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QUINTETTE COAL LIMITED

v.

THE ASSESSMENT APPEAL BOARD OF BRITISH COLUMBIA
ASSESSOR OF AREA 27 - PEACE RIVER
and
THE DISTRICT MUNICIPALITY OF TUMBLER RIDGE

Supreme Court of British Columbia (A862002) Vancouver Registry

Before: MR. JUSTICE MEREDITH

Vancouver, October 23, 1986

Brian J. Wallace for Quintette Coal Ltd.
Robert Gill for Assessor of Area 27
G.E. McDannold for the Municipality of Tumbler Ridge
H.N. Groberman for Assessment Appeal Board

Reasons for Judgment October 31, 1986

The Area Assessor and the District Municipality of Tumbler Ridge move to set aside a refusal of the Assessment Appeal Board to permit them to withdraw a "holding" appeal. Review is sought under the *Judicial Review Procedure Act* on the following grounds:

> "1) The Respondent Assessment Appeal Board (the "Board") has no jurisdiction under its rule-making powers to pass a rule requiring an Appellant before it to obtain leave to withdraw its appeal prior to hearing of the appeal commencing.
>
> 2) In the alternative, the Board erred in exercising its discretion to refuse leave to the District of Tumbler Ridge to withdraw its appeal when it found, without evidence to support such finding, that the actual value was incorrect, and based its decision on such finding."

The facts are set forth in the "Counter Petition" of the Municipality as follows:

> "1) By letter dated January 15th, 1985 the District Municipality of Tumbler Ridge appealed to the Assessment Appeal Board regarding the 1985 assessment rolls relating to the properties occupied by Quintette Coal Ltd.
>
> 2) By letter dated July 10th, 1986 the District Municipality of Tumbler Ridge withdrew its appeals of the 1985 assessment rolls relating to the properties occupied by Quintette Coal Ltd.
>
> 3) On July 15th, 1986 the Assessment Appeal Board convened to hear the 1985 appeals relating to the properties occupied by Quintette Coal Ltd.
>
> 4) The District Municipality of Tumbler Ridge applied to the Assessment Appeal Board before the hearing of the appeals had commenced before the Board for leave to withdraw its 1985 appeals relating to the properties occupied by Quintette Coal Ltd.

5) The Assessment Appeal Board dismissed the application."

Ground No. 1 - Rule-making power

The impugned rule made by the Board reads:

"*Procedures for Conduct of Hearings and Proceedings before the Board*

* * *

"5. Abandonment of Appeal

An Appeal may be abandoned or withdrawn only with leave of the Board."

The Rule was enacted under the authority of this Sub-Section of the *Assessment Act*:

"61. The Board

* * *

(c) may make rules, not inconsistent with this Act, for its own government and for conducting hearings and proceedings before it."

The submission is that the words "proceedings before it" mean that the Board may only make rules governing the conduct of hearings, not preliminary procedures. Moreover section 68, it is urged, is intended to be exhaustive of the preliminaries and thus the rules regarding preliminaries would be "inconsistent with the Act".

I conclude that the submission must be rejected.

Section 68 reads:

"**Procedure on appeal to board**

68. (1) The procedure in an appeal to the board shall be as follows:

(a) the appellant shall, within 21 days from the date of mailing the notice of the decision of the Court of Revision, serve on, or send by registered mail to, the assessor, a written notice of appeal, and the notice shall contain the ground of appeal;
(b) the appellant shall, with his notice of appeal, deposit with the assessor the prescribed fee for the first entry on the assessment roll appealed against, and a further prescribed fee for each additional entry, and those amounts shall be forwarded by the assessor to the Provincial Collector, Victoria Collection District;

(c) as soon as the time for notices of appeal has passed, the assessor shall notify the board of any appeals, giving the names of the appellants and a brief statement of the grounds of appeal;

(d) the board shall appoint a time, date, and place for hearing the appeal;

(e) on receiving an appointment, the assessor shall give to all persons affected notice of the time, date and place fixed for hearing the appeal, and the assessor shall, without further notice, attend the hearing of the appeal with the assessment

roll or a copy of it, the minutes of the Court of Revision relating to the property under appeal and all documents and writings that have a bearing on the appeal;

(f) [Repealed 1984-11-30, effective May 14, 1984 (B.C. Reg. 131/84).]

(g) on the appeal, witnesses may be produced by any of the persons affected by the appeal and may be required to give evidence and to produce books, papers, documents or writings in their possession or under their control relating to the appeal, and a party to the appeal may obtain from the board a subpoena requiring the attendance of a witness on the hearing of the appeal:

(h) the appeal may be determined whether or not the person against or by whom it is made is present.

(2) Where the appellant is the assessor, subsection (1) (a) and (b) does not apply, but the assessor shall, within 21 days after mailing the notice of the decision of the Court of Revision, serve on or send by registered mail to the owner, his solicitor or authorized agent, a written notice of appeal stating the ground of appeal."

Because some at least of the procedures (proceedings) described in the heading as "on appeal to the Board" and in the section itself as "in an appeal to the Board" come before the Board before hearings are commenced (as for instance pre-hearing notification of appeals and subpoenas to witnesses) it follows that all the procedures, because they are compendiously described in the section, were intended to be proceedings before the Board. Section 61 (3) thus confers on the Board power to make rules respecting those procedures. furthermore, the power to make pre-hearing rules is consistent, not inconsistent, with the Act. For these reasons I find that the rule is valid.

Ground No. 2 - Exercise of Discretion

If I have power to interfere with the discretion exercised by the Board, I would not do so. I think the Board was correct. The reason that the Board decided to continue with the hearing (and thus refuse leave to abandon or withdraw) was because the assessed value was very much in question. Quintette, on the one hand, gave notice that it would argue that the assessments should be reduced because of economic obsolescence. The Assessor argued on the other hand that if Quintette made disclosure of material disclosing the true facts, the assessment should at least be the subject of re-examination. Because assessed values were in issue, to say nothing of the fact that the proceedings were well advanced, it was surely sensible and altogether appropriate that the question, which would have ultimately to be determined in any event, be determined earlier than later. I doubt that the Board based its decision on a "finding" that the actual value was incorrect, but rather on an "assertion" that it was incorrect. ("The Company wishes to argue that no allowance has been made for economic obsolescence".) The Board decided, correctly in my view, that it was expedient to retain jurisdiction where the assessment was challenged, at least by Quintette, and where the Assessor himself cast doubt on its accuracy.

The Assessor and the municipality take several additional positions in respect of the allegation that the discretion was improperly exercised.

Firstly, they equate appellants under the *Assessment Act* to litigants prosecuting law suits. True, litigants generally have the undeniable right to abandon their own proceedings. But appellants are not litigants. An Assessment Appeal invests the Appeal Board with the power and imposes upon it as well the duty of determining value by a number of means available to it. The process is essentially inquisitorial. On the other hand, processes before Courts of law are adversarial. The Court has, in the nature of things, to be responsive, and only responsive, to the litigant who seeks its aid. Unlike the Assessment Appeal Board, the Court has no function if the litigant decides to quit. Thus the parallel contended for is inaccurate. The Board may continue its inquiry whatever

the wishes of an appellant. Thus the appellant may not be allowed to thwart the function of the Board by withdrawal, once the Appeal process has been put in motion. And even though put in motion by the Appellant himself. And once put in motion, the Board has a very broad jurisdiction. It is not governed by or confined to grounds of appeal alleged or submissions made to it by the Appellant or Appellants: *Assessment Commissioner of British Columbia* v. *Western Forest Industries Ltd. et al* 25 B.C.L.R. 189.

Then it is argued that the refusal of the right of the Appellants to discontinue or abandon would result in a gross inconsistency of treatment. Appellants, whether they be taxpayers, municipalities or the Assessor himself should be treated, it is suggested, in the same manner. In the *Willingdon Apartments Limited* appeal the assessed owner was permitted to withdraw his appeal in the face of threat by the Assessor that the Board would be asked to increase the assessed values. It is true that the Board, in referring to, for instance, "other remedies" of the Assessor treated the Assessor as if a litigant. And the Board said:

> "In complicated industrial appeals, for instance, considerable work and time may be necessary for a taxpayer to consider an assessment, after which it may be reasonable and in the interests of justice to allow such an appellant to withdraw the Appeal."

Be that as it may, the function of the Board is not to weigh the interests of any of the parties to the Appeal (if the Assessor can be said to have an interest) but rather to exercise its jurisdiction to establish the proper assessed value. In any case, the decision in *Willingdon*, right or wrong, should not inhibit the proper exercise of discretion in the present case.

The application to set aside the refusal of the Board to permit the applicants to withdraw from their appeals is accordingly refused with costs.