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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 Justice of the Alberta Court of Queen's Bench has rejected the claim of a rancher for damages allegedly sustained as a result of psychological trauma to 24 bucking horses and bulls. The rancher argued that the trauma affected the ability of the stock to perform at rodeos and, as a consequence, their value. The trial judge accepted that such a loss might occur in theory, however he concluded there was no evidence to support the claim. (Franklin Rodeo Co. v. Hertz Canada Ltd, [CALN/ 2010-025](#), [\[2010\] A.J. No. 1046](#), Alberta Court of Queen's Bench)
- * The Saskatchewan Court of Appeal has considered a number of principals in valuing the shares of a minority shareholder in a farming corporation in an oppression action. The primary conclusion was that a significant discount - 60% - should be used in valuing the shares of a son who had been given shares as a gift with the expectation that he would work on the farm and "earn the shares", but who left shortly after receiving the shares and, 30 years later, sought a buy out based on an increase in the value of the shares which was mainly attributable to the work of his brother (the majority shareholder) who remained behind under the "autocratic rule" of their father, and the increase in value of farm assets. The Court also upheld the approach of using the value of corporate assets, rather than the income approach, as the correct basis for determining the valuation of shares in a farming corporation. (Derdall v. Derdall Irrigation Farms Ltd., [CALN/2010-026](#), [\[2010\] S.J. No. 513](#), Saskatchewan Court of Appeal)

**** NEW CASE LAW ****

Franklin Rodeo Co. v. Hertz Canada Ltd; [CALN/2010-025](#), Full text: [\[2010\] A.J. No. 1046](#); [2010 ABQB 592](#), Alberta Court of Queen's Bench, R.P. Marceau J., September 16, 2010.

Damages -- Psychological Injury to Bucking Horses and Bulls.

Franklin Rodeo Company Ltd. ("Franklin") brought an action against Hertz Canada Limited ("Hertz") for physical and psychological injuries allegedly sustained when 24 bucking horses and bucking bulls being transported in a livestock trailer were involved in a motor vehicle accident.

Liability was admitted. The primary issue related to the value of the injured bucking horses and bucking bulls, and the extent to which their value had been diminished as a result of the accident.

Expert evidence led at trial indicated that following any traumatic accident, it is not uncommon for animals to suffer both physical and psychological issues, and that depending on the magnitude of the incident and the level of the injury, the post-accident impairments can be temporary or can negatively impact them for the rest of their lives. It was alleged that with the bucking horses and bucking bulls, the trauma would affect their performance, and consequently their value, on the rodeo circuit.

Decision: Marceau, J. awarded \$7,500.00 for the loss of a mare, and \$3,000.00 for the loss of a gelding [at para. 33], as well as damages for the trailer and pre-judgment interest. All other claims were dismissed [at para. 35].

Marceau, J. was critical of the evidence of the Plaintiff's expert. He concluded [at para. 20]:

[20] I accept the evidence that animals involved in collisions can suffer lasting physical or psychological effects, but I find the evidence in this case does not indicate that was the case for any of these animals except the physical observation with respect to horses S-22 and No. 66, observed and recorded by the veterinarian. The conclusion by Ms. Woods that "all of the Franklin stock would most likely be rendered unusable or unmarketable as rodeo stock following the trailer accident" is supported by what she may have been told were the facts, but not supported by the evidence I have heard.

Marceau, J. awarded no damages with respect to the injuries to a bull, and no damages to the 24 head of stock in the trailer (bucking horses and bulls), except for 2 horses [at para. 25]. With respect to these two horses, he commented [at para. 26 and 27] as follows:

[26] Horse No. 66. There is objective evidence of bruising to the hip. She was shipped for slaughter that fall. She had some potential through one-half of her pedigree. Her half-sister is quite valuable. Mr. Franklin says she was worth between \$7,500.00 and \$15,000.00 and places a value of \$10,500.00 on her. Given Mr. King's comments that he would wonder why

a good horse would not be bucked until age eight (well into their prime), I choose a somewhat lower figure of \$8,000.00 from which I deduct \$500.00 for cannery price, for a net of \$7,500.00.

[27] Horse S-22. He was disfigured. The description was that he had a hole in his head. Mr. Franklin says he was a chunky little horse who would not be top quality. He was six when he was first bucked but not the next year, then once in 2004 and finally in 2008. His score was 35, not very high. Mr. Franklin claims he was worth \$2,000.00 to \$5,000.00, with an average of \$3,500.00 as a mid-point. I will accept the mid-point and award \$3,500.00 less cannery fee recovery of \$500.00, for a net of \$3,000.00.

Derdall v. Derdall Irrigation Farms Ltd.; [CALN/2010-026](#), Full text: [\[2010\] S.J. No. 513](#); [2010 SKCA 104](#), Saskatchewan Court of Appeal, M.A. Gerwing and G.R. Jackson J.J.A. and Y.G.K. Wilkinson J. (ad, hoc) September 2, 2010.

Corporations -- Oppression Actions -- Valuation of the Shares of Farming Corporations -- Minority Discount.

Derdall Irrigation Farms Ltd. (the "Corporation") and Raymond Derdall, a majority shareholder ("Raymond") appealed to the Saskatchewan Court of Appeal from a series of decisions of the Saskatchewan Court of Queen's Bench on an oppression action commenced by a minority shareholder, Boyd Derdall ("Boyd").

The Saskatchewan Court of Appeal dealt with a number of issues concerning the valuation of shares in an oppression action involving an agricultural corporation.

The primary issue before the Court was the discount which should be used in determining the value of Boyd's shares.

Boyd had left the farm in 1976, shortly after receiving his shares. The shares were issued to him as a gift, on the understanding that both he, Raymond and a third son, Bernard, would earn their shares by working on the farm. When Boyd left in 1976, Bernard and Raymond remained behind. As a result of a dispute with his father Ancil, Bernard later left the Corporation. When Bernard left, his shares were valued at \$1,371.00.

Decision: Jackson, J.A., Gerwing, J.A. and Wilkinson, J. concurring, allowed the appeal in part. Raymond (who did not contest the trial judge's direction that he purchase Boyd's shares) was allowed to do so, but subject to a discount which was increased from 20% to 60% [at para. 48 and 49].

Jackson, J.A. considered a number of issues:

1. Whether the Trial Judge was Correct in Determining the Value Based on the Value of Farm Assets, Rather than Using the Income Approach.

Jackson, J.A. concluded [at para. 16] that the trial judge was correct in concluding that "fair market value or, in other words, what a reasonable

third party would be prepared to pay for the assets of the [farming] corporation, either by the purchase of assets or the purchase of shares" was the important consideration. The trial judge valued the assets, deducted an amount for tax and liquidation costs and divided the amount by the number of shares held by Boyd, applying a minority discount of 20% to arrive at a price.

Jackson, J.A. upheld the approach, but not the discount (discussed below) stating, at para. 16:

"In order to arrive at some principled basis for determining Boyd's entitlement, this was a correct decision. Further, the trial judge cannot be faulted for having concluded that a method of valuation that looked only to the revenues of the Corporation would not produce a just result. If the income approach alone were used, it would effectively allow the Court to conclude that Boyd's shares have no value because, according to the financial statements, the Corporation has little or no earnings."

2. Whether the Trial Judge was Correct in Concluding that Equipment and Livestock Which had been Purchased in the name of Ancil and Raymond, but Paid for by the Corporation, Belonged to the Corporation.

Jackson, J.A. allowed Raymond's appeal with respect to a John Deere tractor and scraper which had been purchased in Ancil's name, and the offspring of cattle, which had been purchased by Raymond, with payments made by the Corporation. Jackson, J.A. held [at para. 34], that the fact that the Corporation had made payments on the tractor and scraper was not determinative of ownership, and could not displace the fact that Ancil Derdal (father to Boyd and Raymond) personally owned the tractor based on the purchase invoice [at para.34].

Jackson, J.A. also rejected the trial judge's decision that the offspring of cows Raymond had purchased belonged to the Corporation [at para. 36]. This finding could only be supported on the basis that the Corporation had repaid a loan on the cattle. Because Raymond owned the cows, he also owned the offspring.

3. What is an Appropriate Minority Discount for Boyd's Shares?

Jackson, J.A. reversed the trial judge's decision that the minority discount factor should be 20%. He fixed the discount at 60% [at para. 48]. Jackson, J.A. concluded that four circumstances justified a significant discount:

- (a) Boyd had left the farming operation in 1976, shortly after receiving his shares. Boyd sought to "share in the increase in the value of the assets, without having fulfilled his part of the bargain" [at para. 42]. His part of the bargain was to earn the shares by providing labour to the Corporation and building up the assets of the Corporation [at para. 41].
- (b) Boyd's reasonable expectations when he left the Corporation in 1976 could not have been more than "minimal". In a small closely-held Corporation, the "reasonable expectations" of the minority shareholder are important when determining appropriate oppression remedy. Jackson, J.A. stated at para. 43:

"An appellate court will intervene where a trial judge has granted a remedy that exceeds the applicant's reasonable expectations or gives a shareholder a "better deal" than if the oppression had not occurred: David S. Morritt, Sonia L. Bjorkquist, and Allan D. Coleman. The Oppression Remedy, looseleaf (Aurora: Canada Law Book, 2009) at 6:20.10 and 6:20.20. In the instant case, based in particular on what Bernard received, it can be said with confidence that, but for the trial judge's view regarding oppression, Boyd would not have received \$9,160 for each share."

Jackson, J.A. commented [at para. 44] that Boyd's entitlement, and his expectations, could not be greater than Bernard's. Bernard had remained on the farm for 21 years after other brothers had left, and his shares were valued at only \$1,371.00.

- (c) When Boyd left, he went to work for his brother, Reginald, who established a business which was in competition with the Corporation. The fact that an oppressed shareholder is able to directly compete in the business against his oppressor is a factor the Court can consider in arriving at the fair value of the shares of an oppressed party [at para. 45].
 - (d) Boyd delayed for many years before bringing an action for redress. It is rare to attempt to provide a remedy for a feud that is more than 30 years old. The principal increase in the value of assets stemmed from the increase in land values. Delay permitted the increase. There would be no farm if Raymond had not remained behind under the autocratic rule of his father. The equities of the case rested entirely with Raymond, not Boyd [at para. 46].
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**** CREDITS ****

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