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ASSESSMENT COMMISSSIONER

v.

WILLIAM GORE and JUNE GORE

Supreme Court of British Columbia (81/1884) Victoria Registry

Before: MR. JUSTICE H.C. McKAY

Victoria, November 18, 1981

J. Greenwood for the appellant
P. Harrison for the Respondents

Reasons for Judgment November 19, 1981

This is an appeal by way of Stated Case. on a point of law from a decision of the Assessment Appeal Board dated September 9, 1981.

The facts as set out in the case stated are as follows:

1. The subject property was operated by the respondents during 1980 primarily for the boarding of horses, which was carried out for some seven months of the year by pasturing the horses, and by indoor boarding for the winter months.

2. Agricultural produce grown on the property included grass suitable for hay, and some apples and garden vegetables.

3. The grass grown on the property was not cut for hay during 1980, but was used for pasturing the horses.

4. Some evidence was placed before the Board that the respondents sold some of their apples and garden vegetables during 1980, but the receipts from such sales were not quantified, and were small. No hay was sold from the property in 1980.

5. The primary income generated from the property in 1980 was $2,700.00 in fees for the boarding and feeding of horses. The horses were not fed with cut hay from the subject property, although they did pasture on the property.

6. The Board concluded that the growing of grass for the pasturing of horses constituted the raising of a crop, namely; hay, as defined in the Farm Classification Regulations. B.C. Reg. 288/79 and 364/80.

7. The Board further concluded that the evidence as to fees received for boarding and feeding of horses was evidence of the gross value of production of primary agricultural production as those words are used in the same Farm Classification Regulations.

8. The Board therefore found that the property met the standard required by Paragraph 2 of the said Regulations, and should be accorded Farm Classification for 1981.

The questions propounded for consideration by this Court are as follows:

1. Did the Board err in its interpretation of the Farm Classification Regulations?

2. Did the Board err in giving Farm Classification to the subject property on the above facts?

Standards are prescribed for the classification of land as a farm by regulations passed pursuant to the *Assessment Act*. It is conceded by counsel for the respondents that in order to be classified as a farm he must bring his clients' operation within the description "primary agricultural production". The definition, insofar as it may be applicable, reads:

> Primary agricultural production means stock raising, poultry raising, egg production, dairying, horticulture, beekeeping, aquiculture, fur farming and the growing or raising of a crop referred to in Schedule A . . .

It is the position of counsel for the respondents that his clients are engaged in the growing or raising of a crop referred to in Schedule A - specifically, hay.

The next pertinent portion of the regulation reads:

In order to classify land as a farm, the primary agricultural production on the land by the owner or lessee and sold in either the 12-month period ending November 30 of the year in which the assessment roll was prepared or in the preceding 12-month period must have a gross value of production at farm gate prices of

> (a) at least $1,600 on the first 4 ha, . . .

"Farm gate price" is defined in the regulations as follows:

> "Farm gate price" means the price actually received by the producer from the sales of primary agricultural production.

It is not in dispute, and the regulation clearly states, that there must be a sale of the produce and the price received must be at least $1,600.00. If any authority is needed for that proposition, I refer to two decisions of Ruttan, J., namely, *Assessment Commissioner* v. *Hill*, Case No. 143 of B.C. Stated Cases, and *Gerzymisch* v. *Assessor of Area 21-Nelson*, Case No. 153 of B.C. Stated Cases.

Was there a sale of hay as contemplated by the regulations? The first question is whether uncut grass, of a type suitable for hay, can be considered as hay under the regulations. The Shorter Oxford Dictionary does give some slight support to the respondents' position. Hay is there defined as:

> Grass cut or mown, and dried for use as fodder; Occas. including grass fit for mowing.

It appears to me, however, that in the context of the regulations the primary meaning of hay is the only one that makes sense, i.e. "grass cut or mown, and dried for use as fodder". Assuming, however, for the purpose of this case, that the secondary meaning is also applicable, then the question is-was there a sale of that hay? In my view, there was not. Counsel for the respondents used such analogies as a person picking fruit at a U-Pick Farm or of a person loading his plate at a smorgasbord restaurant. He says that a sale is completed when the picker plucks the fruit or the diner loads his plate-in each case, the person has appropriated the goods to his own use. I do

not find the analogies to be apt ones. In each case there is an ascertained product that is subsequently paid for - clearly a sale. Here the Gores provide a service-the boarding of horses. The only sale involved is the selling of that service. Part of the service offered is that the horses are permitted to crop the grass during a period of the year. It cannot even be said, on the evidence, what portion of the $2,700.00 received as boarding fees relates to the seven months of pasturing, and what portion relates to the various other aspects of the service being sold. Counsel tell me that during the period when the horses are under shelter the owners of the horses provide all of the feed, and so rather obviously, a goodly portion of the service fee relates to other than the grazing of the horses.

There was no sale of hay as contemplated by the regulations, and so both questions must be answered in the affirmative.