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ASSESSMENT COMMISSIONER OF BRITISH COLUMBIA

v.

PROGRESSIVE CONSTRUCTION LTD.

Supreme Court of British Columbia (A883402) Vancouver Registry

Before MR. JUSTICE MEREDITH

Vancouver, October 3, 1989

John E. D. Savage for the appellant
W. Ross Ellison for the respondent

Reasons for Judgment October 12, 1989

Progressive Construction Ltd. owns a parcel of land in Richmond comprising a little over 4.83 hectares or about 11.94 acres. The assessor, assessing part of the land for residential purposes and another part for "business/other", assessed the actual value at $7,377,800. The Court of Revision on appeal by the owner held the land to be "farm". The value was reduced to $7,694. The reduction obviously operates to drastically reduce the taxes payable to the municipality. An appeal from the decision of the Court of Revision to the Assessment Appeal Board by the appellant was unsuccessful. He appeals by way of stated case under the provisions of the *Assessment Act*.

The question is whether the parcel qualifies as a "farm" under the Regulation 298/85 made pursuant to the *Assessment Act* and titled "Standards for the Classification of Land as Farm". If so, the assessor must designate the parcel "farm".

The parcel as a whole could scarcely be considered a farm. Only .67 hectares, situated in one corner of the property, are under cultivation. About 2000 fir saplings have been planted there by a lessee. The lessee pays $1 per year for the privilege under a 10-year lease. The lease is determinable by Progressive upon payment to the lessee of relatively modest amounts. The remainder of the land is debilitated and quite unsuitable for cultivation. Nevertheless, Progressive leased the whole of the 4.83 hectares to permit the lessee to raise Christmas trees on the very small plot.

The main object of Progressive in entering into the lease was to attempt to qualify the whole of the parcel as a farm within the letter of the regulation.

Apparently the Court of Revision and the Appeal Board considered that if a parcel of land produces certain minimum crops in relation to size as stipulated in the regulation, the whole of the parcel must be zoned farm whether the whole of the land comprising the parcel is farmland or not. I disagree. I consider the land does not qualify as farm because, other than the small corner set aside for Christmas trees, the land is not used for "primary agricultural production" within the meaning of the regulation.

I say in all good sense if land is to be classified as a farm it must be used as a farm. That is to say that the land must be used for primary agricultural production as defined by the regulation. There

is no primary or any agricultural production on most of the subject land. And I conclude that neither the *Assessment Act* nor the regulation make available to the respondent a "loophole" by which its taxes may be reduced. In my view the Act and regulation contemplate that if land is to be classified as "farm" it must be used actually or prospectively as a farm as defined.

In the first place, section 28 (1) of the Act is consonant with this conclusion. It reads:

"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."

Thus, though an owner owns land a part of which may not qualify as a farm, he may apply for farm classification in respect of another part. This provision suggests to me that only land which is used as a farm may be classified as such. The owner may own land in the same parcel which does not qualify. The farmland may however, qualify for farm classification.

Then section 3 (1) of Regulation 298/85 suggests that if land is to be classified as farm there must be agricultural production on the land so classified. Land would not include land not given over to agricultural production. The subsection reads in part as follows:

"3. (1) In order for land to be classified as a farm, the application . . . must show that the primary agricultural production on the land by the owner or lessee has been produced and sold . . ."

I note parenthetically that "primary agricultural production" is defined to include "plantation culture of Christmas Trees".

My conclusion is further supported by the provisions of section 7 of the regulation. That section permits classification of land as a farm even though the land is not yet used as a farm but the owner has a plan to develop a farm. One of the conditions for a farm classification is that "the commissioner is satisfied that the land is being developed as a farm unit". (Section 7 (2) (c))

The fact that all of the land to be designated farm must be developed as a "farm unit" suggests to me that the land not to be so developed cannot be included in the classification.

Finally, section 8 of the regulation also supports my conclusion:

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

In this case the bulk of the land in question did not start to be used for agricultural production far less ceased to be so used. But if the bulk of the land had been used for agricultural production so as to qualify as a farm, when the production ceased so would the farm designation.

I take my conclusion to be what is meant by counsel for the appellant in his argument under the heading "Legislation contemplates farms on part of a parcel".

And I believe the appraiser came to the same conclusion although possibly he though the application was made under section 7 of the regulation, not section 3. In the field inspection report made by the appraiser in response to the application that the whole parcel be classified as farm the appraiser made these comments:

"1. Historical background: Remaining portion of Lansdowne Race Track property after shopping centre development on western part.

"2. Existing conditions: (date of inspection, type of farming, crop specification, etc.): 21/10/86. 2.222 ac of N/E corner has been fenced. 1.65 ac has now been cultivated and planted in young evergreens theoretically for development of an Xmas Tree operation. (2000 trees according to app. form) [For the word "theoretically" I think the appraiser probably meant "ostensibly."]

"3. Area of Concern: There appears to be insufficient area devoted to any actual attempt to farm to justify farm class. This property has been recently subdivided and the owners hope to have it developed as commercial & multi- family in the near future.

"4. Recommendation and : Farm class should be refused.

Issues: 1. Farm area too small.

2. Time frame for production exceeds 5 years.

3. E & D forms require the commissioner to be satisfied the land is being developed as a farm unit."

I believe item 3 of the above report has special significance.

The Appeal Board said:

"There is no provision to allow the assessor to reject the application in respect of one area of the land and allow it in respect of another if application has been made for the entire parcel. The owner alone has the discretion to restrict his application to part of his land."

I respectfully disagree with the board. If the owner makes application to classify an entire parcel as a farm and if, as here, most of the land is not farm, the assessor should surely simply refuse the application. That is what he did. I believe that his decision was quite correct.

In the result with reference to the questions posed I conclude that the Assessment Appeal Board did err in law in its interpretation of the regulation and in its interpretation of section 28 of the *Assessment Act*. I need not answer the third question as it is irrelevant if my interpretation is correct. With respect to questions 4 and 5 I would conclude that if application is made for classification of land not comprising farmland, then the assessor is justified in rejecting the application. It is not his function to amend the application.

There will be an order accordingly. The appellant is entitled to its costs.