

The following version is for informational purposes only

HAMERSLEY HOLDINGS LTD. and NORTHWEST MANAGEMENT LTD.

v.

ASSESSOR OF AREA 27 - PEACE RIVER

Supreme Court of British Columbia (A883341) Vancouver Registry

Before MR. JUSTICE HOLLINRAKE (in chambers)

Vancouver, December 15, 1988

A. W. Carpenter for the Appellant
G. E. McDannold for the Respondent

Reasons for Judgment

December 15, 1988

This is a Stated Case by the Assessment Appeal Board pursuant to section 74 (2) of the Assessment Act.

I have before me the Stated Case and as part of it I also have before me the reasons of the Assessment Appeal Board dated September 26th, 1988.

The first point to make is that I am bound by the facts in the Stated Case. It is not for me to draw inferences of fact of what may or may not have happened at the hearing, nor make inferences about what the Assessment Appeal Board did.

Question number 1: "1. Did the Board err in law by finding that as a result of Hamersley Holdings Ltd. filing a complaint against the value on the Assessment Roll of the subject property in 1986, section 40 of the Assessment Act precludes Northwest Management Ltd. from making a further complaint against the value on the Assessment Roll of the subject property in 1987?"

My answer to this question is "No".

I do that because when I look at section 40 of that Act in its entirety, I hold subsection (5) cannot be construed to bring the Appellants within it.

I am mindful of subsection (2) of section 40. I think the Board was correct and I quote: "The Board finds that Section 40, subsection 5, is an additional remedy which provides the right of an owner to appeal in the second year of an assessment roll despite their being an appeal by a third party not an owner, in the first year. Hamersley, being an owner, and having made a complaint in 1986, no further complaint may be made in 1987 by any party."

Question number 2 seeks the opinion of the Court on the question, "Did the Board err in law by finding that, even if the complaint to the 1988 Court of Revision may have been improperly brought, the Board was not required under section 61 of the Assessment Act to hear the appeal?"

My answer to that is: "No".

My reason for that is I am not prepared to make any inferences of what the Board may or may not have done. I quote from page 1 of the reasons of the Board: "This matter comes before the Board by way of a hearing as to the validity of the within appeal. By agreement of the parties, evidence and arguments were presented by way of written submissions."

I do not have to say anything beyond that. Based on the facts in the Stated Case and the reasons of the Board, I do not think the Board erred as I am asked to find that they did in Question number 2.

The appeal is dismissed with costs.

The answers to the questions are remitted back to the Board pursuant to section 74 (6).

I should say one further thing. In the Stated Case there were three questions for the Court. Counsel advised me that question number 3 has been abandoned. I received no argument on it and provide no answer.

The Respondent is entitled to its costs.