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GENSTAR LTD.

v.

DISTRICT OF MISSION

Supreme Court of British Columbia (A810072) Vancouver Registry

Before: CHIEF JUSTICE ALLAN McEACHERN (in chambers)

Vancouver, March 25, 1981

E. Neil Kornfeld for the Appellant

C.D. McQuarrie and Ms. K.M. Floeck for the Respondent

Reasons for Judgment March 31, 1981

This is a Motion by Block Bros. Contractors Ltd. pursuant to Rule 15 (5) (a) to be added as a party-appellant to this appeal of Genstar Ltd. against a decision of the Assessment Appeal Board.

Block Bros. Contractors Ltd., hereinafter called "Block Bros.", is the owner of 26 lots in the Silverdale area of the District of Mission. Genstar Ltd. owns 32 contiguous and surrounding lots. Mission appealed the 1980 assessment of these 58 properties to the Court of Revision by one letter dated March 21st, 1980 which merely stated:

> "We hereby appeal the 58 properties listed below on the grounds that they are under assessed as to their 'actual value':-"

There followed 58 roll or assessment numbers (one for each property). The letter instituting that first appeal did not identify which properties were owned by which of the two owners.

The Court of Revision dismissed Mission's appeals. Mission took appeals to the Assessment Appeal Board. There is no question there were separate appeals before the Assessment Appeal Board.
It appears Block Bros.' 26 parcels, which are in the centre of Genstar's lands, were acquired sometime after Genstar purchased its lands. The Assessment Appeal Board chose to treat the purchase price paid by Block Bros. as the best evidence of value, and allowed Mission's appeals accordingly. I mention this to point out that the value of the Block Bros.' lands was and will be central to the disposition of Genstar's appeals.

As a consequence of the decisions of the Assessment Appeal Board the assessed value of Genstar's and Block Bros: lands were increased substantially.

The *Assessment Act*, R.S.B.C. 1979, c. 21 provides for further appeals by way of stated case to this Court.

Section 74 provides in part:

"(2) A person affected by a decision of the board on appeal. including a municipal corporation on the resolution of its council, the Minister of Finance, the commissioner, or an assessor acting with the consent of the commissioner, may require the board to submit a case for the opinion of the Supreme Court on a question of law only by

"(a) delivering to the board, within 21 days after his receipt of the decision, a written request to state a case; and

"(b) delivering, within 21 days after his receipt of the decision, to all persons affected by the decision, a written notice of his request to the board to state a case to the Supreme Court.

"(3) The board shall, within 21 days after receiving the notice under subsection (2), submit the case in writing to the Supreme Court. . . .

"(5) Where a case is stated, the secretary of the board shall promptly file the case, together with a certified copy of the evidence dealing with the question of law taken during the appeal, in the Supreme Court Registry, and it shall be brought on for hearing before the judge in Chambers within one month from the date on which the stated case is filed.

"(6) The court shall hear and determine the question and within 2 months give its opinion and cause it to be remitted to the board, but the court may send a case back to the board for amendment, in which event the board shall amend and return the case accordingly for the opinion of the court."

Genstar Ltd. complied with section 74 (2). supra. Its appeal is pending in good standing in this Court.

The solicitor for Block Bros. prepared an appropriate request for a stated case and filed it in the Vancouver Registry of this Court under No. A803449. He omitted to deliver it to the Board or to anyone else. As a consequence, Block Bros. is too late to bring an appeal on its own. Block Bros. accordingly applies under Rule 15 (5) (a) to be added *nunc pro tuncas* a party appellant to Genstar's appeals.

Mr. McQuarrie, relying upon many authorities dealing with statutory appeals, argues that there is no procedure for appealing except in accordance with section 74. He also says that Block Bros. cannot bring itself within Rule 15 (5) (a).

Mr. Kornfeld argues that many of the old cases such as *Weldon* v. *Neal* (1887), 56 L.J.Q.B. 621, and more recent cases such as *Kelly* v. *Schuitema et al* (1964). 48 W.W.R. 491 (B.C.C.A.) must be regarded as doubtful authority because of *Basarsky* v. *Quinlan et al*, [1972] 1 W.W.R. 303 (S.C.C.). He argues further that Rule 15 (5) (a) (iii) particularly, which came into force on February 1st, 1980, greatly enlarges the Court's jurisdiction to add parties to existing proceedings without regard to questions of limitation. In the latter connection Mr. Kornfeld cites *Gardner* v. *Cattermole et al* (1981) 22 B.C.L.R. 57 (B.C.S.C.) where Taylor. J., said at p. 60:

"This addition (of Rule 15 (5) (a) (iii)) plainly extends the scope of the sub-rule and raises the question whether restrictive interpretation of the rule is possible any more. I do not think it is. It seems clear that limitation defences must now be defeated whenever a claim against a person who would otherwise have had protection of the statute involves questions or issues connected with the relief sought in, or the subject matter of, an existing action brought within the limitation period against others, provided that joinder would be just and convenient. The only questions for the court are whether there is such a connection and whether joinder would, in the circumstances, be just and convenient between the proposed parties."

I have considerable sympathy for the position of the applicant and I would not, with great respect, apply the lines of cases dealing with rights of appeal to statutory courts if I could avoid doing so because the current trend of the law points in a different direction both in criminal and civil cases. This is as it should be, particularly in a Court of original inherent jurisdiction.

In this case, however, I see no escape from the force of Mr. McQuarrie's submissions. Even if I ordered that Block Bros. be added to Genstar's appeals (as I would if that would bring about a fair and just result) I do not think that would solve the problem.

Earlier I quoted some of the provisions of section 74. Those provisions make it clear that proceedings directed towards an appeal against a decision of the Assessment Appeal Board is not commenced in this Court. There must first be a written request to the Board to state a case. Thereafter the Board shall (must) submit the case in writing to the Court, and it is that case, together with a certified copy of the evidence, which is filed with the Court.

With this procedure in mind I must conclude that it would not help the applicant to be added as a party now, or *nunc pro tunc,* to Genstar's appeal as such joinder would not produce a case upon which an appeal by Block Bros. could proceed. In other words, joinder would not bring Block Bros. appeal before the Court because there is no jurisdiction to require the Assessment Appeal Board to state a case except in accordance with the provisions of the Act.

In view of the foregoing I need not consider the difficulties posed by the strict time limits prescribed in section 74 for they do not arise until a case is stated. Similarly, the power to send the case back to the Board for amendment does not arise until a case has been stated.

The motion to add Block Bros. as a party appellant to these appeals must accordingly be dismissed with costs.