

LAND COURT OF QUEENSLAND

CITATION: *Perpetual Nominees Limited & Ors v Department of Natural Resources, Mines and Energy* [2004] QLC 0096

PARTIES: Perpetual Nominees Limited; Commonwealth Funds Management Limited; Permanent Trustee Australia Limited as Trustee and Commonwealth Bank Officers Superannuation Corporation Pty Ltd as Trustee; Perpetual Nominees Limited; CPT Manager Limited as Trustee; AMP Life Limited; PT Limited; Kent Street Pty Ltd as Trustee, Westfield Management Limited and AMP Pacific Fair Pty Ltd as Trustee; AMP Life Limited and Westfield Management Limited; Queensland Investment Corporation; QIC Robina Pty Ltd
(appellants)
v.
Chief Executive, Department of Natural Resources, Mines and Energy
(respondent/applicant)

FILE NOS: AV2003/0798; AV2003/0799; AV2003/0804; AV2002/0802; AV2003/0800; AV2003/0806; AV2003/0796; AV2003/0803; AV2003/0795; AV2003/0797; AV2003/0805; AV2003/0801

DIVISION: Land Court of Queensland

PROCEEDING: Application for Orders for further disclosure

DELIVERED ON: 10 November 2004

DELIVERED AT: Brisbane

HEARD AT: Brisbane

JUDICIAL REGISTRAR: Mr BR O'Connor

ORDER: **To be finalised after further submissions from parties.**

CATCHWORDS: Practice and Procedure - Disclosure - full particulars not yet provided - Need for precision in request for material sought - Confidential material - *Fielder Gillespie* order - Disclosure allowed - Form of order subject to further submissions

APPEARANCES: Mr S Doyle SC, with him Mr J Horton, for the applicants

Mr D Fraser QC, with him Mr T Quinn for the respondent

SOLICITORS: Minter Ellison for the appellants
Legal Counsel, Legal Services, Department of Natural
Resources and Mines for the respondent

[1] The appellants have lodged appeals under the *Valuation of Land Act 1944* against determinations by the Chief Executive of the unimproved value of various parcels of land throughout the State. All properties have situated on them major shopping complexes. The relevant date of valuation in all appeals is 1 October 2002. Hearing of the first of the appeals (the Chermside matter) is set to commence on 8 November 2004.

[2] By way of a further interlocutory step the appellants made application filed on 4 October 2004 for a series of further orders. After further discussions between the parties, only one of the sought orders remains outstanding. The order sought is:

The respondent file and serve a Supplementary List of Documents by 13 October 2004 having regard to the following classes of documents:

All documents relating to the valuations referred to in Schedule 1A to the appellants' particulars filed 27 August 2004 including:

- (i) documents relating to the making of any agreement between the respondent and landowners with respect to any of those valuations;
- (ii) documents relating to the exercise of the respondent's statutory powers to obtain information from landowners for the purpose of valuing that land.

[3] Appeal Grounds 14 and 16 are relevant to the orders now sought. These grounds are:

"14. Further or in the alternative, the value assessed by the chief executive does not represent the capital sum which the fee simple of the land might be expected to realise if offered for sale on such reasonable terms and conditions as a *bona fide* seller would require assuming that the improvements did not exist. Valuations of comparable properties show that the chief executive failed to achieve appropriate relativity with respect to the value of the subject land.

16. Further or in the alternative, the challenged valuation lacks relativity and comparability with similar land valuations and sales."

[4] In an affidavit filed on 28 October 2004 the appellants' solicitor, Russell Reid Bowie, states as follows:

"I am informed by Rodney Louis Brett and Michael John Slater, valuers, that they are each frustrated in their endeavours to report on the relativity between the valuations the subject of appeal and the statutory valuations referred to in Schedule 1A to the Appellants particulars filed on 27 August

2004. Each of those valuers informs me that their analysis will depend upon the information available to the Chief Executive and the use of that information by the Chief Executive in determining the values of the Queensland properties referred to in Schedule 1A and any consideration which the Chief Executive may have given to the national market as it relates to the interstate properties identified in Schedule 1A"

Schedule A is included as an annexure to this decision.

Appellants' Submissions

[5] In seeking the particular disclosure order, the appellants have made written and oral submissions. Mr Bowie also gave oral testimony. Key points made by the appellants include:

- There is an objective likelihood that the respondent has not complied with its duty of disclosure on the particular issue in question..
- The respondent was recently specifically advised in writing by the appellants that relativity will form part of its case at trial.
- The appellants have mentioned specific classes of decisions which they contend were available to the respondent but not yet disclosed.
- Appropriate orders can be made to protect any legitimate claim for confidentiality.
- It is more than the end result (value) that the appellants need to support relativity. One needs to know, for example, what factors were assumed, such as zoning or development approvals, site conditions, access rights, etc.

Respondent's Submissions

[6] These included:

- There has been no attempt by the appellants' valuers to support a relativity case in their reports (now exchanged). In particular, there has been no attempt to explain the criteria by reference to which relativity properties are to be assessed against the subject properties.
- A relativity case would be a substantial task involving investigation of and reference to relevant characteristics of the relativity properties.
- There has been no proper particularisation of the relativity case by the appellants - it is their ground of appeal.
- The appellants offer no identification of what documents are suggested to exist and how such documents are directly relevant. The application is essentially a "fishing" expedition.
- There is no basis to assume any further documents are available to be disclosed by the Chief Executive in relation to the relativity properties.
- The documents in question may be commercially sensitive provided under s.35A of the *Valuation of Land Act 1944*.
- Particulars provide a focus for disclosure. One comes before the other. Outstanding particulars should be provided by the appellants before the respondent is required to further disclose.

Consideration of Issue and Conclusion

- [7] The current law governing disclosure was detailed in the decision of 16 July 2004 on the current matters. (See paragraphs [39] to [43]) Essentially disclosure has to relate to material directly relevant to an issue in the proceedings. As there are no pleadings as such in valuation appeals, it is necessary to go to such aspects as the grounds of appeal and relevant provisions of the *Valuation of Land Act* to ascertain issues in contention. (See discussion on this aspect in decision of 16 July 2004, paragraph [44]) The fact that relativity was nominated in Grounds 14 and 16 of the appeal is an effective foundation for making it an issue.
- [8] Other matters that must be generally considered in arriving at a conclusion in this application are:
- Disclosure will normally follow provision of particulars, especially if there is doubt as to the level of disclosure required.
 - Granting of an order for disclosure is discretionary.
 - Relativity, while relevant, generally is relegated to a less prominent scale if sales or other methods of comparison are available.
- [9] Three specific arguments raised by the respondent should be mentioned at this stage. First, concern was expressed as to the confidential nature of certain material (presumably produced under a s.35A application) that could be revealed to the appellants in a disclosure. However, this could be conveniently addressed in an appropriate *Fielder Gillespie* order, as has been applied to other matters in the current cases.
- [10] Second, the fact that the appellants may not have presently fully complied with their obligations in production of particulars or disclosure is not critical to the present application - provided the disclosure now sought can properly be made on the information presently available to the respondent.
- [11] Third, while there is a presumption of correctness attaching to the applied valuation roll amounts for the Queensland properties nominated for relativity (in Schedule 1A), this presumption (s.33 *Valuation of Land Act*) can be rebutted. It is a deeming provision only. Thus, if evidence was discovered suggesting error in arriving at the applied figure, the latter could still be open to challenge.
- [12] Considering the application in light of the above, I am of the view that the appellants are entitled to disclosure, but in a limited form.
- [13] As regards to the interstate comparisons, Mr Bowie in his oral evidence (see Transcript p7 and p.10) only requests material in relation to these if in fact the Chief Executive has used them in some way to support the figures on the appeal lands. The Chief Executive should

then reveal whether he has used any of those interstate lands and, if so, disclose material relevant to their application.

[14] As regards the Queensland properties listed in Schedule 1A, if the appellants seek disclosure chiefly to demonstrate a different methodology used for some or all of them compared to the appeal lands, such would not found a disclosure order. However, if in a wider relativity argument to support their figure on the appeal lands, the appellants seek to go behind the applied relativity figures to show how they were arrived at, disclosure would be justified. This wider intent is implicit in evidence and submissions. The worth of comparing applied figures, (which may be deemed correct), is increased by providing the evidence forming the basis of such figures. Otherwise, the Chief Executive may well be able to disown such figures, arguing they were based on invalid evidence and lead new evidence to support such a claim.

[15] A third scenario would be for the Chief Executive himself to indicate he intends to rely on such Queensland applied figures (in Schedule 1A). If he does, he should disclose the background material on which such figures were arrived at.

[16] The disclosure obviously cannot turn into a "fishing" exercise where there is no sufficient definition of what material is sought. Counsel for the respondent suggested that, if a disclosure order were to be made, further submissions as to the form of order should be made by the parties. Such seems an appropriate course.

[17] I thus seek submissions as to the form of order based on the parameters outlined above.

BR O'CONNOR
JUDICIAL REGISTRAR OF THE LAND COURT