SC540 Falkenberg, Helen v AA26 & PAAB

Link to Property Assessment Appeal Board Decision

HELEN FALKENBERG

v.

ASSESSOR OF AREA 26 – PRINCE GEORGE and PROPERTY ASSESSMENT APPEAL BOARD

SUPREME COURT OF BRITISH COLUMBIA (0833227) Prince George Registry

Before the HONOURABLE MR. JUSTICE McEWAN
Date and Place of Hearing: January 28, 2010, Kamloops, B.C.

J. Frame for the Appellant
J.D. Houston for the Respondents

Farm Classification – Primary Agricultural Production

The subject property consists of 11.93 hectares north of McBride. The Appellant purchased the property in February, 2007, but the previous owner remained on the property to board his horses, some of which he sold in August, 2007 for $14,000. Before the Appellant moved to McBride she operated a horse farm in Keremeos. BC Assessment removed farm classification for the subject property on the 2008 roll due to insufficient primary agricultural production on the subject property in the 12 months ending October 31, 2007.

The Property Assessment Review Panel ("PARP") upheld the denial of farm class and determined the portion of the property used for stables and a riding area should be class 6, business and other. The Property Assessment Appeal Board ("the Board") upheld the PARP decision.

The Appellant submitted the following two questions for consideration by the Court:

1. *In concluding that there was insufficient evidence of gross annual value of primary agricultural production on the Appellant's Property, did the Board disregard or fail to appreciate relevant material evidence of the sale of the Appellant's horse "Misty" during the assessment period?*
2. *In concluding that there was insufficient evidence of gross annual value of primary agricultural production on the Appellant's Property, did the Board disregard or fail to appreciate relevant material evidence of eight horses raised and sold on the Property by the previous owner, Dr. Geoffrey Cowburn, during the assessment period?*

HELD: Appeal Dismissed.

The Court held that neither 1) the 2007 sale of "Misty" a horse raised by the Appellant at her Keremeos property, nor 2) the income received by the former owner for the sale of his horses from the property (in the absence of a lease back to the former owner and an application for farm classification showing him as a lessee) could be considered for farm classification purposes.

This Court found that the Appellant was unable to show the production of primary agricultural products in "the 12 month period ending October 31" that needed to be demonstrated in order to qualify the subject property for farm class. This Court found that the Board was correct in its findings, answered both questions in the negative and dismissed the appeal.

[1] This is a Stated Case pursuant to s. 65 of the *Assessment Act,* seeking the opinion of the court on two questions arising out of the Decision and Order of the Property Assessment Appeal Board made August 26, 2008, ruling that a rural acreage owned by the Appellant, Helen M. Falkenberg, could not be classified as a farm.

[2] The property consists of 11.93 hectares north of McBride, British Columbia. The Appellant purchased the property in 2006 and took formal possession on February 15, 2007. There are facilities related to horses on the property. The previous owner remained on the property for a time, in order to board his own horses, some of which he sold in August of 2007 for approximately $16,000.

[3] Before the Appellant moved to McBride she had operated a horse farm near Keremeos, British Columbia.

[4] At the end of 2007 the Appellant received a notice from the B.C. Assessment Authority classifying the McBride property as "Residential" for the 2008 assessment year. She appealed to the Property Assessment Review Panel on the basis that the property should have been classified as a farm. The panel refused to grant farm classification and changed the assessment of part of the property, including the stables and riding arena, to "business/other".

[5] The Appellant then took the matter to the Property Assessment Appeal Board. It confirmed the Review Panel's decision in the Written Reasons that are the subject of this Stated Case.

[6] Under the *Prescribed Classes of Property Regulation,* B.C. Reg. 438/81 there are nine possible classifications of property for assessment purposes. A unique feature of the "Farm" classifications is that an owner must apply for the classification, and must satisfy certain criteria.

[7] The proceeding before the Appeal Board was conducted on written submissions.

[8] Although six questions were originally posed in the amended Stated Case, only two have been submitted to this court. These are the following:

1. In concluding that there was insufficient evidence of gross annual value of primary agricultural production on the Appellant's Property, did the Board disregard or fail to appreciate relevant material evidence of the sale of the Appellant's horse "Misty" during the assessment period?

2. In concluding that there was insufficient evidence of gross annual value of primary agricultural production on the Appellant's Property, did the Board disregard or fail to appreciate relevant material evidence of eight horses raised and sold on the Property by the previous owner, Dr. Geoffrey Cowburn, during the assessment period?

[9] In order to qualify for classification as a farm, an owner or lessee must show the production of primary agricultural products in "the 12 month period ending October 31"... in excess of a value scaled to the size of the property. The parties agree that the amount of primary agricultural production that would have had to be demonstrated in the case of the Appellant's McBride property was $2,700.

[10] The evidence of "primary agricultural production" offered by the Appellant was the sale of a horse named "Misty" on October 20, 2007, for $4,000. The horse was not bred on the property and was only boarded there for a few months. According to the Assessor, the Appellant advised her that "Misty" had been purchased from a man named Gordon Walker in 2002, as a yearling, for $75, although she had no receipt for the transaction.

[11] Because the horse was not bred, raised or trained at the McBride property, the appraiser concluded that, applying that criteria of s. 5(4) of the *Standards for the Classification of Land as a Farm Regulation*

B.C. Reg. 411/95, *("The Regulation")* it could not be considered primary agricultural production attributable to the McBride property. The section reads as follows:

> 5(4) In determining the gross annual value, the assessor must
>
> (a) consider only the value of the primary agricultural production which takes place on the farm, and
>
> (b) include any unrealized value of primary agricultural production grown or raised on the farm in the 12 month period ending October 31.
>
> [emphasis added]

[12] The appraiser concluded that any value added to "Misty" would have occurred on the Keremeos properties for which the Appellant had had the benefit of the farm classification.

[13] The evidence of the sale and "value added" to Misty was also considered unreliable by the appraiser. On February 6, 2008, the Appellant sent the Assessor a facsimile of a hand-written bill of sale for "a grade 1/4 horse Arab X mare of 2001" to a Susan Meitner for $4,000 plus GST of $240.00. The appraiser contacted what was number believed to be the home number of Susan Meitner and spoke to a man who identified himself as her husband. He gave the appraiser a cell phone number which was apparently answered by Susan Meitner. She said she purchased a 14 year old horse from the Appellant for $4,000, which was still being boarded with the Appellant.

[14] On February 13, 2008 the Appellant produced a cancelled cheque written to a Gordon Walker dated January 16, 2002, for $120 for a "May 2001 Filly "Misty". The notation suggests that the horse subject of this memo was not a 14 year old horse, as described by the person identified as Ms. Meitner.

[15] The Appraiser also visited a website that contains ads for horses for sale and found a horse named "Misty" still posted for sale by the Appellant for $4,000.

[16] On the basis of the contradictory evidence respecting Misty, the Assessor felt unable to rely on the sale as evidence.

[17] The Appellant responded to these concerns by suggesting that Susan Meitner was mistaken about the age of the horse, "Misty"; that the wrong "Gordon Walker" was contacted; and that the internet ad was old and outdated. She observed that "one forgets where one has advertised" and suggests the possibility that the ad was simply not taken down following the sale of "Misty" to Susan Meitner. She also produced a photograph signed by "G. Walker" identifying the horse depicted in the photograph as a horse he sold the Appellant in Jan[uary] 16, 2002, as a yearling." Another copy of the photo is identified by Ms. Meitner as the horse she bought. That note does not suggest the horse's age.

[18] In written reasons dated August 26, 2008, the Property Assessment Appeal Board, per Sheldon Seigal, upheld the Assessor's determination that the property did not qualify for "Farm" classification. He described the available evidence in terms that made it clear that he had the full record before him. Respecting "Misty" he summarized the Assessor's Evidence as:

> No sale of primary agricultural products including horses, occurred in 2006 or 2007 production years. The only evidence provided contrary to that was of the sale of a horse identified as "Misty" about which the evidence contains discrepancies. The horse was alternately referred to as 1 year-old male, and a 14 year-old female. Further, the horse was never delivered and remained at the property.

[19] He addressed the evidence respecting the sale of Misty as follows:

> [23] All of the evidence that the Assessor had available to him, and additional information provided by the Appellant is before me. On the basis of that documentation I find that there is insufficient evidence

to establish that the property fits within the requirements of the Regulations, in particular with respect to minimum income from primary agricultural income. There are significant issues of reliability (the sale of Misty - for example) and accuracy of some of the records provided, and a notable deficiency of other evidence supporting that the threshold income was met in the required time frame.

[24] The Assessor's conclusion that the evidence before him amounts to insufficient evidence of income to qualify for the minimums required for farm classification is reasonable.

[20] The Appellant's submission is that the Panel's reasons were sparse and amounted to a simple recital of the Assessor's position and a conclusion that there is insufficient evidence of farm income to establish farm classification.

[21] The Appellant characterizes this as acting "without any evidence", one of five species of "question of law" identified in *British Columbia (Assessor of Area No. 26 - Prince George) v. Cal Investments Ltd.* [1993] B.C.J. No. 93, per Ryan, J. (as she then was) at para. 18:

18 For purposes of the Act a "question of law" has been defined as follows:

1. A misinterpretation or misapplication by the Board of a section of the Act.

2. A misapplication by the Board of an applicable principle of general law.

3. Where the Board acts without any evidence.

4. Where the Board acts on a view of the facts which could not reasonably be entertained. (Crown Forest Industries, supra at p. 191 [The case was appealed to the Court of Appeal. It is reported at 10 B.C.L.R. (2d) 145. The court did not disapprove of The principles as set out by Southin, J. in the court below.]; Westcoast Transmission, supra at pp. 1348-1349)

5. Where the method of assessment adopted by the Board is wrong in principle. (Lornex Mining Ltd. v. Assessor of Area 23 - Kamloops, [1987] B.C.J. No. 2555, No. A863217, Vancouver Registry, December 30, 1987, B.C.S.C. at p. 7)

[22] The argument respecting the sale of "Misty" is put as follows in the Appellant's Submission:

> 26. Seigel claimed in paragraph 23 that there were issues of reliability around the sale of "Misty". The only example provided in his reasons was a paragraph 14, where he claims that the horse was "alternately referred to as a 1 year-old male, and a 14 year-old female." This observation was not supported by the evidence; nowhere was "Misty" referred to as a male, but always as a mare (a female horse). Nobody claimed that she was 1 year old; the Appellant claimed she was born in 2001, and the purchaser thought she was 14 years old.
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> 27. At paragraph 15 Seigel cited *Miskuski v. Assessor of Area* 19 (2005 PAABC 20051718) *("Miskuski").* In that case, the Appeal Board refused to count the sale of a horse towards a property's GAV because the Appellant had not provided any information about the horse or details of the sale.
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> 28. In the present appeal the evidence showed that "Misty" was a Quarter Horse/Arabian cross, 14 hands tall and born in 2001. The Appellant purchased her for $120.00 in 2002 and sold her in 2007 for $4,000.00 plus tax.
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> 29. Seigel did not comment on the evidence of the pictures of "Misty" signed by both Gordon Walker and Susan Meitner. He did not comment on the impact of the negotiated cheque to Gordon Walker. He did not address the notes in the Assessor's own submission that both Susan Meitner and her husband independently confirmed that they had purchased a horse from the Appellant for $4,000.00 in October, 2007.

> 30. In Summary, Seigel acted without any evidence in his decision not to count the sale of “Misty” towards the Property’s GAV in 2007.

[23] While it appears that the Panel’s view of the evidence was incorrect in one particular, in that it appears “Misty” was never described as a one year old male - perhaps a typographical error for “mare” - its age was not conclusively established. It is not beyond the realm of possibility, for example, that certain inferences could be drawn, by someone knowledgeable about horses, as to whether the reported purchase price of the horse was reasonable for a yearling, and whether the sale price was reasonable, for a horse of seven years of age, or fourteen years of age. The collateral evidence from “Gordon Walker” and Susan Meitner and her husband is all hearsay, although some of it was generated by the appraiser’s attempt to ascertain the facts.

[24] The fact that there may be a relaxed standard of admissibility of evidence in proceedings of this kind does not imply that it must all be accepted and is not subject to assessment as to weight. It was possible to stitch together a purchase and sale based on a series of unauthenticated documents and hearsay, but it was open to the Assessor and subsequently to the Board to consider whether it was satisfied with the cogency of the evidence taken as a whole.

[25] What the Appellant urges is that much of the confusion arises in connection with information that is not relevant to the establishment of “gross” farm receipts. The Appellant submits that this renders questions about when the horse was purchased and for how much, or how old it was, irrelevant. She says that there is firm evidence of a sale for $4,000 from the property she wishes to have reclassified as a farm, which is all that is required, and speculates that the evidence as to purchase and age considered by the Assessor shows that the Assessor was conflating the requirements applicable to livestock raised for food production, where unrealized value accrues in the animal as it grows, as a result of its presence on a particular farm over time. The Appellant submits that the confusion surrounding the sale of “Misty” arises out of questions which are meaningless relative to the sale of a horse, which is only worth the price it attracts when it is sold.

[26] The Regulation includes “horse rearing” under “primary agricultural production”, and “rearing” means “the breeding or raising of animals for sale”. Section 4 of the Regulation provides that the Assessor “must” classify as farm land used for ...

> (c) the training and boarding of horses in conjunction with horse rearing.

[27] Section 5(1) provides:

> 5(1) Despite section 4, the classification of land as a farm requires the production of primary agricultural products on the farm by the owner or lessee in either the 12 month period ending October 31, or in the preceding 12 month period, having a gross annual value at farm gate prices of at least
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> > (a) $2,500 if the area of land is between 8,000 m^2 and 4 ha, ...

[28] The substantive quarrel the Appellant has with the Assessor’s finding is that the Assessor appears to have taken account of the short period of time that “Rusty” was on the McBride property. The Assessor observed, at para. 9, of her submission, that:

> Appellant responded to January 25th email on January 27, 2008 with a stock list of 5 Westfalian mares that were bred and raised on the Appellants previous property. Horses consist of a 20 year old, a 16 year old, a y (sic) year old, a 6 year old and a 2 year old. (Appendix D: 12) She mentioned that all of her stock including her breeding stock was up for sale and that they had not yet decided which of the mares may possibly be bred in the future. She mentioned that she had potential buyers for her two youngest mares. Also mentioned was that she sold a grade 2001 Arab-quarter horse cross that was purchased in 2002 as a yearling for $75.00 plus delivery of $25.00 and was sold in October 2007 for $4,000 plus GST. She stated that she did not have a receipt for her purchase from Gord Walker of

> Keremeos. BC. This horse was bred, raised or trained on the McBride property. As per Section 5(4) of BC Reg. 411/95 (Schedule B), no value from the McBride property can be attributed to the horse reported to be sold as it was only boarded on the property for a few months before its sale and therefore cannot be considered as primary agricultural production attributed to the land under application.
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> [emphasis added]

[29] The Appellant correctly submits that there is no requirement in the legislation for the horse to be on the farm for any length of time, and thus no guidance for the Assessor in determining the meaning of "production of primary agricultural products ... on the farm." It seems obvious that a horse kept for sale does not accrue value by grazing on a particular acreage as animals kept for slaughter might. In that sense grazing such a horse is a necessary cost of doing business to preserve the carried over value from its maintenance elsewhere. As such, its maintenance, even briefly on a new farm would seem to militate in favour of its price being attributable to production on the farm, rather than lost, for the purpose of tax assessment, to either property (ie: it was not available to support farm classification on the previously owned property because it was not sold; when it was sold it was on the "new" property).

[30] I review these submissions to demonstrate that I have considered them. I think the Appellant raises issues it might be interesting to address on a proper evidentiary foundation. At the bottom of the analysis, however, is an evidentiary call by the tribunal that it was entitled to make. Inasmuch as none of the evidence respecting the sale would be likely to be accepted by the standards applied in Court proceedings, it cannot be suggested that the tribunal are overly strict or technical. Rather, it considered the document evidencing the sale inadequate, and in making further enquiries may have followed lines of enquiry that give rise to issues as to whether the correct concepts were being applied. That was all additional information, however, and it is not within the scope of an appeal like this for the court to parse out what was irrelevant and to judge the adequacy of what was left, where what was left *might* have satisfied the Appeal Board - in the sense that it was within its jurisdiction to decide whether it was evidence it could accept - but would not, in any event meet the evidentiary requirements of a Court. The Board's ruling on the adequacy of such evidence was not a "question of law" within any of the criteria set out in the *Cal Investments* case (see para. 23 above).

[31] The second question was whether in coming to the conclusion it did, the Board disregarded or failed to appreciate relevant material evidence of the sale of eight horses for $16,000 by the previous owner of the McBride farm from that property. There are certain requirements respecting leased lands set out in the *Regulation.* These are found in s. 7:

> 7(1) In the case of leased land, a copy of the lease document must be submitted to the assessor on or before October 31, in order for the land to be classified as a farm.
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> (2) The lease document must contain the names and signatures of the lessee and lessor, the legal or other well defined description of the land being leased, the commencement date, the signing date, the duration of the lease, the lease area, the intended use of the leased land and the consideration for the lease.
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> (3) To be classed as a farm the leased land must
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> (a) make a reasonable contribution to the farm operation, and
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> (b) be 8 000 m^2 or greater except if
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> (i) the land is in an agricultural land reserve, and
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> (ii) despite section 4(3), the land is used for primary agricultural production.

(4) Despite section 5 and section 7(10), in the case of leases of Crown land issued after October 31, the assessor must classify all or part of the land as a farm if

(a) the application form referred to in section 3 is delivered to the assessor on or before December 31, and

(b) the assessor is satisfied that the farm meets the other requirements of this regulation.
[am B.C. Regs. 561/2004, s. 5; 275/2009, Sch. s. 4.]

[32] There was no "lease" document filed by October 31. The document that was ultimately provided is dated March 13, 2008, and was apparently authorized by the vendor, a Mr. Cowburn. It reads:

To Whom it May Concern.

I sold my farm at 1080 Shover Road, McBride, B.C. Tax Roll Number 757-26809.000 for a possession date of the new owner on February 15, 2007.

I leased the farm back for 6 months under the following conditions

1. I could retain use of the pastures, barn and arena (about 24 acres) for my horses

2. The lease I paid consisted of my paying the electric for the barn and arena and paying the salary of the barn manager for the care of the new owners' horses as well as my own

3. I sold some of my horses in August 2007 for a "farm gate" price of about $16,000

[33] This was not part of the initial application for farm classification. The Appellant's position that the sale of "Misty" met the requirements for farm classification purposes suggests that she has control over the use of the lands in question, and that they had not been alienated to the extent of a lease to another person. The portion of the land leased is not formally described.

[34] The Appeal Board alluded only to the question of whether income from a lease back of the property could be included in the assessment of "farm gate price" but concluded that it could not, at paragraph 17 of the Decision:

[17] The definition in the *Standards for Classification of Land as a Farm Regulation* of "farm gate price" does not include income from lease back of the property to the vendor (see Appendix A). The definition of "rearing" means the breeding or raising of animals for sale.

[35] The question of whether the previous owner's sales were relevant would depend on a finding that he was a lessee. Section 5(1) addresses primary agricultural production by the "owner" or "lessee". It does not appear to contemplate a joint submission combining both roles as to the same property, or the assertion of an alternative basis for assessment on the part of either or both of a lessor or lessee.

[36] The application was brought by the owner. If she had alienated the property to the previous owner to the extent that it would have been possible to describe him as the lessee, it appears that he should have made the application. The question was not placed before the Assessor or the Appeal Board on that basis. It is not surprising, then, that the concept of Mr. Cowburn being the "lessee" was not specifically addressed in the circumstances, because the lessee was not applying.

[37] Therefore, on the two questions posed:

1. In concluding that there was insufficient evidence of gross annual value of primary agricultural production on the Appellant's Property, did the Board disregard or fail to appreciate relevant material evidence of the sale of the Appellant's horse "Misty" during the assessment period?

2. In concluding that there was insufficient evidence of gross annual value of primary agricultural production on the Appellant's Property, did the Board disregard or fail to appreciate relevant material evidence of eight horses raised and sold on the Property by the previous owner, Dr. Geoffrey Cowburn, during the assessment period?

The answer in each case is in the negative and the appeal is dismissed.

The Honourable Mr. Justice McEwan