

LAND COURT OF QUEENSLAND

CITATION: *Chen & Anor v Department of Natural Resources and Water* [2009] QLC 0131

PARTIES: Chien-Hung Chen and Luan-Ying Yen
(appellants)
v.
Chief Executive, Department of Natural Resources and Water
(respondent)

FILE NO: AV2008/0518

DIVISION: Land Court of Queensland

PROCEEDINGS: An appeal against annual valuation of land under the *Valuation of Land Act 1944*

DELIVERED ON: 8 September 2009

DELIVERED AT: Brisbane

HEARD AT: Brisbane

MEMBER: Mr RS Jones

ORDER: **1. The appeal is allowed.**
2. The unimproved value of Lot 163 on Registered Plan 77393, Parish of Yeerongpilly as at 1 October 2007 is determined in the amount of Four Hundred and Sixty Thousand Dollars (\$460,000).

CATCHWORDS: Assessment of unimproved value of improved land under the *Valuation of Land Act 1944* – s.33 rebuttal of presumption of correctness of statutory valuation – onus of proof – best evidence of unimproved value

APPEARANCES: Mr C Chen, in person, for the appellants

Mr P Prasad, lawyer, for the respondent

Background

[1] This appeal concerns land located at 29 Marvin Street, Holland Park West, more properly described as Lot 163 on Registered Plan 77393 Parish of Yeerongpilly. The land is located approximately 8 km radially south-east of the Brisbane Central Business District. All the usual

suburban services and amenities are available. The land is 911m² in area and has a low density designation under the Brisbane City Plan 2000. Consistent with that land use designation, as at the date of valuation, the land was being used for single residential dwelling purposes.

- [2] Dissatisfied with the respondent's assessment of the unimproved value of their land the appellants have appealed to this Court. The respondent's assessment of the unimproved value, as at 1 October 2007, is \$510,000. The appellants' original estimate was \$350,000 but, at the hearing of the appeal, contended for a valuation of \$430,000.¹
- [3] The appellants were primarily represented by Mr Chen in person and he was the only witness called in support of their case. Mr Chen has no valuation qualifications but holds formal qualifications in geographic information systems and urban planning. The respondent was legally represented by Mr Prasad, a legal officer employed by the respondent and relied on the evidence of Mr R Cranstoun, an experienced registered real estate valuer, also employed by the respondent.

Issues in the appeal

- [4] The subject land is "improved land" for the purposes of the *Valuation of Land Act 1944* (VLA). Pursuant to s.3(1)(b) of that Act, it is to be valued on the assumption that, at the time at which the value is required to be ascertained, any improvements thereon did not exist.
- [5] Pursuant to s.33 of the VLA, the valuation appealed against is deemed to be correct and the appellants bear the burden of proving that it is wrong. In *Brisbane City Council v Valuer-General*,² Gibbs J, as he then was, in delivering the leading judgment of the High Court considered that the presumption in favour of the correctness of the statutory valuation may be rebutted where it can be shown that the valuation was based on a wrong principle and/or involved a significant error of fact and/or was made by a fundamentally erroneous method.

¹ See Exh. 3.

² (1977-78) 140 CLR 41 at 56-57; see also *G Cominos & Co Pty Ltd v Department of Lands* (1996-97) 16 QLCR 311 at 331-332 (LAC).

[6] In their notice of appeal, the appellants set out seven grounds of appeal. During the hearing it became reasonably apparent that the major complaints against the statutory valuation were that:

- (i) having regard to the unimproved values assigned by the respondent to other land in the vicinity, the unimproved value assigned to the subject was clearly excessive. (the relativity argument);
- (ii) the sales evidence relied on by the respondent was not reliable evidence of value and/or was not properly analysed and applied and;
- (iii) other sales evidence supported the valuation contended for by the appellants. (the sales evidence arguments)

[7] The appellants raised a number of other matters in support of their valuation including:

- (i) the negative impact on value resulting from the proximity of the land to the Mt Thompson Crematorium and Memorial Gardens.
- (ii) that the respondent failed to bring into account any premium attaching to the sales evidence he relied on resulting from the scarcity of vacant land in the area.

[8] I have considered these other matters but have reached the conclusion that there is simply no probative evidence which would justify any adjustment to the valuation appealed against on the basis of proximity to the crematorium and/or any premium attaching to vacant land sales. In respect of the latter issue, I note that the appellants' case was no higher than it "may" have led to the respondent overvaluing their land. Also, it could not reasonably be said that these matters were raised in the appellants' grounds of appeal, a matter which is dealt with in more detail below. In respect of yet further matters raised more directly associated with the subject land itself, including views, traffic, street appeal and amenity, they are brought into account when dealing with the sales evidence.

Section 45(4) of the VLA

[9] During his closing address, Mr Prasad made a submission to the effect that significant parts of the sales evidence relied on by the appellants ought be disregarded because it did not arise out of or was not sufficiently connected with the grounds of appeal as pleaded. Mr Prasad later modified this submission to the effect that when the evidence advanced by the appellants was being considered it should be given less weight than the evidence of Mr Cranstoun.

[10] Section 45(4) of the VLA states:

“Such notice (of appeal) shall state the grounds of appeal and the appeal shall be limited to the grounds so stated and the burden of proving any and every such ground shall be upon the owner.”

[11] No real objection was taken during the course of the hearing of this appeal to either the evidence contained in the appellants’ written material³ or during the testimony of Mr Chen.

[12] Prior to the evidence commencing and the admission of the appellants’ statement of evidence as exhibit 1, it was acknowledged that it contained some material which was argumentative and/or may have included some reference to facts, matters and circumstances which might be privileged. In this regard, it was agreed to by Mr Prasad that, rather than deal with these matters paragraph by paragraph, when I was considering the material contained in that exhibit I would ignore any offensive content. However, as I have already said, no formal objection was taken to any of the evidence on the basis that it fell foul of the operation of s.45(4) until final submissions.

[13] This is a most unfortunate situation. It was a matter that should have been raised and argued fully before exhibits were admitted into evidence and/or otherwise dealt with by way of objection during the evidence of Mr Chen. To fail to raise such a substantive matter at the earliest appropriate opportunity is likely to cause time wasting, disarray and, in the case of many lay appellants, dismay and confusion.

[14] That said, s.45(4) is couched in mandatory terms and its intended effect cannot be ignored because of procedural irregularities.

³ Exh. 1 and Exh. 3.

[15] I agree that some of the evidence advanced by the appellants could not reasonably be said to be applicable to or arise out of the grounds of appeal as pleaded. However, in circumstances where no formal objection was taken to the admission of the evidence until after all the evidence in the appeal had been completed and, most importantly, the evidence of Mr Cranstoun had been fully ventilated, I intend to have regard to the sales evidence relied on by the appellants. This evidence is dealt with in more detail below. It is not being relied on so much as evidence which positively advances the case for the appellants but as evidence going to the correctness or otherwise of the valuation appealed against. In this context Gibbs J in the *Brisbane City Council* case said:⁴

“... . In my opinion once it is shown that in making the valuation the valuer general acted upon a wrong principle, or made a serious error of fact, the presumption created by (now s.33) is rebutted. It is true that the valuer general might by coincidence reach the right result by a wrong process of reasoning, but I cannot attribute to the legislature the capricious intention that a valuation shown to have been erroneously made should be presumed correct simply because by mere chance the valuer general may have hit on the right figure. ... In my opinion once it is shown that a valuation was made by a method fundamentally erroneous the presumption is rebutted. ... “

The relativity case

[16] While it is strongly arguable that any evidence concerning relativity ought be totally ignored because it was not raised in the appellants' grounds of appeal, I propose to deal with it.

[17] The appellants drew my attention to the unimproved value attributed to blocks of land located in the general vicinity of the subject. Particular reliance was placed on three blocks located in Flynn Street, Holland Park West and a number of blocks located in Doheny and Mountain Streets, Mount Gravatt. While much of Mr Chen's evidence concerning the issue of relativity was not seriously challenged, at the end of the day I do not consider it to be sufficiently probative to disturb the valuation appealed against. For the sake of completeness I should identify that Mr Cranstoun did give some specific evidence justifying the lower valuations attributed to the three parcels of land in Flynn Street and I accept his evidence about that.

⁴ At p.56 - 57.

The sales evidence

[18] It is well established that the best evidence for determining a basis for the assessment of unimproved value is evidence of sales of comparable land and particularly sales of vacant or lightly improved land.⁵ The sales relied on however must be able to be described as a reasonably representative group of comparable sales.⁶

[19] In his valuation,⁷ Mr Cranstoun states:

“The land has been valued by direct comparison with sales of vacant land or lightly improved land around the date of valuation. ...”

That this was the approach taken by him was reinforced in his evidence-in-chief.

[20] However, as it emerged, it is likely that, as at the date of sale, at least four of the sales relied on by him had substantial but old and dated houses on them. I accept Mr Cranstoun's evidence that these sales were purchased with the intention that the purchasers would eventually demolish or remove the original house and build a new one. But that does not qualify these sales to be described as being vacant or lightly improved, a matter which Mr Cranstoun conceded. That the appellants' suspicions about the respondent's use of those sales were aroused is not surprising given their misdescription.

[21] In defence of Mr Cranstoun's reliance on these sales, Mr Prasad referred me to the well known passage from the decision of the High Court in the *Valuer-General v Fenton Nominees Pty Ltd*:⁸

"The importance of these sales is that they tended to establish the price which a developer would be prepared to pay for vacant land suitable for the appropriate development. Although the developers acquired parcels of improved land in assembling their sites, they were acquiring improved land in order to convert it into unimproved land as part of a consolidated site which they could then develop. The improvements existing on the land which they acquired had no value to them. Consequently no part of the purchase price reflected a value placed by them on those improvements.

In these circumstances the price which the respondent paid was one element, indeed the largest element, in the cost of acquiring a site consisting of vacant land suitable for development. The other elements were the cost of demolition and of earthworks. ..."

⁵ *Fischer v Valuer-General* (1983) 9 QLCR 44 at 46; *Grahn v Valuer-General* (1992-93) 14 QLCR 327 at 328.

⁶ *Maurici v Chief Commissioner of State Revenue* (2003) 212 CLR 111; *Department of Natural Resources and Mines v Spender* (2002-03) 24 QLCR 414 at para 54.

⁷ Exh. 2 at p.2.

⁸ (1982) 150 CLR 160 at 166.

- [22] The difficulty for the respondent here is that there is no evidence one way or the other about how the purchasers and vendors dealt with the structures on the land in negotiating the sale price. They might have had a neutral effect on value or, as was the case in *Fenton Nominees*, had a negative impact due to demolition costs. However, as was suggested on behalf of the appellants, it was equally open to speculate that the structures might have been capable of generating rental income up until the time the purchasers were ready to redevelop the land. Alternatively, they might have been utilised by the purchasers themselves for accommodation purposes up until that time.
- [23] Mr Cranstoun's sales subject to these difficulties were those located at Thornycroft Street, Bramston Street, Chamberlain Street and Pring Street (his Sales 1, 2, 3 and 4). There is a possibility that another sale relied on by Mr Cranstoun might also have had a house on it at the date of sale but that matter was not meaningfully ventilated by the appellants.
- [24] Given the difficulties associated with these sales, I do not consider that they provide reliable evidence of the unimproved value of the subject land and, at best, provide only indicative evidence of a level of value at about which the subject land might lie. Further, in respect of the first three sales, it is my opinion that Mr Cranstoun had insufficient regard to the views to the city available from each of the sites. I also find that Mr Cranstoun has tended to overstate any disadvantages these sites might have in comparison to the subject land concerning convenient access to public transport.
- [25] When these matters are properly taken into account, it is tolerably clear to me that Mr Cranstoun has tended to overstate the value of the subject land in comparison to these four sales or, to put it another way, has tended to underestimate some of the advantages these sales had in comparison to the subject.
- [26] Turning to the remaining sales evidence, including that relied on by the appellants, I have reached the conclusion that those sales located at 79 Kneale Street and 13 Castle Hill Street, provide no reliable evidence of value. As the appellants themselves point out, they are vastly

superior parcels of land having extensive views, including city views and are otherwise located in areas which, to use the appellants' words, might be described as "million dollar" streets. Before proceeding further I should point out that no attack could be made on the sales evidence relied on by the appellants summarised in Exhibit 3 on the basis that the evidence somehow fell foul of the operation of s.45(4) of the VLA. The Effingham, Kneale and Castle Hill Streets sales all raise the issue of city views, a matter sufficiently raised in Ground 1 of the appellants' notice of appeal. The Windmill Street sale is also relied on by Mr Cranstoun.

[27] I also reject Mr Cranstoun's Sale 6 located in Corn Street. The evidence is that it involved two 405 m² lots purchased by a developer who subsequently erected new houses on them and onsold them for profit. According to Mr Cranstoun, the applied value to each of these 405 m² lots was \$280,000. If this sale was treated as one involving two separate lots, individually they could not be said to be comparable to the subject as they are less than half its size. On the other hand, if the sale were to be treated as the purchase of one 810 m² parcel (which in any event is contrary to the evidence), the sale would have to be considered to be materially superior to the subject because it comprised of two separate lots which could be developed and/or sold separately. As was acknowledged by Mr Cranstoun in his evidence in chief this sale was not directly comparable to the subject.

[28] For the reasons given, I have concluded that the most reliable evidence of value is the common sale at 6 Windmill Street (Mr Cranstoun's Sale 5) supported by the sale at 46 Effingham Street. In respect of the latter sale, despite being offered the opportunity to criticise it and the other sales relied on by the appellants, Mr Cranstoun only went so far to suggest that these sales were not as comparable as those relied on by him.⁹

[29] As to the first, the appellants consider it superior to their land and Mr Cranstoun says it is inferior. I prefer the evidence of Mr Cranstoun and find that the subject land is materially

⁹ Transcript p.22.

superior to this sale. It is significantly smaller than the subject and, while I accept that it adjoins a "bush reserve", I also find that it has inferior views.

[30] As I understand the appellants' evidence, they consider the Effingham Street sale to be inferior to their land predominantly because it has some city views, is located in a superior street and is very close to a primary school. This evidence was not really challenged but I am of the view that when comparing this sale to their land, the appellants tended to understate the standard of views from their land and the difference in site areas. On balance, I intend to proceed on the basis that the respective positives and negatives associated with this sale and subject would tend to cancel each other out.

[31] Having regard to all of the evidence, including the indicative evidence provided by Mr Cranstoun's first four sales, as limited as it is, I have reached the conclusion that the appellants have proved that Mr Cranstoun has overvalued their land to a material extent. The difficulty is that the state of the evidence does not allow for much more than an educated estimate as to what the true unimproved value might be. Unfortunately, in valuation cases that is sometimes all that the evidence allows.¹⁰

[32] It is my view that, when taken as a whole, the evidence justifies a reduction in the valuation appealed against of in the order of 10 per cent. On this basis I determine the unimproved value of the land, as at 1 October 2007 to be \$460,000.

Orders

- (1) The appeal is allowed.
- (2) The unimproved value of Lot 163 on Registered Plan 77393, Parish of Yeerongpilly as at 1 October 2007 is determined in the amount of Four Hundred and Sixty Thousand Dollars (\$460,000).

RS JONES
MEMBER OF THE LAND COURT

¹⁰ *Leichhardt Municipal Council v Seatainer Terminals Pty Ltd* (1981) 48 LGERA 409 at 434.