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**** HIGHLIGHTS ****

* A Justice of the Alberta Court of Queen's Bench has held that a farmer who received a loan on the security of a flock of sheep was in partnership with a divorcee who he was living with, and who later claimed that the sheep were hers, not the farmer's. The Court concluded that an objective review of the facts must be conducted to determine whether the parties had the intention of carrying on business in common as partners, and that the divorcee's denial of common intent was not determinative. The Court concluded that the loan application (which was witnessed by the divorcee) was made by the partnership even though it was only signed by the farmer, and that the loan documents and the security agreement signed by the farmer as the divorcee's agent. [Editor's Note: Undocumented partnerships are common in the rural landscape. Ownership issues with respect to livestock on family farms are complicated. Lenders can avoid risks like this by, among other things, requiring all farming participants to sign loan and security documents.]. (Agricultural Financial Services Corp. v. Felker, CALN/2014-032, [2014] A.J. No. 1084, Alberta Court of Queen's Bench)

**** NEW CASE LAW ****

Agricultural Financial Services Corp. v. Felker; CALN/2014-032, Full text: [2014] A.J. No. 1084; 2014 ABQB 587, Alberta Court of Queen's Bench, J.S. Little J., September 22, 2014.

Partnerships -- Subjective Evidence of Intention to Carry on Business in Common -- Agricultural Loans and the Ownerships of Livestock Collateral.

The Plaintiff, Agricultural Financial Services Corporation ("AFSC") applied for summary judgment against the Defendants, Berry Lee Felker ("Felker") and Kathleen Erikson ("Erikson") for the balance owing on a loan made by AFSC to Felker.

AFSC made the loan to Felker in 2007. Felker granted AFSC a security interest over a flock of sheep including replacements and progeny.

AFSC alleged that Felker and Erikson were partners when the loan was granted and that Felker therefore acted as agent for Erikson.

The loan went into default and Felker and Erikson moved their ranching operation to Saskatchewan. They registered a partnership in Saskatchewan in 2009. They later split up both on a business and a personal level.

Felker sold a portion of the flock of sheep at an auction sale in Alberta in 2011.

AFSC sought an Order for the proceeds from the auction sale. The proceeds from the sale of the auction were held in a solicitor's trust account and were subject to several claims between Felker and Erikson.

Erikson's defence was that she and Felker were not partners in 2007 and that the sheep pledged as security for the AFSC loan were hers alone.

Felker and AFSC both filed Affidavits which supported AFSC's position that in 2007, Felker and Erikson were both personal and business partners with a combined flock of sheep, and that Felker granted security for a partnership loan over a partnership asset.

Although Erikson filed an Affidavit in which she swore that Felker had no sheep in 2007, and that she and Felker did not have a partnership before 2009, her 44 page Affidavit included Felker's 2005 income tax return which showed wool sales, confirmed Felker purchased over 600 ewes and 14 rams in 2006, and contained a number of invoices for sheep purchases and the shipping of sheep in Felker's name, which were paid for by Erikson's cheques.

Decision: Little, J. granted AFSC's application for summary judgment in the sum of $52,151.55 and declared that the proceeds held in trust by the Saskatchewan law firm were proceeds from the sale of property in which AFSC had a valid security interest in priority to any interest of Felker or Erikson [at para. 21].

Little, J. held [at para. 12] that notwithstanding Erikson's sworn statement that she had no intention of carrying on business in common with Felker, the determination of partnership ".does not require a subjective intention of the parties, but rather an objective review of their actions" relying on Volzke Construction Ltd. v. Westlock Foods Ltd. (1986), 1986 ABCA 136 (CanLII), 70 AR 300 (CA).

Little, J. also held [at para. 13] that a partnership may exist, even though the partners also run their own separate businesses, relying on the decision of Watson, J. in Coulombe v. Sabatier 2006 ABQB 618 (CanLII).

In response to Erikson's argument that the partnership yielded no profit, and that if there was profit, it all went to Felker, was rejected by Little, J. who held [at para. 14] that the definition of partnership did not require actual profit, or a split in profit, only that "a business be carried on in common with a view to profit, relying on s. 1(g) of the Partnership Act RSA 2000, c. P-3, and Backman v. Canada 2001 SCC 10 (CanLII).

In response to Erikson's argument that there was no partnership until 2009 when Felker and Erikson registered a partnership in Saskatchewan, Little J. held [at para. 15] that registration of a partnership was not a prerequisite to a finding that a partnership exists.

Little, J. concluded [at para. 20], as follows:

> [20] The Plaintiff has met its burden of proof that, on a balance of probabilities, the Defendants in 2007 were carrying on business as partners and that the security agreement witnessed by Erikson and executed by Felker in favour of a lender introduced to him by Erikson bound both of them as partners. The sheep were a co-mingled flock of sheep purchased by the two partners beginning at least in 2006.

** CREDITS **

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