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CASSIAR MINING CORP.
(formerly Cassiar Resources Ltd./Brinco Mining Ltd.)

V.

ASSESSOR OF AREA 27 - PEACE RIVER

Supreme Court of British Columbia (A870144) Vancouver Registry

BEFORE: MR. JUSTICE BOUCK

Vancouver, May, 21, 1987

Brian J. Wallace for Cassiar Mining Corp.
John E. D. Savage for Assessor of Area 27 – Peace River

Reasons for Judgment

May 27, 1987

INTRODUCTION

Cassiar Asbestos Mining Corporation (Cassiar) operates an asbestos mine at Cassiar in the Peace River Assessment Area. On 17 November, 1986 the Assessment Appeal Board dismissed its appeal from a 1986 decision of the Court of Revision. That appeal was based upon the entitlement of Cassiar to a mid-term revised roll due to an alleged decrease in the value of its undertaking.

By way of a Stated Case, pursuant to s. 74 (2) of the *Assessment Act*, R.S.B.C. 1979, c. 21, the Assessment Appeal Board asks this court to answer the following questions:

- "1. Did the Assessment Appeal Board err in law in finding that the physical change in the property resulting from the extraction of asbestos ore, was not a change in 'physical characteristics' within the meaning of those words in subparagraph 2 (1.2) (b) (v) (A) of the *Assessment Act*, R.S.B.C. 1979, c. 21 (as amended) (the 'Act')?"
2. Did the Assessment Appeal Board err in law in finding that the extraction of asbestos ore since the preparation of the assessment roll was *not* a 'new development' within the meaning of those words in paragraph 2 (1.2) (b) (iv) of the Act?"
3. Was the finding of the Assessment Appeal Board, that the extraction of asbestos ore was not 'a basis. . . by which a different actual value may appropriately be determined', contrary to all of the evidence and therefore an error in law?"
4. Did the Assessment Appeal Board err in law in finding that any change in value resulting from the extraction of asbestos ore was a change it was precluded from considering because of the exception for depreciation in subsection 2 (1.5) of the Act?"
Before answering these questions I should set out the facts agreed upon by the parties when they argued the appeal before the Board.

FACTS

Here are the material facts:

- "1. The Appellant is a mining company which operates an asbestos mine in Cassiar, British Columbia, within the Peace River Assessment Area.
2. The Appellant appealed from the Decision of the Court of Revision to the Assessment Appeal Board which heard the appeal July 3, September 17 and 18, 1985. During the course of the hearing, the Assessor made a recommendation which was accepted by the Appellant confirming the following values for the respective Assessment Roll Numbers:

Roll Number 27-87-787-83570.000

Land	\$ 213,250	(unchanged)
Buildings	\$ 20,801,750	
M & E	\$ 28,375,000	
Total	\$ 49,390,000	

Exemptions:

Land	\$ Nil
Buildings	\$ 4,659,000
M & E	\$ 5,227,750
Total	\$ 9,937,350

Roll Number 27-87-787-83570.005

Land	\$ 2,450	Class 1 (unchanged)
	\$ 800	Class 6 (unchanged)
Buildings	\$ 4,092,950	Class 1
	\$ 1,513,800	Class 6
Total	\$ 5,610,000	

Exemptions:

Buildings	\$ 157,000
Total	\$ 157,000

3. The Appellant appealed to the 1986 Court of Revision and from the Decision of the 1986 Court of Revision to the Assessment Appeal Board.
4. From the period July 1, 1984 to July 1, 1985, the Appellant removed and mined some 1,167,188 tonnes of ore.
5. The Assessor did not assess ore in the valuation recommended and accepted before the Assessment Appeal Board in 1985.
6. The ore was removed from Folio No. 27-87-787-83570.000.
7. The mine, improvements, machinery and equipment were valued before the 1985 Assessment Appeal Board based on the 'remaining life of the ore body' method. That method requires a reduction in value of a single purpose industrial property such as a mine based on the remaining life of the mine as measured by the remaining life of the ore body. Thus, if a mine with improvements and machinery is built to process ore from an

ore body which ore body has a ten-year life, the improvements and machinery would be valued in the second to last year of operation at 2 10ths of its replacement cost, plus salvage value, and in the last year of operation, at 1 10th of its replacement cost, plus salvage value.

8. Based on this method, the parties agreed to the values before the 1985 Assessment Appeal Board as appropriate for July 1, 1984.

9. The substantive issue in this appeal is whether the removal of the additional ore required the Assessor to issue a revised Assessment Roll.

10. Based on the reduced ore body, the remaining life of the ore body method of valuation would reduce the improvement and machinery and equipment values for the July 1, 1984 valuation date as follows:

Roll Number 27-87-787-83570.000

Land	\$ 213,250	(unchanged)
Buildings	\$ 17,573,000	
M & E	\$ 23,970,750	
Total	\$ 41,757,000	

Exemptions:

Land	\$ Nil
Buildings	\$ 3,936,400
M & E	\$ 4,458,600
Total	\$ 8,395,000

Roll Number 27-87-787-83570.005

Land	\$ 2,450	Class 1 (unchanged)
	\$ 800	Class 6 (unchanged)
Buildings	\$ 3,460,000	Class 1
	\$ 1,279,750	Class 6
Total Class 1	\$ 3,462,450	
Total Class 6	\$ 1,280,550	

Exemptions:

Class 1	\$ Nil
Class 6 Total	\$ 132,750

11. There is no change in the physical condition of the buildings and machinery and equipment from September 30, 1984 to September 30, 1985, except wear and tear.

12. The decision of the Assessment Appeal Board dated 17th November, 1986 is attached hereto marked Schedule 'A'."

LAW

What is involved here is the right of the Appellant to open up the Assessment Roll in 1985 between the normal assessments in 1984 and 1986. In other words, Cassiar alleges that because

it removed 1,167.188 tonnes of ore up to July 1, 1985, its assessment for the period 1 July, 1985 to 1 July, 1986 should be less than the value set for the two year period based upon the value of the lands and improvements as of 1 July, 1984. In normal circumstances, the assessment established on 1 July, 1984 was the basis for taxation until the next scheduled assessment on 1 July, 1986.

The procedure for assessing property in British Columbia and the right to reopen the assessment roll in mid-term is statutorily defined in s. 2 of the *Assessment Act*. It reads in part:

"2. (1) The assessor shall, not later than September 30, 1984 and September 30 in each even numbered year after that, complete a new assessment roll in which he shall set down each property liable to assessment within the municipality or rural area and give to every person named in the assessment roll a notice of assessment, and in each case the roll so completed shall, subject to this Act, be the assessment roll for the purpose of taxation during the 2 following calendar years.

(1.1) The assessor shall, not later than September 30, 1985 and September 30 in each odd numbered year after that, complete a revised assessment roll containing revisions to the assessment roll for the purpose of taxation during the following calendar year.

(1.2) Subsection (1.1) applies only to cases where

(a) land or improvements that are liable to assessment by the operation of section 34, 35 or 36 are not entered in the assessment roll or where land or improvements that have ceased to be liable under those sections are shown on the roll,

(a.1) a restriction, not previously taken into account pursuant to section 26 (3.2) and (3.3), affects the value of land and improvements that are liable to assessment under section 34, 35 or 36,

(b) the actual value, determined under this Act in relation to a revised assessment roll, is not the same as the actual value entered in the assessment roll by reason of

(i) an error or omission,

(ii) new found inventory,

(iii) the permanent closure of a commercial or industrial undertaking, business or going concern operation,

(iv) new construction or new development to, on or in the land or improvements or both, or

(v) a change in any of the following:

(A) physical characteristics;

(B) zoning;

(C) the classification referred to in section 24 or 28;

(D) entitlement to assessment in accordance with section 26 (4),

(c) there has been a change in any of the following:

- (i) ownership;
- (ii) legal description;
- (iii) the classification referred to in section 26 (8);
- (iv) the eligibility for, or the amount of, an exemption from assessment or taxation;
- (v) municipal boundaries, or

(d) section 28 (7) applies

(1.3) The assessor shall not

- (a) when acting in a case referred to in subsection (1.2), make an entry on a revised assessment roll so as to increase or decrease the amount of an actual value shown on the assessment roll except to the extent that the increase or decrease is attributable to a factor referred to in that subsection, or
- (b) act in a case referred to in subsection (1.2) (b) (iii) unless he has received a written statement that the closure is permanent.

(1.4) In subsection (1.2) (b) (i) 'error' means an entry resulting from a clerical or arithmetical error, or any entry based on incorrect facts.

(1.5) Notwithstanding anything in this section, depreciation occurring since the completion of the assessment roll shall not be a basis for the making of any entry on a revised assessment roll."

According to s. 2 (1.5), where all that has occurred in the intervening period following the preparation of an assessment roll is the depreciation of the property in question, there is no right to have the assessment roll revised. The Assessment Appeal Board found that is what happened here. According to the Board, the removal of the ore from the mine caused it to depreciate in value and so the petitioner was not entitled to a revised roll. A good deal of discussion was advanced at the hearing of this application as to whether the removal of the ore was a form of depreciation. There does not appear to be any case on point. Where it is discussed, "depreciation" is used as a convenient word to describe the effect of taking ore from a mine. Text authority canvassed by both sides deals with depreciation of buildings and fixtures and not with the consequences of removing ore from the ground.

For example, in a text referred to by counsel for the Appellant entitled, *The Appraisal of Real Estate*, 8th Ed., at page 471 the learned author describes "accrued depreciation" in these words:

"Accrued depreciation is a loss in value from the reproduction cost or replacement cost of improvements from any cause, as of the date of an appraisal. A loss to structures or other improvements emanates from one or more of three sources. The sources are physical deterioration, functional obsolescence, or external obsolescence."

With respect, it seems to me a more accurate description of the effect of removing the ore from the mine is the word "depletion" and its derivatives. To deplete is to reduce the fullness of, to empty out. . . . *Shorter Oxford English Dictionary*, 3rd Ed., p. 522.

When ore is taken from a mine the mine is being "emptied out", it is not just aging from the effects of ordinary wear and tear. Nor is it falling in value because it is obsolete. Depletion is most often

referred to in taxing statutes dealing with the extraction of natural resources from the ground, but it is still an apt word in these circumstances. *Black's Law Dictionary*, 5th Ed. at page 394 defines depletion in part as follows:

"An emptying, exhausting or wasting of assets. A reduction during taxable year of oil, gas or other mineral deposits or reserves (i.e. wasting assets) as result of production. The process by which the cost or other basis of a natural resource (e.g., an oil and gas interest) is recovered upon extraction and sale of the resource."

Therefore, I do not think that s. 2 (1.5), is a road block which prevents the assessor from making a revised assessment roll in this situation. What is occurring here is the depletion of an ore body, not its depreciation.

The two statutory events which the Appellant now contends gives it the right to a revised roll because of the depletion of the ore body from 1 July, 1984 to 1 July, 1985 are:

- (1) new development on or in the land (s. 2 (1.2) (b) (iv)); or
- (2) a change in the physical characteristics of the land or the improvements (s. 2 (1.2) (b) (v) (A)).

When examining this part of the submission it is important to keep in mind that the ore body itself is not the subject of assessment under the *Assessment Act*. Only land and improvements come within its grasp. Insofar as the land is concerned, it is agreed between the parties that the land value remained unchanged from 1 July, 1984 to 1 July, 1985. Cassiar is using the depletion of the ore body for the purpose of reducing the assessment on improvements including the machinery. According to paragraph 7 of the Agreed Facts, improvements and machinery for assessment purposes are valued on "the remaining life of the ore body" method. In other words, as the ore body is exhausted the valuation of the improvements and machinery are correspondingly reduced until the time when the mine runs out, then they should theoretically be worth nil, apart perhaps from their salvage value.

With respect, I do not think the statute intended a revised assessment should be prepared in these circumstances. First of all, the ordinary roll prepared as of 1 July, 1984 contemplated that a reduction would occur in the value of the improvements and machinery in the subsequent roll of 1 July, 1986 because of the gradual depletion of the ore body. Section (2) (1.2) (b) (iv) and (v) (A) dealing with mid-term or revised rolls, where there has been new development or a change in the physical characteristic of land or improvements, seems to be concerned with events which could not be expected or anticipated as of 1 July, 1984. But everyone knew on 1 July, 1984 that ore would likely be taken from the ground between 1 July, 1984 and 1 July, 1986. It was no surprise. Put another way, the removal of ore from the mine after 1 July, 1984 was not an unexpected new development on or in the land, or an unanticipated change in the physical characteristics of the land or improvements entitling Cassiar to a revised roll as of 1 July, 1985.

Second, the technique of assessing the value of the land and improvements by ascertaining the remaining life of the ore body is simply an appraisal method of determining worth. It is not a statutory event which triggers the right to a revised roll. Land and improvements associated with a mine only depreciate in value for assessment purposes on a notional basis as the ore body is exhausted. Whether in fact they do lose value is another matter. For example, in this instance it is agreed the land itself had the same value on 1 July, 1985 as it did on 1 July, 1984. An appraisal of the value of the improvements might reveal the same thing. Machinery might even go up in price if it is hard to find or was originally purchased at a bargain price. Similarly, buildings might be worth more because of higher construction costs following their original completion. It seems to me the intent of the section is to allow for a revised roll where the things discussed in s. 2 (1.2) actually happen, and not just when they notionally happen.

On the basis of this reasoning the answer to the questions posed by the Board are as follows:

"1. Did the Assessment Appeal Board err in law in finding that the physical change in the property resulting from the extraction of asbestos ore, was not a change in 'physical characteristics' within the meaning of those words in subparagraph 2 (1.2) (b) (v) (A) of the *Assessment Act*, R.S.B.C. 1979, c. 21 (as amended) (the 'Act')?"

Answer: No.

2. Did the Assessment Appeal Board err in law in finding that the extraction of asbestos ore since the preparation of the assessment roll was not a 'new development' within the meaning of those words in paragraph 2 (1.2) (b) (iv) of the Act?"

Answer: No.

3. Was the finding of the Assessment Appeal Board, that the extraction of asbestos ore was not 'a basis . . . by which a different actual value may appropriately be determined' , contrary to all of the evidence and therefore an error in law?"

Answer: No.

4. Did the Assessment Appeal Board err in law in finding that any change in value resulting from the extraction of asbestos ore was a change it was precluded from considering because of the exception for depreciation in subsection 2 (1. 5) of the Act?"

Answer: Yes.

In the result, the appeal is dismissed. Costs follow the event.