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# Agricultural Law NetLetter™

A twice-monthly current awareness service reviewing recent cases on land use, marketing boards, environmental issues, creditors rights, animals, grain, import/export and other matters in an agricultural context.

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Bi-weekly issues are added on Thursdays.

## **\*\* HIGHLIGHTS \*\***

- \* A Judge of the Provincial Court of Saskatchewan has dismissed the claim of a tenant for alleged improvements made by the tenant to farm land, before the land was sold by the landlord to a third party. The improvements consisted of burying rocks, ditching and fall cultivation to prepare the seed bed for next year's planting. The Court held that the landlord had not requested or agreed to the improvements, and that the tenant could not establish there had been unjust enrichment because it could not be established that the improvements made any difference to the sale price. (A. & M. Enge Farms Ltd. v. Hendrickson et al, [CALN/2010-024](#), [\[2010\] S.J. No. 476](#), Provincial Court of Saskatchewan)

## **\*\* NEW CASE LAW \*\***

*A. & M. Enge Farms Ltd. v. Hendrickson et al*; [CALN/2010-024](#), Full text: [\[2010\] S.J. No. 476](#); [2010 SKPC 105](#), Provincial Court of Saskatchewan, R. Green J., August 24, 2010.

Real Property -- Farm Leases -- Compensation to Tenants for Improvements.

The Plaintiff, A. & M. Enge Farms Ltd. ("Enge") purchased three quarter sections of land from the Defendants, Floyd Hendrickson, Alice Hendrickson and Dale Hendrickson (the "Hendricksons").

Floyd Hendrickson represented the Hendricksons in their dealings with Enge.



Enge leased the land for 3 years pursuant to a written lease, commencing in 1996. In 2005, he leased the land again, this time pursuant to an oral lease. He summer fallowed the land in 2005 and seeded it in 2006, 2007 and 2008.

In November of 2008, the land was tendered for sale by the Hendricksons. Enge bid on the land, however, his offer was not accepted. Third parties purchased the land for \$201,000.00.

After the land was sold, Enge claimed damages for work he had done on the land which he alleged had improved the land.

Enge alleged that in the fall of 2007, he did:

- (a) Ditching; and
- (b) Burying of stones and cleaning a fence line.

Enge alleged that in the fall of 2008, he did:

- (a) Post-harvest spraying;
- (b) Heavy harrowing and cultivating to prepare the crop bed for low tillage seeding in 2009, and;
- (c) Ditching.

Floyd Hendrickson admitted that he agreed to pay Enge for the post-harvest spraying done in 2008, but denied he entered into an agreement to do any of the other work.

Enge claimed he was entitled to compensation based on an express or implied contract between the parties, and that in the absence of an enforceable contract, that the Hendricksons were unjustly enriched by the work performed by the Plaintiff and should be compensated in damages for the work.

Decision: R. Green, J. granted Enge judgment for \$6,285.00 for post-harvest spraying in 2008 (which the Hendricksons admitted was owing) but dismissed all other claims [at para. 29].

Green, J. considered two issues:

- (a) Was there an enforceable contract regarding the work other than spraying?

After reviewing the evidence, Green, J. concluded that the evidence of Floyd Hendrickson was as believable as the evidence of Mr. Enge and that there was no evidence that Floyd Hendrickson had agreed to compensate Enge for any of the work [at para. 21 and 22].

- (b) Can damages be recovered for unjust enrichment?



Green, J. referred [at para. 23] to the decision of *Peel (Regional Municipality) v. Canada*; *Peel (Regional Municipality) v. Ontario*, [\[1992\] 3 S.C.R. 762](#) in which McLachlin J. approved the following passage from the *Law of Restitution* (3d) (Goff and Jones: 1986), which stated that unjust enrichment:

"presupposes three things: first that the defendant had been enriched by the receipt of a benefit; secondly, that he had been so enriched at the plaintiff's expense; and thirdly, that it would seem unjust to allow him to retain the benefit."

Green, J. concluded [at para. 27] that he was not satisfied on a balance of probabilities that the Hendricksons were enriched by the work done by Mr. Enge. While there may have been some improvement to the land, it was not established that the third party purchasers would have paid more than the amount they did for the land whether or not the work had been done.

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### **\*\* CREDITS \*\***

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