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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: MADAM JUSTICE PROUDFOOT (In Chambers)

Vancouver, September 10, 1985

Brian Wallace for Quintette Coal Ltd.
P.W. Klassen for Assessor of Area 27
G.E. McDannold for the Municipality of Tumbler Ridge
D.L. Clancy for the Assessment Appeal Board and the Attorney General

Reasons for Judgment October 15, 1986

This is a petition by Quintette Coal Limited to the court for an order that the decision of the Assessment Appeal Board dated July 15, 1986, requiring the petitioner to produce all costs of acquisitions and construction of certain lands and improvements, etc., pursuant to s. 62 of the *Assessment Act*, R.S.B.C. 1979, ch. 21 (the Act), be set aside pursuant to s. 2 of the *Judicial Review Procedure Act*, R.S.B.C. 1979, ch. 209. This information is required to enable Area Assessor No. 27 to produce an accurate inventory and reliably allocate those costs to land, structure, machinery and equipment of those costs of construction.

The petitioner argues that the Assessment Appeal Board was in error when it considered it had jurisdiction pursuant to s. 62 to require the production of information (during a 1985 appeal) relating to an amount and allocation of construction costs incurred by the petitioner prior to December 31, 1983.

Alternatively, the argument is if the Board had the jurisdiction, the Board exercised its discretion wrongly when they concluded that the amounts and allocations of costs incurred by the petitioner prior to December 31, 1983 could be used and could become an issue in their adjudications in the hearing of the 1985 appeal.

There is a further alternate position. The petitioner takes the position if the Board retained jurisdiction to consider the motion (to require production of information) it erred when exercising its discretion by distinguishing between an application bought by Tumbler Ridge in 1984, and the motion, in the 1985 appeal.

The facts briefly are as follows. The petitioner, Quintette, owns and/or occupies certain lands within the Municipality of Tumbler Ridge. During the period January 1, 1982 to December 31, 1983, Quintette erected certain improvements for the purpose of processing coal extracted from the lands. Pursuant to s. 26 (2) of the Act, the Assessor No. 27 is required to determine the actual value of lands and improvements for the purpose of entering these values on the assessment roll for the 1984 taxation year. The actual value of the lands and improvements as at December 31,

1983 were ascertained for the assessment roll for 1984 by the Assessor. These costs were received and were used to form the basis of the actual values for the 1984 assessment. These values were approved by the 1984 Court of Revision. Tumbler Ridge appealed from the decision from the 1984 assessment.

December 17, 1984 the Municipality applied for an order that the board, or a person authorized by it, make an enquiry by inspection, etc., to ascertain all costs incurred in connection with the lands and improvements prior to December 31, 1983. That enquiry was directed pursuant to s. 62 of the Act. The Board dismissed that application of the Municipality. The Board concluded that the allocation of construction costs as at December 31, 1983 which were placed in the 1984 assessment roll were reasonable and ordered that:

> 1. Actual values and allocations contained on the assessments in the name of Quintette Coal Limited regarding the machinery and structures be confirmed (subject to changes in exemption) as found by the 1984 Court of Revision.

Tumbler Ridge appealed that May 31, 1985 decision, to the Supreme Court of British Columbia by way of stated case, pursuant to s. 74 (2) of the Act. The Supreme Court of British Columbia effectively confirmed the Board's decision.

For the 1985 taxation year the Assessor determined the actual value of lands and improvements which had actually been constructed as of September 30, 1985 based on a July 1, 1985 valuation date. Prior to arriving at values for the 1985 assessment, the Assessor requested detailed construction costs of the improvements, etc. The petitioner supplied detailed information with respect to construction activity and costs between January 1, 1984 to September, 1984, but declined to produce information of costs incurred prior to December 31, 1983.

The Assessor appealed from the decision of the Court of Revision for the 1985 assessment. Tumbler Ridge also appealed the 1985 decision of the Court of Revision. A hearing was set by the Board of the 1985 appeal for July 15,1986. On July 11,1986 the Assessor delivered a motion to the petitioner applying for an order pursuant to s. 62 of the Act that the petitioner be required to produce all information relating to the cost of acquisition and construction of the lands and improvements. The motion was heard July 15, 1986. Counsel for the Assessor made it clear that the information concerned costs incurred prior to December 31, 1983. The Board allowed the Assessor's application in an oral ruling dated July 15, 1986. I have perused the conclusion of the hearing on July 15, 1986 and am satisfied that all the information to be supplied concerned costs of acquisition and construction of the lands and improvements thereon, including prior to December 31, 1983. It is that ruling which the petitioner seeks to set aside.

S. 62 of the Act reads:

> "**Inspection powers of the board**
>
> The board, or a person authorized by it to make any inquiry or report, may
> (a) enter on and inspect any land or Improvements;
> (b) require the attendance of all persons as it considers necessary to summon and examine, and take the testimony of those persons;
> (c) require the production of all books, plans, papers and documents; and
> (d) administer oaths, affirmations or declarations."

The petitioner's argument simply put is that the Board did not have the jurisdiction to make the order they made on July 15, 1986 pursuant to s. 62 for the complete discovery of all documents of the petitioner. The matter had already been dealt with when the 1984 assessment was completed and that this information could not be called upon to arrive at the 1985 assessment. Secondly, that only that information subsequent from January 1, 1984 could be used, that the matter was *res judicata* (issue estoppel having been previously determined). Alternatively, that if

the Board had the discretion to make such an order they exercised it wrongly because even if they got the information it could not be used; it having been used before. The Assessor would be estopped from using these costs in the 1985 assessment.

Does *res judicata* apply to assessment cases being dealt with by administrative tribunals? It seems quite clear from the massive amount of authorities cited to me that the petitioner's argument cannot succeed. I refer only to a few of the cases put to me: *Broken Hill Proprietary Company, Limited and Municipal Council of Broken Hill*, [1926] HL 94, p. 100; *Society of Medical Officers of Health* v. *Hope*, [1960] H.L. (E.) A.C. 551, pp. 557, 559, 561-563, 568-569: *Mohamed Falil Abdul Caffoor and others, The Trustees of the Addul Gaffoor Trust* v. *Commissioner of Income Tax Colombo*, [1961] H.L. 584, pp. 597-598, 600: *Gil et al* v. *Ferrarri et al*, [1950] 4 D.L.R. 286, p. 288: *Assessor of Area 12 - Coquitlam* v. *Sports Car Club of B.C.*, Stated Case No. 216.

The petitioner relies on a dissent in *Angle* v. *Minister of National Revenue* (1974),47 D.L.R. (3d) 544, Laskin, J. where he stated that an anomaly should not be introduced into the general application of the doctrine of *res judicata*. The majority, however, found that *res judicata* did not apply because the question in the earlier case was not "*eadem quaestio*" with that in the latter. That case is of very little assistance. In any event, it did not involve a situation of successive tax assessments.

The petitioner also relies on the case of *Re Halam Park Development Ltd. and Regional Assessment Commissioner for Hamilton-Wentworth, Region No. 19 et al* (1985), 50 O.R. (2d) 436. Firstly, that case relied heavily on the Laskin, J. dissent in the *Angle* v. *Minister of National Revenue*, (supra). Then if one analyzes the reasons of Smith, J., particularly at p. 442, it would seem that Smith, J. seemed to agree that *res judicata* should not apply. The case, I suggest, is not helpful to the petitioner in face of the weight of authority against the petitioner's argument.

There are a number of very impressive reasons why *res judicata* should not apply to successive tax assessment cases, all of which have been expressed most eloquently in the cases cited. The chief of these, I suggest, are:

1. An Assessor carries out a statutory duty;

2. An assessment or valuation is temporary in nature and limited in time;

3. The jurisdiction of a decision-making tribunal is limited. Its function begins and ends with determining the assessment of a defined period;

4. The assessment for a new year is not" *eadum quaestio*";

5. No real *lis* is involved since the assessor has no self interest.

Two final points that assist in convincing me that the doctrine of res judicata does not apply is found in s. 11 (1) and (2) of the Act. This section, in my opinion, contemplates there will be no application of the doctrine. Also the case of *Re Arbitration Act Re Fernie Memorial Hospital Society and Duthie* (1963), 42 W. W.R. 511, in that case Lord, J. seems to say quite clearly that *res judicata* only applies to "a judicial decision pronounced by a judicial tribunal". That would seem to imply by inference that it does not apply to an administrative tribunal.

The petitioner's application cannot succeed and is dismissed with costs.