

- [1] The matter before the court relates to a Show Cause Hearing which was originally scheduled for May 17, 2006 at 10:00 AM, then adjourned to June 1, 2006 10:30 AM and again adjourned and heard on June 21, 2006 at 10:30 AM before myself. The Petition was filed by Robert Ettinger, the “Applicant” on April 10, 2006 citing the Executor, William McNeil, to show cause why he has not settled the claim on file and requested payment under the Attested Claim. The Attested Claim was filed January 16, 2006 for unpaid wages. The claim stated the deceased owed him \$14,600.00 for work performed on the farm and it was broken down to 4 hours per day, from March 28, 1999 to March 28, 2000 at the rate of \$10.00 per hour.
- [2] Watson P. McNeil died on March 28, 2000. His estate was Probated May 1, 2000. A closing was held on October 16, 2002 before myself. Present at the closing were William McNeil, Executor; Ralph Fram, Residuary Beneficiary; Dan McGrath, Proctor of the Estate and myself. Before issuing a Final Decree the court awaited amended accounts to reflect the discussions held at the closing. To date no amended accounts have been filed and the decree was never issued.

SERVICE

- [3] Mr. White filed an affidavit of service dated April 11, 2006 indicating the “Executor” was served with the Citation personally on April 11, 2006.

ISSUES

- [4] - Is this money owed by the estate for unpaid wages?
- Was the Claimant compensated for the work performed by receiving Watson McNeil’s portion of the wood lot?

FACTS

- [5] Present at the Hearing were Robert Ettinger, the Claimant; Jim White, Solicitor representing the claimant; Barry Alexander, Proctor of the Estate (Dan McGrath was the former proctor of the estate, now retired); William McNeil, Jr., Executor of the Estate and myself.
- [6] The Attested Claim filed January 16, 2006 stated the estate owed the claimant \$14,600.00 for work performed on behalf of the estate during the period of March 28, 1999 and March 28, 2000. The work entailed 4 hours labour per day, at \$10.00 per hour. The invoice was dated April 30, 2000.
- [7] Graham McNeil was a brother of Watson McNeil. Graham died March 28 1999.
- [8] William McNeil was named the Sole Executor of both “Graham’s” and “Watson’s” estate.
- [9] Jim McNeil was the father of Graham and Watson, who originally owned a wood lot property. The property was never deeded to Graham nor Watson personally by their father.
- [10] Watson’s Will read different from Graham’s. Graham’s share of the woodlot property was devised to Robert Ettinger. Watson left his estate (with the exception of a few monetary bequests) to his nephew Ralph Fram.
- [11] On October 16, 2003 Ralph Fram conveyed the 50 Acre Wood lot Property, situated in Windsor Forks, to Robert Ettinger, the Claimant. The deed was recorded in the Registry of Deeds on October 17, 2003.
- [12] A gentleman by the name Ralph Taylor prepared an appraisal of the Wood Lot Property, Cattle and Equipment. Watson’s interest in the wood lot property was valued at approximately \$20,000.00. (Total value of property owned by the two brother’s was \$40,000.00).
- [13] No release was signed by Robert Ettinger upon receipt of the wood lot from Ralph Fram. The deed was received in the mail.

- [14] After Watson's Death Robert Ettinger continued to work on the farm and presented on a regular basis detailed invoices for the work performed. Robert was compensated in full. There is no dispute in regard to unpaid wages during this period of time.
- [15] Gary Ettinger, the brother of Robert Ettinger was hired by the Executor to look after Watson's personal needs. Gary was paid \$14,600.00 and it is noted this is the same amount being pursued by the claimant.

FINDINGS

- [16] The Court must determine whether the estate owes the claimant \$14,600.00 for unpaid wages. It must also determine whether the claimant was compensated for the work performed by receiving Watson McNeil's interest in the wood lot property.
- [17] Robert Ettinger worked on the "McNeil" Farm for over a 12 year period without compensation. He worked 5 - 6 days a week and his duties entailed fencing, haying and various farm chores. After Graham McNeil died Robert continued to work on the farm on a daily basis, as he had always done.
- [18] The period in question is for work performed after Graham McNeil's death and prior to Watson McNeil's death.
- [19] The Claimant states he was not compensated for the work performed during this period and thus the reason for the claim of unpaid wages. The position of the Executor is that Mr. Ettinger was paid and/or compensated in full for all services rendered and state the transfer of Watson's share of the Wood lot property was to compensate him for the work performed.
- [20] Robert Ettinger was referred to as an "excellent" worker and there is no dispute in regard to his work ethics.
- [21] It is clear, by Mr. Ettinger's testimony, he didn't bill either Graham or Watson McNeil for the work performed during their lifetime nor was it his intention

to do so. He testified he was once offered \$300.00 by Graham McNeil, for services rendered, but declined the offer. He didn't want the the "old fellers" to pay him and indicated if he started taking money from them they would rely on him and he would then have to go daily. He stated the reason he submitted the bill was because he was told to do so by the Executor, Bill McNeil. He then requested his wife to draft a bill. It is unclear the exact date she prepared the bill but I suspect it was after the date shown. Robert Ettinger has testified the bill was not submitted until after the wood lot property was conveyed to him by Mr. Fram.

- [22] Bill McNeil did not dispute telling Robert to submit a bill and testified upon receipt of any estate bill, his practice was to scrutinize the bill and if he felt it was a legitimate bill he would then pay it.
- [23] The bill was dated *April 30, 2000*, and was made payable to the Estate of Watson McNeil and read as follows:

*Dated March 28, 1999 to March 28, 2000.
4 hrs/day for one year - dated above, at \$10.00 per hour.
Total \$14,600.00.
Signed by Robert Ettinger.*

- [24] Robert Ettinger testified under oath he approached the executor on several occasions, **after** the death of Watson McNeil, regarding compensation.
- [25] There was conflicting evidence as to when the Executor received the invoice. The executor testified he did not receive an invoice personally from the claimant. As far as he recollected he didn't receive the invoice until after Mr. Fram forwarded a copy to him. Robert Ettinger testified he presented the original bill to Bill McNeil and a copy of the invoice was sent in a letter to Mr. Fram. During testimony the Executor commented "Bobby Ettinger doesn't lie". I too found Robert Ettinger to be a credible witness. I conclude in all probability the bill was forwarded to Mr. McNeil, though he may not recollect.

- [26] In regard to any work performed “after” Watson’s death, though this is a non issue before the court, I conclude there was an agreement between Robert Ettinger and William McNeil, prior to the work being performed. Robert Ettinger invoiced the estate regularly and was compensated in full, unlike the period in question.
- [27] Throughout the hearing the estate’s submission indicate the reason for the transfer of the wood lot property was to compensate Robert Ettinger for the work done during the one year period in question. Unfortunately Mr. Fram was not present at the show cause hearing and I am left to question what his personal intentions were. Did he deed his inheritance to compensate Robert Ettinger for the many years of work performed on the farm? I am left to rely on the Executor’s testimony.
- [28] Robert Ettinger was compensated by Ralph Fram, personally. The executor had no other option but to comply with the terms of the Last Will and Testament of Watson McNeil. William McNeil told the court that he impressed on Ralph Fram the importance of getting the deed for the wood lot conveyed to Robert in compensation for “looking after things”. He personally felt “Bobby” deserved it. Mr. Fram could do whatever he wished with the wood lot property. It would appear, in the absence of Mr. Fram’s testimony, Ralph Fram conveyed the property in gratitude for all the work Mr. Ettinger performed on the farm.
- [29] I conclude there was never a compensation agreement entered into between the claimant, the Executor nor Mr. Fram, the Residuary Beneficiary. It was evident during the hearing the suggestion of the wood lot property being conveyed as compensation came as a complete surprise to the claimant. Under testimony the executor stated he told Robert it was transferred “for what he did”. Under Robert’s testimony he indicated he did not request compensation from Graham nor Watson McNeil. It is noted when the land was transferred there was no release obtained. Mr. Ettinger received the deed in the mail. I find it interesting to note, when the claim was filed, there was no discussion in regard to the land being transferred to compensate him for the one year period he worked on the farm nor did Mr. Fram, the Residuary Beneficiary make any mention of the compensation in letter addressed to Robert Ettinger. I can clearly understand why Robert Ettinger would misunderstand the reason for the conveyance. There appeared to be a lack of communication.

- [30] A vital and important factor in this hearing is determining whether Robert was hired to work on the farm for the one year period in question.
- [31] I question why the Executor requested Robert Ettinger to make up a bill if he had no intention to pay. Maybe it was to determine what his wages were worth. Throughout the hearing the position of the executor indicated the land was to compensate for wages during this one year period. I am also left to question why Robert Ettinger waited so long before submitting a bill and then eventually filing a claim against the estate? We know the land was conveyed by Mr. Fram to Robert Ettinger October 16, 2003 and recorded at the Registry of Deeds on October 17, 2003. As indicated prior Mr. Ettinger did not submit his bill until after the conveyance.
- [32] The court must determine whether there was a legitimate contract entered into for the work performed. As mentioned prior Robert Ettinger had no intention, initially, of charging Watson nor Graham for the work performed. He worked on the McNeil Farm for a long period of time without compensation and indicated “he did it because he enjoyed it”. There is no disputing his generosity was to the McNeil brothers’ benefit and it was his personal choice to work. Robert Ettinger approached the Executor “after” the death of Watson and was told to bill the estate. It is obvious even though the invoice was dated “April 30, 2000” the bill was not submitted until after the land was conveyed in October 2003. It is also interesting to note Mr. Ettinger continued to work on the farm, after Watson’s death, even though he felt he had not been compensated for the one year period prior. After Watson’s death a contract or agreement was entered into by Mr. McNeil and Mr. Ettinger and invoices were submitted on a regular basis and he was compensated in full.
- [33] It is obvious to the court the billing was an “afterthought” as he too felt he deserved compensation just like his brother Gary.
- [34] I agree with the submissions of the Estate as to the important and underlining factor in this hearing: ***The onus is on the Claimant to prove there was a “prior” agreement.***
- [35] I conclude there is no evidence before the court to substantiate there was a “prior” agreement or contract and invoices were not submitted on a regular basis. This is

clearly a case of “past consideration” and therefore there is no enforceable contract before the court. I conclude Robert Ettinger is not entitled to unpaid wages for the period of March 28, 1999 and March 28, 2000.

- [36] As indicated prior there were outstanding matters after the estate closing before myself, October 16, 2002. The Executor, Residuary Beneficiary and Dan McGrath, the Proctor at the time, were present and all parties were aware of my concerns.
- [37] The appraisal made by Ralph Taylor should help clarify my concerns at the initial closing and the estate should now be in a better position to conclude these issues. I do note if my initial requests were carried out, shortly after the scheduled closing, this claim would have been a non issue.
- [38] I therefore order that the attested claim be dismissed without costs to either party and order the Executor to present an amended account to reflect the issues before the court at time of closing.

Susan Campbell-Baltzer
Registrar of Probate