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ROBERT A. JOHNSON

v.

ASSESSOR OF AREA 19 - KELOWNA

SUPREME COURT OF BRITISH COLUMBIA (S71078) Kelowna Registry

Before the HONOURABLE MR. JUSTICE BROOKE (in chambers)
Date and Place of Hearing: September 6, 2006, Kelowna, BC

V. Ruzicka for the Appellant
G. McDannold for the Respondent

Reasons for Judgment (Oral) October 2, 2006

[1] THE COURT: This is a Stated Case filed by the Assessment Appeal Board in accordance with s. 65 of the *Assessment Act*, R.S.B.C. 1996, c. 20 hereafter called the *Act*. The Appellant takes issue with the classification of the property for assessment purposes and appeals the decision of the Assessment Appeal Board published January the 19th, 2006.

[2] The questions framed by the Stated Case are those of the Appellant. The Board must state the case in the form provided by the Appellant. Section 65 of the *Act* says this in subsection (1):

> (1) Subject to subsection (2), a person affected by a decision of the board on appeal, including a local government, the government, the commissioner or an assessor acting with the consent of the commissioner, may require the board to refer the decision to the Supreme Court for appeal on a question of law alone in the form of a stated case.

[3] The Stated Case then must be limited to questions of law alone and the standard of review is the standard of correctness (*Assessor of Area 27 – Peace River* v. *Burlington Resources Canada Ltd.*, (2004) B.C.C.A. Stated Case No. 471). The court on appeal must accept the findings of fact made by the Board and may not consider the weight or the sufficiency of the evidence before the court.

[4] The Appellant is a beekeeper, or rather Mr. Ruzicka, who argued the matter for the Appellant, is a beekeeper and the tenant of the property. He says that the 74.7 acres upon which he keeps bees is necessary for forage and ideally suited for that purpose. He says that the entire 74.7 acres should therefore be classified as farm as it was in the past.

[5] The Assessment Appeal Board in its carefully considered decision found there was no, or no sufficient, factual basis on the evidence to support a finding on the balance of probabilities that the property outside the area occupied by the hives is predominantly used for "primary agricultural" production and "necessary to the farm," and here I read from paragraph 45 of the decision.

[6] The language used by the Assessment Appeal Board is the language of Regulation 411/95 under the *Act* entitled "Standards for the Classification of Land as a Farm".

[7] Section 4(1) says:

> . . . the assessor must classify as farm all or part of a parcel of land used for

(a) primary agricultural production, ...

[8] Section 4(2) says:

> Land will only be classified as farm where part of a parcel or parcels of land are
>
> (a) necessary to the farm; and
>
> (b) predominantly used for primary agricultural production.

[9] The land in question is leased land and s. 7(3) of the Regulation says this:

> To be classed as a farm the leased land must:
>
> (a) be either
>
> (i) used for primary agricultural production and make a reasonable contribution to the farm operation; or
>
> (ii) certified by the owner. . . as being held for the purpose of primary agricultural production. . .

[10] I accept that the principles of interpretation to be applied are those adopted by the Supreme Court of Canada in *Bell Express Vu Limited Partnership* v. *Rex*, [2002] 2 S.C.R. 559 at para. 26 where this is said:

> 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.

[11] Justice Trainer of this court in *May* v. *Assessor of Area #13 - Dewdney- Alouette*, (1981) Stated Case No. 158 (B.C.S.C.), considered a Stated Case on the issue of classification of land as farm and said this:

> .. .it is classification as a farm for the purposes of the *Assessment Act* and not whether it is or is not actually a farm.
>
> . . .
>
> If a landowner wishes to have his property classified as a farm for the purposes of taxation, he is obliged to meet the standard established. If he produces up to the standard, they can claim classification as a farm. If he fails to produce up to the standard, either through choice or misfortune, he cannot make that claim.
>
> [Emphasis added]

[12] In the result, the strict requirements of the *Act* and the Regulations under the *Act* must be satisfied. There is no discretion in the Board to relieve against what otherwise might be seen as unfairness or hardship. The Board determined an oral hearing was not necessary and received written submissions. The facts before the Board are set out in the Stated Case in paragraphs 1 to 13.

[13] The questions upon which the opinion of the court is requested are these, and I repeat these are generated by the Appellant:

(1) Did the Board err in law when refusing to grant in person an oral hearing?

(2) Did the Board err in law accepting hearsay evidence and irrelevant precedence to grant its decisions?

(3) Did the Board err in law when accepting Assessor interpretation of pollination being a service therefore no agricultural product significantly lowering beekeepers agricultural product and in some cases denying farm status to genuine beekeepers at all?

(4) Did the Board err in law when it denied farm classification based on the Assessor claims of insufficient contribution of bees use of land for farm certification?

(5) Did the Board err in law when it denied agricultural status on the argument of Highest and Best Use?

(6) Did the Board err in law when they denied agricultural status to the forage land used for bees regardless that they use it and have qualified the land as agricultural for more than 25 years?

(7) Did the Board err in law when it denied farm classification based on land not being unused referring to horse boarding?

(8) Did the Board err in law by not reinstating the agricultural land status for whole property for the year 2005?

[14] Those then are the questions on the Stated Case. With regard to the first question, I am satisfied that pursuant to s. 43(3) of the *Act* that the Board is the master of its own procedure. Question 1 is therefore answered no.

[15] With regard to question 2, I cannot find that the Board erred in law in accepting hearsay evidence or in considering what are characterized as irrelevant precedents. The Board controls its own procedure as I observed in respect to the first question and has adopted Board rule number 19 pursuant to s. 43(3) of the *Act* and s. 11 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45.

[16] Rule 19 provides that the Board is not bound by the legal rules of evidence and may weigh and consider such evidence as it, in its discretion, may accept. The answer therefore to question 2 is no.

[17] Questions 3 to 8 raise questions not of law but of the weight and sufficiency of evidence, questions of fact or at best of mixed law and fact. As such, the court must decline to answer questions 3 to 8.

[18] In the result, I find the Board did not err in finding that there is no basis upon which to upset the classification of the property. The appeal then is dismissed with costs to the Respondent at scale 3.