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SOUND CONTRACTING LTD.

v.

ASSESSOR OF AREA 04 - NANAIMO/COWICHAN

SUPREME COURT OF BRITISH COLUMBIA (37268) Nanaimo Registry

Before the HONOURABLE MR. JUSTICE TAYLOR (in chambers)
Date and Place of Hearing: June 19, 2003, Nanaimo, BC

N. Evans for the Appellant
G. McDannold for the Respondent

Reasons for Judgment (Oral) June 19, 2003

[1] THE COURT: This is an appeal by way of a Stated Case from a decision of the Property Assessment Appeal Board which upheld the removal of two adjoining parcels of land from their former classification as farm land.

[2] The case stated by the Board contains five questions to be answered, but at the outset of this appeal counsel agreed that only two need be answered and that the answer to question number three was in essence the real issue on this appeal.

[3] The two questions thus to be answered are question one, did the Property Assessment Appeal Board exceed its jurisdiction in refusing to give documents submitted by the Appellant proper consideration; and question three, did the Property Assessment Appeal Board err in law by failing to give the applicant the benefit of B.C. Regulations 411/95, s. 6.

[4] The relevant provisions of the *Assessment Act* and the Regulations are as follows. Section 23 of the *Act* sets forth how classification of land as a farm is to be accomplished. Subsection (2) is of relevance and reads as follows:

> Subject to this Act, the assessor must classify as a farm any land, or any part of a parcel of land, that meets the standards prescribed under subsection (3).

[5] Subsection (3) simply refers to standards which are set for the basis of classification of land as a farm, and, as well, Regulation 411/95 made under the *Assessment Act* which sets forth the standards for classification of land as a farm.

[6] Section 4(1) of those Regulations provides that:

> Unless this regulation provides otherwise, the assessor must classify as farm all or any part of a parcel of land used for (a) primary agricultural production.

[7] Portions of s. 5(1) provide for the amounts and terms of value of production of primary agricultural products on the farm. Subsection (3) provides that the sale of primary agricultural products must occur during each 12-month period ending October 31st.

[8] Under the standards for classification of lands as farm under the Regulations, subsection (6) provides:

> Despite section 5, if primary agricultural production from the land is not sold but is produced in sufficient quantities to have met the gross annual value requirements if it had been offered for sale, the assessor may classify the land as a farm if the primary agricultural production is grown and harvested for processing for sale or to be used in the preparation of manufactured derivatives to be made available for sale within 12 months after October 31.

[9] Section 10 provides that the Assessor may require information from the owner or lessee, and section 11 provides for the mandatory declassification of land as a farm if:

> (a) The owner or lessee fails to submit information as required by the assessor under section 10, or
>
> As applies here:
>
> (b) (iv) The land does not meet the production and value requirements of section 5.

[10] The term "primary agricultural production" is defined in the Regulations and includes livestock raising.

[11] The approach to such appeals as this is well-summarized in *Winkler* v. *Assessor of Area 09*, Vancouver Stated Case 409. I have re-read the principles enunciated by Mr. Justice Owen-Flood and taken them into account in determining this appeal.

[12] The factual basis for the appeal is set forth in the Board's written reasons dated the 16th of December of 2002. I do not propose to review them in detail. It is sufficient for me to summarize that when requested by the Assessor to provide a statement of income under s. 10 of the Regulations, the Appellant filed such a statement on October the 19th, 2001 in which, under Products Held For Sale, he stated the estimated value of seven cows and three calves was $6,100 based on his estimate of the value of each. He then recorded, under Total Farm Income, the following: Total income from marketed production, zero; total estimated value of products held for sale, $6,100.

[13] The Assessor declassified the lands as farmlands because, as noted in a letter of December the 18th of 2001 to the Appellant:

> You have failed to have a sale of primary agricultural products during the past year.

[14] Subsequent to the Assessor's decision, the Appellant provided further information to the Board as to a modest amount of egg production.

[15] At paragraph 15 of its reasons, the Board found that as there had been no sale of primary agricultural products as recorded on the return filed by the Appellant, the Assessor was correct in declassifying the lands. It also concluded that any sale such as eggs reported after the 31st of October was simply too late to be taken into account. At paragraph 16 the Board found that the unrealized value of cattle was not a factor as there must be a sale of primary agricultural products reported. As none were, the "unrealized value" was not to be taken into account.

[16] The position of the Appellant is that s. 6 of the Regulations was wrongly interpreted by the Board in upholding the Assessor's declassification and that the value of stock and land, which was valued by the Appellant at $6,100, should be a basis for classification of the farmland.

[17] In my view, the position argued by the Appellant as to the meaning of s. 6 is untenable to the extent that the argument suggests that the Board exceeded its jurisdiction by refusing to consider documents submitted after the 31st of October.

[18] Considering what s. 6 purports to provide, I am mindful of the approach set forth to such interpretation in *Rizzo* v. *Rizzo Shoes* (1998) 1 SCR 27 at paragraph 21, where Mr. Justice Iacobucci for the court adopted the observations of the author of *Driedger on the Construction of Statutes* and quoted him at page 87 of that text as follows:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

[19] In short, the interpretation of a statute must be contextual, not founded upon a simplistic approach based only on the bare words of the legislation. The requirement that such information as requested here be filed before October 31st has a purpose given the entire chain of government functions that are set in motion after that day.

[20] As pointed out by counsel for the Board, following October the 31st the Assessor is obliged by statute to provide taxing authorities with a provisional estimate of values upon which planning may begin at the municipal taxation level and provincial taxation level in terms of determining the mill rate to be set. By December 31st the assessment roll must be completed so that taxing authorities will have now a precise figure to work with, subject to appeals and assessments which are required to be filed by January 31st.

[21] In this context, the requirement for a cut-off date is important. In my view, the Board made no errors in refusing to consider information beyond that filed in the requisite return. Because of the mandatory nature of s. 23 of the Regulations, compliance must be strict. The Board did not err in its approach to the Appellant's documents, and I would answer question one in the negative.

[22] Section 6, in my view, is, firstly, a discretionary section and is so worded to provide for those unique farming occupations where there may be primary agricultural production that are not in and of themselves sold as such but rather what is sold is derivative, as referred to in the section. It refers to "for processing for sale" or "to be used in the preparation of manufactured derivatives", both of which are to be made available for sale after October 31st.

[23] As counsel for the Board observes, this section is intended to cover such operations as vineyards that do not produce grapes necessarily for sale but rather grapes from which the juice will be prepared and eventually sold for the preparation of wine, and likewise a similar analogy to the apple orchard that produces apples for juice. It does not avail a cattle rancher whose primary agricultural production is cattle to argue that the cattle may later be used for such products as diverse as jellybeans and leather saddlebags.

[24] As I observed earlier, interpretation of such a regulation is contextual in nature and in my view the Board properly considered and concluded the meaning of s. 6 when it concluded that unrealized value of cattle was not a sale under s. 5(3) of the Regulations and thus was not a basis for farm classification under s. 6.

[25] Such primary agricultural production, as the Appellant advocated should fall under s. 6, simply has no place in a s. 6 consideration given the context of that section. Accordingly, I would answer question three in the negative.

[26] The Respondent Board is entitled to its costs. Accordingly, the appeal is dismissed with those questions so answered.