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NEWMONT MINES LTD.

v.

ASSESSOR OF AREA 17 - PENTICTON

Supreme Court of British Columbia (A862783) Vancouver Registry

Before MR. JUSTICE TOY

Vancouver, January 15, 1987

R.S. Gill for the Assessor
D.H. Clarke and J.W. Elwick for Newmont Mines Ltd.

Reasons for Judgment February 10, 1987

This is a case stated by the Assessment Appeal Board from their decision pronounced on the 18th of August 1986, reviewing and upholding a decision of the Court of Revision rendered on the 10th of December 1985, wherein that Court determined that Newmont Mines Ltd. (hereinafter to be referred to as "Newmont") had the right to a hearing of their complaint that their land and improvement assessments by the Assessor of Area 17 - Penticton had been valued at too high amounts.

The *Assessment Act*, R.S.B.C. 1979, c. 21, has been recently amended providing for biennial assessments as opposed to annual assessments, which historically and up to 1984 had been the norm. At issue is whether Newmont had the right to have its "complaint" heard by the Court of Revision from the assessments made during the fall of 1984 that pertained to the calendar years 1985 and 1986 by a notice in writing to the Assessor dated October 24, 1985 for the assessment in effect for the calendar year 1986.

The Assessor's position is that Newmont gave a notice in writing to the Assessor on October 29, 1984, which triggered a hearing in the Court of Revision in substantially similar terms, that the Court of Revision had ordered a reduction in the assessment for both 1985 and 1986 and, as a consequence, neither the Court of Revision nor the Assessment Appeal Board had jurisdiction to entertain the complaint or appeal by Newmont pertaining to the assessment for the calendar year 1986.

Subsequent to September 30, 1984 when the Assessor had completed his assessment for calendar years 1985 and 1986, a notice of that assessment was delivered to Newmont. Newmont, on or about October 29, 1984, some two days before the statutory deadline, filed a notice of complaint in writing directed to the Assessor. A responsible officer of Newmont, before the Court of Revision sat, met with the Assessor and pointed out to him that the value of certain improvements had been included in two of the company's assessment folios. The Assessor, recognizing that there had been a duplication and that one folio was patently wrong, agreed to go before the Court of Revision and request an appropriate modification of the Roll. When the Court of Revision sat on December 8, 1984, the Assessor applied to the Court to accordingly revise the Roll, and the Court asked the representative of Newmont, who was present, if he agreed to the values put forth by the Assessor and Newmont's representative replied "Yes". The Assessment Appeal Board's decision of the 18th of August 1986, now under review, clearly sets out the facts,

the issues and arguments of both parties. The Board's conclusions, with which I am in substantial agreement, reads as follows:

> **CONCLUSION**
>
> The Board is of the opinion that the *Assessment Act* is intended to generally prevent a person from taking another appeal in the second year of the biennial roll where a complaint has been made to the Court of Revision in the first year of the two year cycle. There are certain statutory exceptions giving a right of appeal in the second year but those exceptions do not apply in this instance. The nice question to be decided in this appeal is whether, with respect to the 1985 Assessment Roll, a complaint was made by the appellant within the meaning of section 40 (4) of the *Assessment Act.* It is the opinion of the Board that by allowing the appellant to now have his day in court would not contravene section 40 (4) of the Act. The Board concludes it is not the intention of the Act to deprive an appellant from appealing on substantive issues in those circumstances. In this instance, it was the assessor who made the error on the 1985 Assessment Roll. After the appellant brought the error to the attention of the assessor it was the assessor who went to the Court of Revision and recommended that the error be corrected. There was no dispute between the appellant and the assessor. The evidence is that the assessor does not provide to the taxpayer details of the make-up of the values on the Assessment Roll usually until after the statutory time limit for appealing the assessment has passed. It is therefore, in those circumstances, necessary for a taxpayer to file a notice of its intention to complain in order to preserve its right of appeal until the taxpayer is in a position, and has adequate information, to determine if a complaint or an appeal is warranted. It seems to the Board that it goes against a sense of fair play and against the interests of justice to say that a taxpayer is denied an appeal on the merits of the case in those circumstances. Surely there would be an injustice in the assessor being seen to take advantage of a taxpayer's attempts to preserve his rights.
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> The Board is also mindful of section 8 of the *Interpretation Act*, which states,
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> 'Every enactment shall be construed as being remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.'
>
> The Board, therefore, finds that the appellant did not exhaust its right to appeal the 1985 Roll to the Court of Revision and does, therefore, have a right of appeal to the Court of Revision in the second year of the biennial roll and the Board will proceed with a hearing on appeal from the decision of the 1986 Court of Revision.
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> (Underlining for emphasis mine.)

The Assessor argues that by notifying the Assessor in writing as it did of its complaint in the notice in writing of the 29th of October 1984, that Newmont has lost or exhausted its right to complain about the Assessor's assessment for the 1986 calendar year.

The applicable provisions of the *Assessment Act*, R.S.B.C. 1979, c. 21, as amended, that must be interpreted are hereinafter reproduced:

> 40 (1) Where a person is of the opinion that an error or omission exists in the completed assessment roll in that
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> (a) the name of a person has been wrongfully inserted in, or omitted from, the assessment roll;
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> (b) land or improvements, or both land and improvements, within a municipality or rural area have been wrongfully entered on, or omitted from the assessment roll;

(c) land or improvements, or both land and improvements, have been valued at too high or too low an amount;

(d) land or improvements or both land and improvements have been improperly classified;

(e) an exemption has been improperly allowed or disallowed; or

(f) the commissioner has failed to approve an application for classification of land as a farm under section 28 (1), or has revoked a classification of land as a farm under the regulations.

(3) Notice in writing of every complaint in respect of an entry in

(a) an assessment roll shall be delivered to the assessor not later than October 31 of the year in which the assessment roll is completed, or

(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.

(Underlining for emphasis mine.)

To remove what I conceive to be ambiguity in the use of the word complaint in the second line of subsection 4, the Assessor's counsel submits that I should interpret those words as meaning. . . "where no notice of complaint is made within the time limit specified in subsection (3) (a) . . .".

Counsel for Newmont submits that the words should be interpreted as meaning . . . "where no complaint is made in pursuance of a notice of complaint given within the time limit specified in sub-section (3) (a) . . .".

In my judgment, the ambiguity should be resolved in favour of Newmont as opposed to the Assessor for the following reasons:

1. Although Newmont sent a notice of complaint to the Assessor, once the Assessor's clerical error was discovered the Assessor had a statutory obligation to bring such an error to the Court of Revision for correction regardless whether Newmont had filed a notice of complaint or appeared in person, or by agent, or solicitor, or in writing to press its complaint. That obligation is found in s. 9 (1) which reads:

Correction of errors

9. (1) The assessor shall bring all errors or omissions in a roll completed under section 2 to the Court of Revision for correction.

When the Assessor agreed to and in fact applied to the Court of Revision to revise the Newmont assessment, the Newmont's representative, both before and at the hearing, impliedly agreed not to advance any further matter for complaint at that time. In substance, though not in form, I interpret Newmont's actions as tantamount to a withdrawal of its complaint as the complaint anticipated by the notice of October 29, 1984 never got before the Court of Revision for consideration.

2. When Newmont delivered its notice of complaint on October 24, 1985, which the Court of Revision and subsequently the Assessment Appeal Board determined the matter litigated was a complaint directed to too high evaluation, namely a complaint made pursuant to s. 40 (1) (c) which is a matter that was never addressed or considered by the Court of Revision when it corrected the Assessor's error on December 8, 1984.

Bearing in mind s. 8 of the *Interpretation Act*, R.S.B.C. 1979, c. 206, previously quoted and relied upon by the Assessment Appeal Board, in my judgment, the Legislature, in enacting sub-section (4) of s. 40, intended to preclude complainants from re-litigating complaints before the Court of Revision or taking more than one bite at the apple. Although reference is made in the Act to "appeals" to the Court of Revision, they are not appeals in the normally accepted sense of that word. Where there is genuine disagreement between the Assessor and a property owner, the complaint procedure and a hearing by the Court of Revision is the first opportunity given to the property owner to be heard by an impartial tribunal against the unilateral act of the Assessor who is charged with the responsibility of assessing all property owners in his area.

In my judgment, it would not be fair to this respondent 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.

The question posed by the stated case is:

> 1. Did the Assessment Appeal Board err in law in determining that the appellant before it, Newmont Mines Ltd., had a right of appeal to the 1986 Court or Revision and thence to the 1986 Assessment Appeal Board, in the circumstances of this case?

My answer is - No.

The respondent Newmont Mines Ltd. will have its costs of this appeal.

Leave to Appeal to the Court of Appeal was granted May 12, 1987.