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Agricultural Law *NetLetter*™

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Bi-weekly issues are added on Thursdays.

**** HIGHLIGHTS ****

* A Justice of the Supreme Court of Nova Scotia has set aside the transfer of land to a surviving joint owner based on the principle of resulting trust and unjust enrichment. The case concerned a farm which was jointly held by a son and his mother. The son, who had made substantial improvements to the farm and who had cared for his mother for many years, unexpectedly predeceased his mother. The Court, based on evidence given by survivors, found that the common intention of both parties was that the son become the owner of the land. (MacRae Estate (Re), CALN/2010-012, [2010] N.S.J. No. 230, Nova Scotia Supreme Court)

* The Alberta Court of Appeal has upheld the non-suit of a claim advanced by a potato grower against a herbicide manufacturer, Dupont. The potato grower alleged Dupont had a duty to warn, and that it was negligent or had made negligent misrepresentations in connection with the herbicide called "Glean" which, was not recommended for use on sandy soils or for potatoes. The Court concluded that the potato grower was aware of the harmful affects of Glean, and of its presence in the soil, before crops were planted. (NPS Farms Ltd. v. E.I. Dupont Canada Co., CALN/2010-013, [2010] A.J. No. 404, Alberta Court of Appeal)

**** NEW CASE LAW ****

MacRae Estate (Re); CALN/2010-012, Full text: [2010] N.S.J. No. 230; 2010 NSSC 157, Nova Scotia Supreme Court, F.C. Edwards J., April 23, 2010.

Real property -- Joint ownership -- Resulting trust -- Unjust enrichment.

Theresa MacRae ("Theresa") brought a claim against the Estate of Mary Sarah MacRae ("Sadie") for a farm located in Inverness County, Nova Scotia, consisting of 200 acres

(the "Farm"), which had passed to Sadie by operation of law as a surviving owner of land held jointly by her and Theresa's husband, Vincent MacRae ("Vinnie").

Vinne had been born on the Farm. He left the Farm to work in an auto plant in Windsor when he was young.

In 1973, Vinnie's father asked him to return to assist with the Farm. Vinnie was 23 at the time and was engaged to Theresa.

Vinnie's father died shortly thereafter. Vinnie and Theresa lived in the family home and raised their family. They continued to work on the Farm property and made substantial improvements to it, and cared for Sadie.

The Farm was registered in Sadie's name following her husband's death. Sadie held title until 1995 when she executed a deed conveying the property to the joint names of herself and Vinnie. At the time, she was 76 years of age and Vinnie was 48 years old. The evidence at trial, which was led by Affidavit, indicated that it was expected that Sadie would die first, and that the intention of the parties was that the Farm would eventually go to Vinnie.

However, Vinnie died in 2002. Sadie died intestate in 2003.

The beneficiaries of Sadie's estate claimed that the deed transferring joint interest in the title be set aside on the grounds that Vinnie had exerted undue influence on Sadie to sign the deed.

Theresa claimed the Farm on the basis of an alleged resulting trust and undue enrichment.

Decision: Edwards, J. dismissed the undue influence claim of the beneficiaries of Sadie's Estate [at para. 42] and directed that Sadie's Estate quit claim its interest in the Farm to Vinnie's Estate [at par. 28 to 42].

Edwards, J. held that it was clear that Sadie's intention was that Vinnie was to become the sole owner of the Farm and that a resulting trust had been established based on their common intention, stating, at para. 45 to 50:

> [45] I have not the slightest doubt that Sadie was extremely grateful that Vinnie returned home and worked the farm. As I have said, Sadie signed the August 15, 1995 deed specifically to ensure that Vinnie's ownership was secure. No doubt she appreciated that he needed his name on the deed to get a mortgage. But her primary motivation was to make Vinnie the owner of the farm.
>
> [46] If ever there was a case which merited the finding of an implied or resulting trust, this is it. I am sure that it never occurred to Sadie that her son Vinnie would predecease her. If events had unfolded as Sadie had anticipated, Vinnie would have become sole owner of the farm.

[47] In Veinot Estate v. Veinot 1998 CanLII 1957, the Court held that the brothers had established their claim on the basis of a resulting trust:

> I conclude as well that a resulting trust exists and has been established in their favour. Rathwell (1978), 83 DLR 3rd, 289 (SCC). Reginald and Carmon Veinot contributed to the acquisition, development, extension, and improvement of the farm operations and the evidence establishes a clear, common intention with their father that amounted to a joint venture between them and their father in the farm operation. The existence of such a strong common intention brings the factual situation well within the prerequisites of a resulting trust, and the same division I arrive at based on constructive trust would prevail had it been necessary to rely upon the doctrine of resulting trust.

[48] In Rathwell, the Supreme Court had described a resulting trust as being firmly grounded in the settlor's intent, with that intent being inferred or presumed "...as a matter of law from the circumstances of the case ... The law presumes that the holder of legal title was not intended to take beneficially."

[49] The Veinot decision was upheld on appeal, and leave to appeal to the Supreme Court of Canada was refused.

[50] As I am satisfied a resulting trust exists in favour of Vinnie's estate, I need not deal with constructive trusts. Had it been necessary to do so, I would have no difficulty in finding that Sadie's estate is unjustly enriched by the acquisition of the farm while Vinnie's estate is correspondingly eprived.

NPS Farms Ltd. v. E.I. Dupont Canada Co.; CALN/2010-013, Full text: [2010] A.J. No. 404; 2010 ABCA 124, Alberta Court of Appeal, R.L. Berger, K.G. Ritter and F.F. Slatter JJ.A., April 19, 2010.

Pesticides -- Duty to Warn -- Negligence.

NPS Farms and N. Pentelechuk & Son ("NPS") appealed to the Alberta Court of Appeal from a non-suit granted by a trial judge in favour of E.I. Dupont Canada Company ("Dupont"), The Attorney General of Canada and Beaverhill Developments Ltd.

In 1986, NPS acquired a lease on some land for a period of 7 years. NPS' intention was to plant potatoes.

The previous owner had applied a Dupont herbicide "Glean" to the lands but had disregarded a label and misused the product. The label provided that Glean could not be used in sandy soils.

In 1987, NPS did a soil analysis. The Alberta Environment Centre Laboratory recommended that potatoes not be planted because of the presence of "Glean" in the soil.

NPS had been aware since 1982 that Glean labelling indicated that potatoes should not be planted on lands where Glean had been used because of its adverse affect.

In 1990, NPS planted 70 acres of potatoes. It knew there was risk but proceeded in any event.

NPS claimed damages for production losses due to lower yields in potato crops grown in 1990, 1993, 1994, and 1998.

NPS argued before the trial judge that Dupont, as the manufacturer of a product having dangerous propensities, distributed and marketed the product without itself understanding the nature and extent of the dangerous propensities. NPS alleged that because Dupont did not make itself aware of these dangerous propensities, it could not and did not provide adequate warning to consumers that its marketing of the production without adequate warning was negligent. At the trial, the trial judge granted a non-suit.

Decision: The Alberta Court of Appeal dismissed the appeal [at para. 12]. The Court concluded that there was ample evidence before the trial judge to conclude they were aware of the presence of Glean on the lands and that it was harmful to potatoes. The Court stated at para. 7:

> [7] There was ample evidence before the trial judge to demonstrate that the Appellants were aware of the presence of glean on the lands in 1987 and knew that it was harmful to potatoes. They conducted soil tests and planted test strips of potatoes on the lands in 1987, 1988 and 1989 which showed damage to their potatoes. They did not plant full potato crops on the lands in 1988 and 1989 because they were aware of the injury which would result.

The Court also held that the trial judge was correct in refusing to allow amendments at trial which would have permitted NPS to an action based on a defective product claim, rather than allegations of misrepresentation and a breach of a duty to warn, which were the basis for the claim as plead.

** CREDITS **

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