

The following version is for informational purposes only

LEADER POTATO ASSOCIATION LTD.

v.

ASSESSOR OF AREA 17 - PENTICTON

B.C. Court of Appeal (CA 004069) Vancouver Registry

Before: MR. JUSTICE A.B.B. CARROTHERS
MR. JUSTICE H.E. HUTCHEON
MR. JUSTICE R.F. CHEFFINS (in Chambers)

Vancouver August 15, 1986

R.S. Gill for the Respondent
J.R. Lakes for the Appellant

Reasons for Judgment of Mr. Justice Carrothers

August 15, 1986

This appeal has its genesis in an application pursuant to s. 28 of the *Assessment Act*, R.S.B.C. 1979, c. 21 (the "*Act*") by Leader Potato Association Ltd. ("Leader"), a potato farmers' co-operative operating through shareholdings in a limited company, to have the land ("subject Land"), upon which Leader has a potato sorting, grading, packaging and storage facility, classified as "farm" and consequently valued for assessment purposes at its actual value as a farm without regard to its value for other purposes (s. 28 (3) of the *Act*).

The four shareholders of Leader happen to be potato farmers on individually owned farmlands nearby the Leader facility and these farmers use the common Leader facility, rather than individual facilities on their own farms, for sorting, grading, packaging and storing their potato crops preliminary to marketing them. This common facility, while used primarily by the four Leader shareholder farmers, is also available at cost to other potato farmers in the neighbourhood. Leader is not itself a potato farmer, in the limited sense that it does not actually grow potatoes.

The Assessor of Area #17 - Penticton appealed against the 1984 Court of Revision assessment of the subject land as "farm" and the Assessment Appeal Board found that the sorting, grading, packaging and storage of potato crops is part of "primary agricultural production" when performed by and under the control of the grower as an integral part of the potato farming process.

The Assessment Appeal Board consequently classified the subject land as "farm" pursuant to s. 7 of B.C. Regulation 288/79, as consolidated. In classifying this subject land as "farm", the Assessment Appeal Board held that ". . . ownership of such a facility is ostensibly the same regardless of form, i.e., personal ownership v. a coop ownership as a limited company. The business reasons for such a legal entity do not, in this Board's opinion alter the primary purpose for this facility."

At the request of the Assessor of Area #17 - Penticton, a Supreme Court opinion was sought in respect of the following questions:

1. Did the Assessment Appeal Board err in law when it held that the provision of storage facilities for potatoes was "primary agricultural production" within the meaning of the Regulations passed pursuant to section 28 of the *Assessment Act*?

2. Did the Assessment Appeal Board err in law when it held that the ownership of the appealed property held by the shareholder/farmers in the form of an incorporated company does not preclude classification of the property as "farm" pursuant to section 28 of the *Assessment Act* and B.C. Regulation 288/79, 364/80 and 413/82 as consolidated?

Southin, J. answered both questions in the affirmative and Leader appeals.

The key to the correct resolution of these questions is the standard for classification of land as a farm as set forth in Regulation 7, B.C. Regulation 288/79 as amended by B.C. Regulations 364/80 and 413/82, which regulation reads as follows:

7. Land may be classified as a farm where it consists of all or part of any parcel or group of parcels of land, contiguous or not, making up a tract of land owned or held under a written lease by a person singly or jointly with any other person or persons and operated as an integrated farm operation for primary agricultural production. (my emphasis)

In my opinion, the dividing line between "an integrated farm operation for primary agricultural production", which qualifies the land for farm classification, and the marketing of the crop, which does not, is what might be described as the "farm gate". Usual and customary farming activities within the farm gate qualify the land for farm classification. Usual and customary farming activities within the farm gate obviously include the "growing and raising of a crop" within the meaning of "primary agricultural production" (Regulation 1 (1)), but "production" does not end with the "growing and raising" only to let the crop rot in the ground or on the trees and must include the usual and customary activities of harvesting. I have no doubt that this wording when applied within the farm gate includes harvesting and preparation for market, but clearly short of any marketing activity. I also have no doubt that harvesting and preparation to market includes, in the case of a potato crop, the sorting, grading, packaging and holding for shipment to market, particularly when carried out as part of "an integrated farm operation".

I observe that Regulation 7 contemplates parcels of farmland which are not contiguous and also farmland which is owned or leased by more than one person (which includes a corporation).

It is common knowledge and I would take judicial notice of the usual and customary farming practice of farmers in Canada of pooling resources to acquire costly harvesting machinery beyond the individual farmers' economic reach and cooperatively using such machinery in sequence on the participating farms. This is analogous to the common harvesting facility operated by Leader, which by virtue of its characteristics must be stationary. If it were on one of the participating farms, there would be no question that it is part of the crop harvesting activity within the farm gate.

I consider it error to refer to the Leader facility and activity as part of the marketing process, which is done through the Interior Co-operative Marketing Agency clearly beyond the farm gate. I would hold that the Leader facility and activity is within the farm gate and within the meaning of the words "an integrated farm operation for primary agricultural production" within the meaning of Regulation 7. I agree with the approach and interpretation of the Assessment Appeal Board that the use of a corporate entity by the farmer shareholders as a mechanism to own and operate the Leader facility is not a bar to the application of Regulation 7 to this case.

I would answer both questions in the negative. I would allow the appeal.

Reasons for Judgment of Mr. Justice Hutcheon

The appellant, Leader Potato Association Ltd., owns 6.56 acres of land in Grand Forks on which it has constructed a 40,000 sq. ft. building. In that building, potatoes grown by its four individual shareholders on nearby lands are graded, sorted, stored and packed. The Assessor of Area #17 -

Penticton classified the land for property tax purposes as residential but that classification was changed to farm by the Court of Revision whose decision, was upheld by the Assessment Appeal Board.

On a stated case, Madam Justice Southin held that the Board had erred in these two questions submitted for opinion:

1. Did the Assessment Appeal Board err in law when it held that the provision of storage facilities for potatoes was 'primary agricultural production' within the meaning of the Regulations based pursuant to section 28 of the *Assessment Act*?
2. Did the Assessment Appeal Board err in law when it held that the ownership of the appealed property held by the shareholder/farmers in the form of an incorporated company does not preclude classification of the property as 'farm' pursuant to section 28 of the *Assessment Act* and B.C. Regulation 288/79, 364/80 and 413/82 as consolidated?

Pursuant to s. 28 (1) of the *Assessment Act* an owner may apply to have his land classified as a farm and it is left to the commissioner to prescribe standards for classification of land as a farm (subsection 2). With the approval of the Lieutenant Governor in Council, the commission has provided standards and so far as material they are

1. (1) In these Standards,
"farm gate price" means the price actually received by the producer from the sales of primary agricultural production ...

"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 but does not include those manufactured derivatives produced from agricultural raw materials.
2. 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. and in addition
 - (b) an amount equal to 5 per cent of the actual value of the land for farm purposes that exceeds 4 ha.
5. In determining the gross value of the annual production under section 2, the Assessor shall include any unrealized value of primary agricultural production on the land.
6. Land of less than 8,000 m² shall not be classified as farm unless the Assessment Commissioner is satisfied that the owner earns his livelihood from the primary agricultural products on the land.
7. Land may be classified as a farm where it consists of all or part of any parcel or group of parcels of land, contiguous or not, making up a tract of land owned or held under a written lease by a person singly or jointly with any other person or persons and operated as an integrated farm operation for primary agricultural production.

Schedule 'A' includes potatoes as a crop.

The findings of the Assessment Appeal Board are set out in these five paragraphs:

2. The facility is used primarily by the four shareholders of the company who themselves are the farmers who produce potatoes, although other potato farmers than the four shareholder/farmers have access at cost to use this facility.

3. The four shareholder/farmers grow potatoes on other lands in the immediate vicinity, however, there are no potatoes grown on the subject land nor does Leader Potato Association Ltd. grow potatoes on any other lands.

4. The Board found that the grading, sorting, storage and packaging of potatoes which occurs on the subject land is an integral part of the growing and farming process.

5. The Board having found the growing, sorting, storage and packaging of potatoes is an integral part of the growing and farming process, the Board classified the subject land as 'farm' pursuant to B.C. Regulation 288/79, as consolidated, section 7 thereof.

6. In classifying the subject land as 'farm', the Board held that ". . . ownership of such a facility is ostensibly the same regardless of form, i.e., personal ownership v. a coop ownership as a limited company. The business reasons for such a legal entity do not, in this Board's opinion, alter the primary purpose for this facility."

In paragraph 5, the word "growing" is probably used by mistake for the word "grading".

One difficulty I have with this appeal is that, contrary to what appears in Question 1, I do not think the Assessment Appeal Board found that the provision of storage facilities for potatoes was 'primary agricultural production'. In the written decision and in the stated case, the Board found that grading, sorting, storage and packaging were an integral part of the growing and farming process. On that finding the Board classified the land as farm under Section 7 of the Regulations.

The wording of '5' makes this quite clear:

5. The Board having found the [grading], sorting, storage and packaging of potatoes is an integral part of the growing and farming process, the Board classified the subject land as 'farm' pursuant to B.C. Regulation 288/79, as consolidated, section 7 thereof.

I agree with Madam Justice Southin that the provision of storage facilities alone is not within the definition 'primary agricultural production'. However, as I read the decision of the Board and the stated case, the land was classified as farm because it was part of an integrated farm operation for primary agricultural production.

The real dispute in this case is not whether Lot A, on which storage facilities are located, may be classified as farm if the potatoes are grown on Lot B. As to that question, Mr. Gill, counsel for the Assessor, stated the answer in his factum:

Section 7 of the standards recognizes that many farms will have facilities which are not immediately involved in primary agricultural production. These may include storage facilities, and the preparation of products required for primary agricultural production as in *Fraser Valley Mushroom Growers Cooperative Association v. Assessor of Area #14*. Such facilities, when owned and operated by the farmer, are extended the benefit of farm classification under Section 7.

The dispute is about the separate ownership of Lot A and Lot B. The Assessor says that because the storage facilities are owned by Leader Potato Association and not by the potato farmers Section 7 does not apply. Question 2 is relevant to that dispute.

For convenience, I repeat the language of Section 7:

7. Land may be classified as a farm where it consists of all or part of any parcel or group of parcels of land, contiguous or not, making up a tract of land owned or held under a written lease by a person singly or jointly with any other person or persons and operated as an integrated farm operation for primary agricultural production.

The judge had this to say:

The taxpayer must, therefore, fail back on regulation 7 which relates to 'integrated farming operations'. I have no doubt that that phrase does cover the storing, grading and packing of the crop for the purpose of its being marketed.

The issue then becomes whether the owner of this land is in other respects within section 7. The crucial words are 'owned . . . by a person . . . and operated as an integrated farming operation for primary agricultural production'.

In the case at bar, the "owner" is Leader Potato Association Ltd. Leader does not operate this land as an integrated farming operation for primary agricultural production. It operates the land for the marketing of a crop raised by others.

With respect, I do not think that Section 7 requires that Leader Potato Association operate 'this land as an integrated farm operation'. The section contemplates, among other things, a tract of land operated as an integrated farm operation and several owners of that tract of land made up of parcels of land held by them singly or jointly.

Once the Board found as a fact that the work on this land was an integral part of this particular growing and farming process, the requirements of Section 7 were met. That was a finding of fact that this land was part of an integrated farm operation for primary agricultural production.

I agree with the conclusion of the Board that the ownership of the property by a limited company does not alter the primary purpose of the facility.

Accordingly, I would answer in this way:

Question 1: Did the Assessment Appeal Board err in law when it held that the provision of storage facilities for potatoes was "primary agricultural production" within the meaning of the Regulations based pursuant to section 28 of the *Assessment Act*?

Answer: In my view, this question does not follow from the findings and need not be considered.

Question 2: Did the Assessment Appeal Board err in law when it held that the ownership of the appealed property held by the shareholder/farmers in the form of an incorporated company does not preclude classification of the property as "farm" pursuant to section 28 of the *Assessment Act* and B.C. Regulation 288/79, 364/80 and 413/82 as consolidated?

Answer: No.

For these reasons, I would allow the appeal.

I AGREE. The Honourable Mr. Justice Cheffins.