

MOTEL PIERRE INC. (*Plaintiff*) APPELLANT;

AND

LA CITÉ DE SAINT-LAURENT }
(*Defendant*) }

RESPONDENT.

1967
*Apr. 28
June 26

ON APPEAL FROM THE COURT OF QUEEN'S BENCH,
APPEAL SIDE, PROVINCE OF QUEBEC

Municipal corporations—Taxation—Business tax—Motel—Whether business tax prohibited by Quebec Licence Act, R.S.Q. 1941, c. 76, s. 33.

The plaintiff sued the municipality for the recovery of business tax it paid during the years 1959 to 1962 and which had been levied at the rate of 8 per cent on the rental value of a motel it occupied. It was contended that the tax paid by the motel was a tax contemplated by s. 33 of the *Licence Act*, R.S.Q. 1941, c. 76, which enacts that no municipality may levy any tax, impost or duty for keeping a hotel, restaurant or lodging-house. The trial judge dismissed the action and his judgment was affirmed by the Court of Appeal. The plaintiff appealed to this Court.

*PRESENT: Fauteux, Abbott, Martland, Judson and Ritchie JJ.

1967

MOTEL
PIERRE
INC.
v.
CITÉ DE
SAINT-
LAURENT

Held: The appeal should be dismissed.

The trial judge and the majority in the Court of Appeal were right in holding that s. 33 dealt only with licence fees of the type contemplated under the Act in which it was contained and that it had no application to a business tax of general application based upon rental value which was in issue here.

Corporations municipales—Revenu—Taxes d'affaires—Motel—Est-ce que la taxe d'affaires est prohibée par la Loi des licences, S.R.Q. 1941, c. 76, art. 33.

Le demandeur a poursuivi la municipalité en recouvrement de la taxe d'affaires qu'il a payée durant les années 1959 à 1962 et qui avait été prélevée au taux de 8 pour-cent sur la valeur locative d'un motel qu'il occupait. On a soutenu que la taxe payée par le motel était une taxe envisagée par l'art. 33 de la *Loi des licences*, S.R.Q. 1941, c. 76, qui décrète qu'aucune municipalité ne peut prélever aucune taxe, aucun impôt ou droit pour tenir un hôtel, un restaurant ou une maison de logement. Le juge au procès a rejeté l'action et sa décision fut confirmée par la Cour d'appel. Le demandeur en appela devant cette Cour.

Arrêt: L'appel doit être rejeté.

Le juge au procès et la majorité dans la Cour d'appel ont jugé avec raison que l'art. 33 traite seulement des droits de licence du genre envisagé par le statut qui le contient et qu'il ne s'applique pas à une taxe d'affaires d'une application générale basée sur la valeur locative dont il est question dans cette cause.

APPEL d'un jugement de la Cour du banc de la reine, province de Québec¹, confirmant un jugement du juge Lamarre. Appel rejeté.

APPEAL from a judgment of the Court of Queen's Bench, Appeal Side, Province of Quebec¹, affirming a judgment of Lamarre J. Appeal dismissed.

Paul Trudeau, for the plaintiff, appellant.

Pierre Coutu, for the defendant, respondent.

The judgment of the Court was delivered by

ABBOTT J.:—Appellant sued the respondent municipality to recover the sum of \$11,447.68 alleged to have been paid in error as business tax for the years 1959, 1960, 1961 and 1962. During that period, appellant operated a motel in

¹ [1967] Que. Q.B. 239

the said municipality and the tax in question was paid as business tax levied at the rate of 8 per cent on the assessed rental value of the immovable property occupied by the appellant. The tax was imposed under the authority of municipal By-law 158, enacted in 1934 under the authority of the *Montreal Metropolitan Commission Act*, 11 Geo. V, c. 140 as amended which, generally speaking, applied to all businesses in the municipality.

It is common ground that the motel operated by the appellant is a "hotel" within the meaning of that word as used in s. 33 of the *Quebec License Act*, R.S.Q. 1941, c. 76. That section reads as follows:

Notwithstanding any special act to the contrary, no municipality may, by by-law, resolution or otherwise, levy any tax, impost or duty for keeping a hotel, a restaurant or a lodging-house.

The License Act creates a provincially administered system of licensing certain specified types of business—including hotels—and provides for control and supervision of such businesses throughout the province. The possession of a license under the Act is a condition precedent to carrying on business.

As counsel for appellant conceded in his factum, the sole question in issue on this appeal is whether the business tax amounting to \$11,447.68 paid by appellant, is a tax contemplated by s. 33 of the *Quebec License Act*.

The learned trial judge and the majority in the Court of Queen's Bench¹ held that the said s. 33 dealt only with license fees of the type contemplated under the Act in which it was contained, and had no application to a business tax of general application based upon rental value which is in issue here.

I share that opinion and am in respectful agreement with the reasons of Casey J. in the Court below which were concurred in by Rinfret, Owen and Brossard JJ.

I would dismiss the appeal with costs.

Appeal dismissed with costs.

Attorneys for the plaintiff, appellant: Prévost, Trudeau & Bisailon, Montreal.

Attorneys for the defendant, respondent: Savard & Coutu, St-Laurent.

¹[1967] Que. Q.B. 239.