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SC 104 Granduc Mines v. NW Assessment and Appeal Board

GRANDUC MINES (NPL) LIMITED

v.

**NORTHWEST ASSESSMENT AREA
and
ASSESSMENT APPEAL BOARD**

Supreme Court of British Columbia (No. A 770155/77)

Before: MR. JUSTICE H.C. McKAY

Vancouver, May 10, 1977

J.W. Elwick and D.H. Clarke for the Appellant
R.B. Hutchison for the Respondent

Reasons for Judgment

May 13, 1977

This is an appeal on a question of law pursuant to section 67 (1) of the *Assessment Act*, S.B.C. 1974, c. 6.

An agreed statement of facts was filed, and I reproduce hereunder the relevant portions:

1. The Appellant is the registered owner of those lands and premises comprising the Granduc Concentrate Loading and Storage Facility at Stewart, British Columbia and more particularly known and described as:

Block B Lot 4198
and Lot 1
District Lot 4044
Plan 5450
Jurisdiction 340
("Folio 8001.000").

2. The Appellant is the registered owner of those lands and premises comprising the Granduc Mine and Mill at Tide Lake near Stewart, British Columbia and more particularly known and described as:

Lots 6978, 6979, 6990, and
6991 Jurisdiction 340 ("Folio
8002.000").

3. . . . not necessary.

4. . . . not necessary.
5. . . . not necessary.
6. The assessments referred to in paragraphs 4 and 5 above were calculated in each instance by a method which arrives at assessable value based upon replacement cost less depreciation. The difference between the various assessments resulted only from the deduction of the value of deleted improvements and the addition of the value of added improvements. In all other respects the assessments for the years 1975 and 1976 are the same as the assessments for the year 1974.
7. The Appellant appealed the 1976 assessment of the properties comprising folios number 8001.000 and 8002.000 to the Court of Revision which affirmed the assessment of the Assessors.
8. The Appellant then appealed to the Assessment Appeal Board from the Court of Revision by Notice of Appeal dated the 3rd day of March, 1976 on the following grounds:
 - (1) the assessment is too high;
 - (2) the Court of Revision did not give proper consideration to our appeal;
 - (3) the depreciation, obsolescence, and reduced operating level, were not properly considered by the Court;
 - (4) other reasons which will be brought forth at the hearing.
9. The appeal was heard by the Assessment Appeal Board on the 5th day of October, A.D. 1976 and by a decision in writing dated the 29th day of December, A.D. 1976 the Assessment Appeal Board dismissed the Appellant's appeal and confirmed the 1976 assessment of the subject property as prepared by the Assessor. A copy of the decision of the Assessment Appeal Board is annexed hereto as Schedule "C" and forms part of the within Statement of Facts.
10. The business operation of the mine and mill and the concentrate loading and storage facility ("the Granduc Mine") is carried on by Granduc Operating Company, a joint venture of Newmont Mining Corporation and American Smelting and Refining Company. The latter leases the subject lands from the Appellant.
11. The Granduc Mine was developed over a period of years commencing full operation as a mine, mill and shipment facility producing copper ore concentrate in November of 1970.
12. The components of the mining and milling process were designed and engineered so that the Granduc Mine could economically produce copper ore concentrate for sale on world markets at a rate between 6,750 and 8,250 tons per calendar day, within a range of 10 percent more or less than, 7,500 tons per calendar day ("the Design Capacity").
13. During the first two years of operation, namely 1971 and 1972, the Granduc Mine did not produce copper ore concentrate at the Design Capacity because of problems associated with commencing production.

14. During the calendar years 1973 and 1974 the Granduc Mine did achieve rates of production within the range of the Design Capacity . Average daily production of copper ore concentrate during the years 1972, 1973 and 1974 was as follows:

Year	Tons Per Day
1972	5,710
1973	7,666
1974	7,421

15. In October of 1974, economic conditions changed. In particular:

(a) the cost of inputs to the productive process, especially oil rose out of proportion to the general rate of inflation;

(b) the price at which the product of the Granduc Mine could be sold on the world market fell.

16. As a result, producing at Design Capacity put the Granduc Mine in a loss position. By reducing the rate of output the Granduc Mine has operated at better efficiency and with lower costs of production because of certain economies. In particular, new ore development has been stopped so that at present the Granduc Mine is mining ore above the tunnel level. To produce at Design Capacity would entail mining ore below the tunnel level at greater cost.

17. As a result of adverse world marketing conditions affecting the copper industry the management of Granduc Mines reduced its operating level as a holding action during the period of such adverse market conditions. Average daily production of copper ore concentrate during the year 1975 was as follows:

Year	Tons Per Day
1975	4,529

As of the date of assessment for the year 1976 and as of December 31st, 1975 no decision has been taken by the Board of Directors of the Appellant to permanently reduce the operating level of Granduc Mines.

18. In preparing the 1976 assessment the Assessor did not take into account the actual operating level of the Appellant. There has been no physical change in the plant and improvements since the assessment for the year 1974.

19. The subject plant and equipment are and were assessed on a replacement cost basis and during the years 1973 and 1974 when the plant was operating at a profit and world market conditions were favourable the assessment was not increased to take these factors into account.

The question submitted for the opinion of this Court is:

"Did the Board err in law in failing to make any deduction from the subject assessment for economic obsolescence as claimed by the Appellant?"

Counsel for the respondent took the preliminary objection that no question of law is involved. I agree. The question is put in the form of a question of law, but a reading of the reasons of the Board makes it clear that a question of law is not involved.

The members of the Board were fully aware that in ascertaining actual value they could take into account, under section 24 (2) of the *Assessment Act*, such matters as economic obsolescence; they were aware of the difference between functional and economic obsolescence; they made reference to such cases on the subject as *Montreal v. Sun Life Assurance Co. of Canada*, [1952] 2 D.L.R. 81, *Re Assessment Equalization Act, Re Royalite Oil Company Limited* (1957-58) 23 W.W.R. 328 and *Re Assessment Equalization Act, Re British Columbia Forest Products Limited's Appeal* (1961) 36 W.W.R. 145. It was their view, however, that the appellant had failed, on the evidence, to establish economic obsolescence. That is a finding of fact and not subject to review under section 67 (1) of the *Assessment Act*.

The appeal is dismissed with costs to the respondent.