aid society…whether held in the name of the society or in the name of a trustee or otherwise, if used exclusively for the purposes of and in connection with the society". In *Re Royal Ontario Museum and Assessment Commissioner for Region No. 10 et al*. (1976), 12 O.R. (2d) 778 (Div. Ct.), at p. 782, the Divisional Court concluded that the words "property of" do not include leasehold interests such that land leased by the museum was not entitled to the statutory exemption from taxation of the property of a scientific public institution.

[16] Finally, the appellant relies on the decision of the Superior Court in *Kitchener-Waterloo Young Men's Christian Association v. Municipal Property Assessment Corporation*, [2007] O.J. No. 3176. This decision, which was not appealed, concluded that land leased, used and occupied by the Kitchener-Waterloo YMCA in Kitchener was entitled to an exemption from property tax. In that case, the original statute, which contained an exemption from taxation in

substantially the same language as s. 10 of the *YMCA Act*, was amended in 2005 to provide an exemption for all land used or occupied by the association in Waterloo, including leased property.

[17] The application judge in the *Kitchener-Waterloo* case was required to consider whether the act in force (not the original 1928 act) also afforded the exemption in question to land in Kitchener. He interpreted the statute in light of the 2005 amendment, including its preamble, and concluded that the Legislature intended that property leased by the Kitchener-Waterloo YMCA should be exempt from taxation in both Kitchener and Waterloo. That is not the situation here. The *YMCA Act* contains no such amending language that would suggest that leased properties occupied by the association were intended to be exempt from taxation.

[18] Again, the protection afforded by the *YMCA Act* depends on the words that were used in that Act, in the context of the municipal tax regime. It may be unfortunate, but hardly surprising, that the property used by various local YMCA associations in some cases will be exempt and in other cases not; the exemptions depend on the wording of the private acts, which were put forward at different times and by different proponents, and not for a single or comprehensive legislative purpose.

[19] For these reasons the appeal is dismissed. Costs are to the respondent in the agreed amount of $7,500 inclusive of applicable taxes and disbursements.

Released: (“PR”) FEB 25 2015

“Paul Rouleau J.A.”

“K. van Rensburg J.A.”

“G. Pardu J.A.”