NEWMONT MINES LTD.

v.

ASSESSOR OF AREA 17 - PENTICTON

British Columbia Court of Appeal (V00467) Victoria Registry

Before MR. JUSTICE CRAIG, MR. JUSTICE ANDERSON and MR. JUSTICE HUTCHEON

Vancouver, May 25, 1989

John E.D. Savage for the Appellant Assessor
J.W. Elwick for the Respondent, Newmont Mines Ltd.

Reasons for Judgment July 18, 1989

The issue on this appeal is whether Newmont Mines Ltd. was entitled in law to appeal the assessment of property taxes in October 1985. The Assessor of Area 17 - Penticton has taken the position unsuccessfully before the Court of Revision, before the Assessment Appeal Board, and before the Supreme Court that, because Newmont Mines delivered a notice in writing in October 1984 complaining of the assessments, its rights of appeal were at an end. I think his position to be the correct one.

In 1984, the *Assessment Act* was amended to provide for assessments every two years in place of the yearly assessment theretofore. Thus in October 1984 Newmont Mines received the assessments for the years 1985 and 1986.

Under s. 40 (3) (a) of the Act, Newmont was required, if it wished to appeal to the Court of Revision, to deliver to the assessor a notice in writing of its complaint not later than October 31, 1984. In various ways the assessments could come before the Court of Revision after October 31, 1985 but the only one with which we are concerned is to be found in s. 40 (4):

> **40.** (4) Notwithstanding subsection (3) (a), where no complaint is made within the time limit specified in subsection (3) (a) in respect of an entry in an assessment roll, a notice of complaint in respect of that entry may be delivered to the assessor not later than October 31 of the year following the calendar year in which the assessment roll was completed, but an amendment in the assessment roll made pursuant to that complaint shall have effect only in relation to liability for taxation in the second calendar year following the completion of the assessment roll.

What happened in this case was that Newmont delivered to the assessor a notice in writing on October 29, 1984. The notice was in general terms in accordance with their usual practice to file a notice before the end of October.

The notice, in letter form, stated

> We hereby notify you of our intention to appeal the following Assessment Roll Numbers for 1985 and 1986:

717-00738-100
717-2400-290
717-2400-295

Our grounds for appeal are as follows:

- actual values are incorrect

- additions/deletions cannot be reconciled

- assessed values are incorrect

- other grounds to be brought forth at the Court of Revision.

The next events are best set out in this quotation from the Stated Case:

> The above letter was written by Mr. K. N. Broster, Chief Accountant of the appellant. Mr. Broster testified that it was the usual practice of the company to file such a letter upon receipt of assessment notices. Some time later, after receiving the detailed information with respect to the make-up of the values for the appellant's properties on the assessment roll, exchanges of information usually would take place between the company and the assessor's office. In the instance we are dealing with the appellant brought to the attention of the assessor that certain errors had been made in the assessment of the appellant's properties. In particular, values attributable to improvements were incorrectly included on Folio No. 717-2400-290. The value of those improvements had properly been included on Folio No. 717-2400.295.
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> The outcome of the discussions between Mr. Broster and the assessor was that Folio No. 717-2400-290 would show only a value for land and that the values for Folio No. 717-2400.295 as shown on the assessment authority's computer print-out would be accepted with certain hand written amendments and that the values for Folio No. 717-00738-100 would remain the same. The parties agreed that the assessor would go to the Court of Revision and request the Court of Revision to modify the Roll in accordance with the above noted agreement. Mr. Broster attended at the Court of Revision on December 7, 1984 and said nothing to the Court except to answer "yes" when asked by the court if he agreed to the values put forth by the assessor.
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> The agreement of the parties was accepted by the Court of Revision, and it made an order accordingly, and notice of its decision was mailed to the appellant January 3, 1985.

By letter dated October 24, 1985, Newmont Mines delivered a notice in writing to the assessor to change the values for 1986, the second year. The Court of Revision acceded to that appeal and its jurisdiction to do so was upheld by the Assessment Appeal Board and by a judge of the Supreme Court in chambers.

The jurisdiction to appeal in the second year, 1985, must be found in s. 40 (4). For the present purpose the part of the section to be interpreted may be expressed in this way:

> . . . where no complaint is made by October 31, 1984, in respect of an entry in an assessment roll, a notice of complaint in respect of that entry may be delivered to the assessor not later than October 31, 1985 . . .

The chambers judge agreed with both counsel that the word "complaint" created an ambiguity. For my part, I do not think there is an ambiguity or that words need to be added to give meaning to the subsection. All that is meant is that if the person has not protested a particular entry in the assessment roll by October 31, 1984, be it in respect of land or buildings or machinery or class, that person has the right to protest that particular entry before October 31, 1985.

Without a finding of ambiguity, there is no need to add words or to refer back for assistance to s. 40 (1) which talks of the person coming before the Court of Revision to "make his complaint of the error or omission."

The question then is whether the complaint made by Newmont in October 1984 barred the complaint in October 1985. Because the letter that I have quoted is couched in very broad terms the answer must be in the affirmative unless there is anything in the point that Newmont withdrew its complaints.

The chambers judge held that it would not be fair to Newmont to deny it a hearing simply because it had previously filed a notice of complaint which was effectively withdrawn before the Court of Revision had considered whether or not it had any meritorious complaint to be considered.

However, the Assessment Appeal Board found as a fact that Newmont did not withdraw its notice of complaint. In December 1984 the Court of Revision had considered the assessments and made its decision based on what it was told by the Assessor, concurred in by the representative of Newmont. There was evidence before the Assessment Appeal Board to support its finding of fact.

In my opinion, Newmont was not entitled to deliver its Notice in October 1985. I would allow the appeal.