LexisNexis®

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.

Thursday, February 24, 2011 - Issue 220

Bi-weekly issues are added on Thursdays.

**** HIGHLIGHTS ****

* A Justice of the Ontario Superior Court of Justice held that drying and pelletizing alfalfa on a parcel of land adjacent to the landowner's farm was "processing" within the meaning of the Ontario Assessment Act, and that an assessment authority's classification of the land as "industrial and commercial" rather than "agricultural" land (which is taxable at a lower rate of tax) was correct. (Lorentz Farms Ltd. v. Municipal Property Assessment Corp., CALN/2011-006, [2011] O.J. No. 682, Ontario Superior Court of Justice)

* The Supreme Court of Canada, in appeals from the British Columbia and Ontario Courts of Appeal has reconsidered and clarified the law with respect to resulting trusts and unjust enrichment in common-law situations. The decisions are lengthy and comprehensive. Although the decision does not deal with farm property, the principles and precedents considered are applicable to the resolution of claims arising from common-law marriages in an agricultural setting. (Kerr v. Baranow, CALN/2011-007, [2011] S.C.J. No. 10, Supreme Court of Canada)

**** NEW CASE LAW ****

Lorentz Farms Ltd. v. Municipal Property Assessment Corp.; CALN/2011-006, Full text: [2011] O.J. No. 682; 2011 ONSC 904, Ontario Superior Court of Justice, J.F. McGarry J., February 15, 2011.

Property Taxation -- Assessment -- Land used for Processing Agricultural Products.

Lorentz Farms Limited ("Lorentz") applied to the Divisional Court of the Ontario Superior Court of Justice for leave to appeal a decision of the Assessment Review Board (the "Assessment Board") from the Assessment Board's decision that the treatment of

alfalfa on a 2.66 acre parcel of land adjacent to the Lorentz's farm operations amounted to "processing" within the meaning of s. 6(1)(1)(i) of the Assessment Act (the "Act").

As part of Lorentz's farm operations, Lorentz used machinery and equipment to dry alfalfa and turn it into pellets on this property.

The Municipal Property Assessment Corporation (the "Assessment Corporation") classifies land use for tax purposes. The Assessment Corporation classified the Lorentz's parcel as "industrial and commercial".

Believing the proper classification to be "agricultural", and subject to a lower rate of tax, Lorentz appealed this classification to the Assessment Board in 2009. The Assessment Board determined that the treatment of the alfalfa amounted to "processing" within the meaning of s. 6(1)(1)(i) of the Act, and concluded that the Assessment Corporation's classification was correct. This section provides:

> The industrial property class consists of the following:
>
> 1. Land used for or in connection with,
>
> (i) manufacturing, producing or processing anything.

The issue on the application for leave to appeal was whether Lorentz had established:

(a) That there was some reason to doubt the correctness of the Assessment Board's decision;

(b) That there is a point of law of sufficient importance to merit the attention of the Divisional Court.

Decision: Justice J.F. McGarry dismissed the application for leave to appeal on the grounds that there was no reason to doubt the correctness of the decision of the Assessment Board without deciding whether or not the decision was of sufficient importance to merit the attention of the Divisional Court [at para. 8 and 9].

McGarry, J. observed the agreed statement of fact indicated that the buildings on the land were probably used to "process" farm produce" ...but the meaning of process or processing is at the very heart of the case and if the buildings are in fact used to process farm produce, then s. 44 applies and the subject property cannot be classified as farm property." [at para. 6].

McGarry, J. concluded [at para. 8]:

> [8] In my view, it is clear based upon the agreed facts, that "processing" took place as the treatment of alfalfa by grinding into a powder and producing pellets amounts to "processing". Therefore, as it is likely that the operations on the subject property amount to "processing" within the meaning of s. 6(1)(1)(i), the property was properly was classified as industrial and accordingly, there is no reason to doubt the decision of the

ARB.

Kerr v. Baranow; CALN/2011-007, Full text: [2011] S.C.J. No. 10; 2011 SCC 10, Supreme Court of Canada, McLachlin C.J. and Binnie, LeBel, Abella, Charron, Rothstein, and Cromwell JJ. February 18, 2011.

Unjust Enrichment -- Application to Common-law Marriage Claims.

Resulting Trust -- Application to Common-law Marriage Claims.

The Supreme Court of Canada has considered an appeal from a judgment of the British Columbia Court of Appeal in Kerr v. Baranow, and the Ontario Court of Appeal in Vanasse v. Seguin.

The Kerr appeal involved a couple in their late 60's who had separated after a common-law relationship of more than 25 years in which the trial Judge had awarded Mrs. Kerr one third of the value of the couple's residence grounded on both resulting trust and unjust enrichment claims, together with substantial monthly support. In Vanasse, the parties had lived in a common-law relationship for 12 years and the trial Judge concluded that Mr. Seguin had been unjustly enriched. The trial Judge valued the extent of the enrichment by determining what proportion of the increased wealth was due to Ms. Vanasse's efforts as an equal contributor to the family venture. Neither case involved farm property, however the Court considered previous decisions of the Supreme Court of Canada involving unjust enrichment in a family law context, including citing Pettkus v. Becker, [1980] 2 S.C.R. 834.

Decision: Cromwell, J., for the Court, allowed the appeal of Michele Vanasse and restored the trial judgment in the Vanasse appeal [at para. 161], and allowed the appeal of Ms. Kerr, in part, in the Kerr appeal [at para. 220].

In a lengthy and comprehensive decision, Cromwell, J. reviewed and clarified the principles of law that apply to domestic resulting trust claims and unjust enrichment claims [at para. 12 to 125].

Cromwell, J. observed that the more appropriate remedy in domestic situations is based on the principle of unjust enrichment, stating at para. 28 and 29:

> [28] Finally, as the development of the law since Pettkus has shown, the principles of unjust enrichment, coupled with the possible remedy of a constructive trust, provide a much less artificial, more comprehensive and more principled basis to address the wide variety of circumstances that lead to claims arising out of domestic partnerships. There is no need for any artificial inquiry into common intent. Claims for compensation as well as for property interests may be addressed. Contributions of all kinds and made at all times may be justly considered. The equities of the particular case are considered transparently and according to principle, rather than masquerading behind often artificial attempts to find common intent to support what the court thinks for unstated reasons is a just result.

> [29] I would hold that the resulting trust arising solely from the common intention of the parties, as described by the Court in Murdoch and Rathwell, no longer has a useful role to play in resolving property and financial disputes in domestic cases. I emphasize that I am speaking here only of the common intention resulting trust. I am not addressing other aspects of the law relating to resulting trusts, nor am I suggesting that a resulting trust that would otherwise validly arise is defeated by the existence in fact of common intention.

Cromwell, J. summarized the Court's reassessment of principles involved in unjust enrichment claims at para. 124, stating as follows:

> [124] To summarize:
>
> 1. The parties' reasonable or legitimate expectations have little role to play in deciding whether the services were provided for a juristic reason within the existing categories.
> 2. In some cases, the facts that mutual benefits were conferred or that the benefits were provided pursuant to the parties' reasonable expectations may be relevant evidence of whether one of the existing categories of juristic reasons is present. An example might be whether there was a contract for the provision of the benefits. However, generally the existence of mutual benefits flowing from the defendant to the claimant will not be considered at the juristic reason stage of the analysis.
> 3. The parties' reasonable or legitimate expectations have a role to play at the second step of the juristic reason analysis, that is, where the defendant bears the burden of establishing that there is a juristic reason for retaining the benefit which does not fall within the existing categories. It is the mutual or legitimate expectations of both parties that must be considered, and not simply the expectations of either the claimant or the defendant. The question is whether the parties' expectations show that retention of the benefits is just.

The decision merits careful study. A detailed analysis of the decision is beyond the scope of this Netletter.

** CREDITS **

This NetLetter is prepared by Brian P. Kaliel, Q.C. of Miller Thomson LLP, Edmonton, Alberta.

For more information about the LexisNexis® Quicklaw™ service,
call 1-800-387-0899 or email service@lexisnexis.ca.

For more information about LexisNexis® products and services,visit www.lexisnexis.ca.

Design and compilation © 2011 LexisNexis Canada Inc. All rights reserved. Unless otherwise stated, copyright in the content rests with the author(s). LexisNexis and the Knowledge Burst logo are registered trademarks of Reed Elsevier Properties Inc., used under licence. Quicklaw and NetLetter are trademarks of LexisNexis Canada Inc. Other products or services may be trademarks or registered trademarks of their respective companies. Use of this NetLetter is subject to the LexisNexis Canada Inc. Terms and Conditions of Data File Usage.

LexisNexis®