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## ASSESSMENT COMMISSIONER OF BRITISH COLUMBIA

v.

## PROGRESSIVE CONSTRUCTION LTD.

British Columbia Court of Appeal (CA011580) Vancouver Registry

Before the HONOURABLE MR. JUSTICE LAMBERT,  
the HONOURABLE MR. JUSTICE HUTCHEON,  
the HONOURABLE MR. JUSTICE CUMMING

Vancouver, January 18, 1991

Peter G. Voith for Progressive Construction Ltd.  
J. E. D. Savage for The Assessment Commissioner of British Columbia

### Reasons for Judgment (Oral)

February 8, 1991

This is an appeal from a decision of Mr. Justice Meredith on a Stated Case under the *Assessment Act*, R.S.B.C. 1979, c. 21.

The issue relates to whether the land should be assessed for the 1987 assessment year under the farm classification as farm land.

The parcel of land being assessed is 12 acres in size. It is part of the old Lansdowne Race Track in Richmond and is located next to the Lansdowne Shopping Centre. It is being held by Progressive Construction Ltd. for development. Progressive Construction Ltd. paid \$9,000,000 for the land in 1985 or thereabouts.

After receiving advice about the applicability of the Real Property Taxation Legislation to the land, Progressive Construction leased the land to Christmas Farms, a company engaged in the production of Christmas trees, for a nominal rent and on terms that the lease could be cancelled on 60 days notice. Christmas Farms began growing Christmas trees on a part of the land. That part is 1.67 acres in area. So it comprises about 15 percent of the total parcel. The remainder of the land remained vacant. There were some construction materials stored on the land.

The Assessor assessed part of the 12 acres as "residential" and another part as "Business/Other". The assessed value on that basis was \$7,377,800. Progressive Construction applied to the Court of Revision. The Court of Revision decided that the 12 acres should have been assessed as "farm" and changed the assessed value to \$7,694. The Assessment Appeal Board affirmed the decision of the Court of Revision.

On an appeal to the Supreme Court by way of Stated Case, Mr. Justice Meredith allowed the appeal and decided that the 12 acre parcel should not have been assessed under the "farm" classification. Leave was granted by a judge of this Court to Progressive Construction Ltd. to appeal from Mr. Justice Meredith's decision on a question of law.

I propose now to set out the most directly relevant statutory provisions. The first is s. 26 (8) of the *Assessment Act*.

(8) The Lieutenant Governor in Council shall prescribe classes of property for the purpose of administering property taxes and shall define the types or uses of land or improvements, or both, to be included in each class.

The second relevant provision is s. 28 of the *Assessment Act* and in particular subsections (1), (2), and (3):

Classification of land as a farm 28.

(1) An owner of land may apply to the commissioner to have all or part of his land classified as a farm and the application shall be made in the form and manner the commissioner prescribes and the commissioner may, subject to this Act, approve the classification of the land as a farm.

(2) The commissioner shall, subject to the approval of the Lieutenant Governor in Council, prescribe standards for classification of land as a farm and the assessor shall classify as a farm land that is in accordance with the standards.

(3) Land classified by the assessor as a farm shall, while so classified, be valued at its actual value as a farm, without regard to its value for other purposes.

Under the powers of s. 28 (2) of the *Assessment Act* regulations were made by the Commissioner, with the approval of the Lieutenant Governor, headed "Standards for the Classification of Land as a Farm". All of those regulations have some significance in relation to this appeal but I propose only to set out subsections 3 (1) and 3 (2) (a), and s. 8:

Classification of land as a farm

3. (1) In order for land to be classified as a farm, the application made under section 28 (1) of the *Assessment Act* must be submitted prior to July 1 and must show that the primary agricultural production on the land by the owner or lessee has been produced and sold in either the 12 month period ending July 1, or in the preceding 12 month period, and had a gross value of production at farm gate prices of at least

(a) where the area of land is 4 ha or less, \$1,600, but, where land is less than 8000 m<sup>2</sup>, the assessor must be satisfied the owner earns the greater part of his livelihood from the primary agricultural products produced on the land, or

(b) where the area of land is more than 4 ha. \$1,600 plus 5% of the actual value of the land for farm purposes in excess of 4 ha.

(2) (a) Notwithstanding subsection (1) (a) and (b), the assessor shall classify land as a farm provided the application form referred to in subsection (1) shows that

(a) in the case of crops that require years to establish before production can occur, there is a sufficient area prepared and planted to meet the requirements of subsection (1) (a) or (b) when production occurs.

\* \* \*

De-classification where land not in production

8. Notwithstanding anything contained in this regulation, land that ceases to be used for primary agriculture production shall not be classified as a farm.

Under the powers contained in section 26 (8) of the *Assessment Act* regulations were made setting out "Prescribed Classes of Property" under the *Assessment Act*.

The first class in its relevant provisions reads in this way:

**Class 1 -- residential**

1. Class 1 property shall include only:

(c) land having no present use and which is neither specifically zoned nor held for business, commercial, forestry or industrial purposes.

Class 6 is described in this way:

**Class 6 -- business and other**

6. Class 6 property shall include all land and improvements not included in Classes 1 to 5 and 7 to 9.

Class 9 is described in this way:

**Class 9 -- farm**

9. Class 9 property shall include only land classified as farm land.

The submission of counsel for the taxpayer is that the question of whether a parcel of land is a farm is to be tested by the statutory provisions which have been made to govern this question and not by other tests. He says that the 12 acre parcel in total, of which 1.67 acres is in Christmas tree production, is in total to be assessed as a farm because that parcel meets all of the requirements of paragraph 3 (1) (b) of the "Standards for Classification of Land as Farm".

Counsel for the taxpayer also pointed out that "Class 9 -- farm" is not defined on the basis of "use", as some of the other classes are defined, but, rather, is defined on the basis of "classification" as farm land.

We were referred to a number of provisions in the Act and in the subordinate legislation which were said to support Progressive Construction's argument.

Counsel for the Assessment Commissioner, on the other hand, referred to other provisions which tended to support the Commissioner's position. He placed particular emphasis on s. 8 of the "Standards for Classification of Land as a Farm" which provides that land that ceases to be used for primary agricultural production shall not be classified as a farm. He submits that s. 8 would make no sense if land that is not used for primary agricultural production could be granted an initial farm classification at the outset.

In the end I do not think that it is necessary to examine all of the statutory provisions to which we were referred. They all contained some element of potential ambiguity depending on what is to be regarded as "the land" in the first place. Is "the land" the part of the owner's parcel that is in actual

use as a farm, or, is it the whole parcel, a part of which is used for a farm. So reference to those provisions which embody the term "land" tend to beg the question that we are asked to resolve in this case.

In my opinion the most telling argument is that there is nothing in the "Prescribed Classes of Property Regulation" or in the Act which deals with the issue of what is to happen if a parcel of land comes within two or more of the prescribed classes of property. The implication from the fact that there is no answer to that question in the legislation is that the legislative scheme is intended to operate on the basis that every piece of land being considered can fit only within one class. If that is the basis of the scheme, as I think it is, then a single parcel may have to be divided into two or more pieces in order to fit each of those pieces into the proper classification for assessment purposes.

The result in this case of the approach suggested by counsel for the taxpayer can be graphically illustrated. Suppose that an office tower were to be constructed on the 85 percent of the 12 acres that is vacant land. The construction of such a building would make no difference to the application of the standards for classification of the 12 acre parcel as being entirely farm land, if the taxpayer's submission were correct. Of course counsel for the taxpayer did not insist that that would be so but he could point to no provision which would prevent it from being so.

There is no statutory provision which says that land must be divided into pieces so that each piece may be put in its appropriate classification. But that must be done if the absurdity that I have suggested of having a large office tower on the otherwise vacant land treated as if it were part of the farm or at least treated as presenting an irreconcilable problem of interpretation as to whether it was to be treated as part of the farm.

For those reasons it is my opinion that the 12 acre parcel should not have been treated for assessment purposes as farm land under the farm land classification.

No separate application has ever been made to have farm classification granted to the 1.67 acre part which is actually used for primary agricultural production. No request was made to us in this appeal or, as I understand it, in the questions in the Stated Case, with respect to separate treatment for that part of the whole 12 acre parcel. We have not been asked to deal with any question about proper classification of the land in any other way or with any other question arising in relation to the assessment.

I would dismiss the appeal.

MACDONALD, J. A.: I agree.

CUMMING, J. A.: I agree.

LAMBERT, J. A.: The appeal is dismissed.