IN THE REVENUE COURT

APPEAL NO: 7 OF 1996

(CONSOLIDATED WITH NOS. 5, 6, 8, & 9)

BETWEEN	**WILLIAM RICHARDSON**	**APPELLANTS**
A N D	**DORRIS RICHARDSON & ORS**	
A N D	**COMMISSIONER OF LAND VALUATION**	**RESPONDENT**

Hilary Phillips Q.C, Leighton Pusey and Kipcho West for the Appellants.

Barbara Lee for the Respondent

Heard on the 28th and 30th days of April, and the 3rd and 6th days of May, 1999, in CHAMBERS.

Coram: Courtenay Orr J.

This is a summons by the appellants for leave to amend the grounds of appeal herein.

The notice and grounds of appeal were filed and served on the Respondent as far back as 19th July, 1996.

The appeal arises out of decision by the Respondent on 25th April 1996, in which she dismissed the objections by the Appellants to valuations placed on their respective properties, which are all part of a housing scheme known as Woodlands Court, on Shortwood Road in St Andrew.

Woodlands Court, like many other townhouse schemes consists of a number of townhouses, and common areas which contains roads, sewage works, and other amenities which support the townhouses. Each owner has a registered title which in the instant case indicates that the holder thereof has a fee simple in either 1320 square feet of land or 1508 square feet of land, plus 1/29th undivided share in the common areas. In the instant case the common areas are made up of some lots 4 of land.

The hearing began as far back as 29th October 1997. Since then the case continued with some 21 further days of evidence by various experts, and the Respondent herself gave evidence. Each side has closed its case.

The matter was adjourned on 9th April last for the parties to make written submissions.

When the time for the Respondent to have done so had almost expired, the Appellants filed this notice seeking leave to amend their grounds of appeal.

The provision governing this exercise is found in Rule 6 (a) of the Revenue Court Rules 1972. Rule 6 states in part:

> "6. A Notice of Appeal may be amended:
>
> (a) without leave....
>
> (b) at any time by leave of the Court or Judge."

The grounds of appeal read as follows:

> "1. That the value assessed by the Commissioner of Land Valuation for the unimproved value of land situate at Lot 27, 61 Shortwood Road, Kingston 8, in the parish of St Andrew and registered at Volume 1177 Folio 664 of the Register Book of Titles, as at 1st April 1992, is unreasonable and excessive.
>
> 2. That the Respondent erred in law and on fact when she decided that the unimproved value of the land situate at Lot 27, 61 Shortwood Road, Kingston 8 in the parish of St Andrew and registered at Volume 1177 Folio 664, having an area of 1,320 square feet, was Three Hundred and Fifty Thousand Dollars ($350,000) and not One Hundred and Twenty Six Thousand, Five Hundred Dollars ($126,500).
>
> 3. That the Respondent erredin law in that she used irrelevant considerations to arrive at the valuation of the unimproved value, for the purposes of the Land Valuation Act, of the premises at Lot 27, of 61 Shortwood Road in the parish of St Andrew.

The Appellants aver that a comparison of Woodlands Court with other similar properties suggest that the valuation of Woodlands Court is too high.

The Respondent rejects this contentioon and states at paragraph 2(d) of the Statement of Case that:

> (d) "in considering the Appellants' objection, the Respondent took into account, inter alia, the roadworks, telecommunication systems and other amenities surrounding the subject lot; and the value of other multiple residential lots copmparable to the subject lot in size and geographic location. The Respondent was mindful too, of the second proviso to the definition of "unimproved value" in Section 2 of the Land Valuation Act; and after applying all the established rules and principles of making valuations, not only of land generally, but in particular, of multiple residential lots, disallowed the Appellant's objection and confirmed the valuation made.

In their reply the Appellants deny the Respondent's contention and state:

> "...that the Respondent erred in that it considered, inter alia amenities which are part of the common area owned by the Appellants and other proprietors in the same housing scheme. These amenities were established by the Appellants and other proprietors of the scheme and are continuously maintained by them. The Appellants aver that any such amenities are improvements to land owned by the Appellants and therefore ought not to be a factor taken into account when assessing the "unimproved value" of the subject land and/or considering the Appellants Notice of Objection".

They now seek at this eleventh hour to amend the grounds of appeal by adding the following grounds:

> "That the Respondent erred in fact and law in that lands which should be included in a single valuation, namely townhouse lots of 1320 sq. ft. and a 1/29th undivided share of the common area, have been valued separately."

This proposed ground is based on Section 20(b) of the Land Valuation Act. Section 20 reads so far as is relevant reads as follows:

> "20. Any person who is dissatisfied with a valuation made under this Act may, within sixty days after service of notice of valuation, post or lodge with the Commissioner an objection in writing against the valuation stating the grounds upon which he relies: such objection shall be in the prescribed form and shall be limited to one or more of the following grounds:
>
> (a) that the values assessed are too high or too low;
>
> (b) that lands which should be included in one valuation have been valued separately;
>
> (c) .....
>
> (d) ....."

Mrs Lee for the Respondent objects to the amendment and submits that this ground was never canvassed. She points to the fact that Mrs Stair, the Respondent expessly stated in her affidavit that she valued the common areas separately, and repeated this in oral evidence.

Moreover in her affidavit in opposition she states that:

> "There are at least (13) instances to be found in the range of documents filed in this matter, in which the specific square footage of the parcels of land which were valued was acknowledged and referred to not only by the Respondent but by the Appellants as well."

Miss Phillips submits that the Appellants did not believe that the lands were valued separately until the new notices Exhibit 11 were produced near the end of the hearing.

She also argues that the thrust of her cross examination was that to value the common areas separately was wrong.

The Respondent, in her affidavit of 24th February 1997, set out the method used in valuing Woodlands Court and sought to refute the

comparisons given by the appellants by submitting her own analysis of other lots.

In that affidavit she made a statement which had a particular relevance to this application. In paragraph 6 she said:

> "In accordance with the mandate contained in Section 6 of the Land Valuation Act I make valuations of the unimproved and improved value of every parcel of land; and in the matters herein, the relevant valuation is the unimproved value. Accordingly I made valuations of the unimproved value of every parcel of land in Woodlands Court.This means that parcels which exist as common areas were valued separately from parcels on which townhouses stand; the former parcels being assessed at a nominal value".
> (latter emphasis mine)

In her counter affidavit dated 30th May 1997 she states in paragraph 5:

> "The building of access roadways ; the provision of water or sewage disposal systems are features which must be in place before a parcel of land known as a townhouse lot comes into existence. Until such features have been put into place the parcel of land of which I am required to find the unimproved value, does not exist; it has not been created. That is what makes the costs of crearting the parcel of land relevant. It must be understood that roadways, sewage lines, parking lots and such works are not considered to be improvements on the individual parcels of land which are to be valued. They are contained in a separate parcel of land which has its own separate valuation number and in fact, is separately assessed."

The Appellants filed affidavits by Euriel Maitland, a real estate valuer and Dean Burrows, a quantity surveyor and building economist. Both of these gentlemen were also cross-examined. None of them either in their affidavits or in their oral evidence criticised the Respondent's method of valuing the common areas separately from the individual townhouse lots on which dwellings stand.

In re-examination Mr Pitter referred to this practice as being the normal method of valuing townhouse lots. No application was made to cross-examine him on this point. During the cross-examination of Mrs Stair, the Respondent, she again stated that the common areas were valued separately

and given a separate valuation number. The certificate of valuation was produced and she admitted that there were a good number of errors on it. For instance the square footage was wrong and the notice named persons other than the owners of the townhouses in Woodland Court.

Some time later in re-examination she indicated that amended notices had been served on the proper parties. This was tendered in evidence as Exhibit 11.

In spite of all this when Mrs Stair left the witness box it had never been explicitly suggested to her that she had included in a single valuation, lots which should have been valued separately. The nearest approach to this was the following question on 8th April 1999, in cross-examination by Miss Phillips:

> "Q. It would have been far more in keeping with the Land Valuation Act if you had considered the parcel of land being valued by you under the Land Valuation Act as the parcel that is contained in the Certificate of Title of each lot holder 1508 or 1320 square feet plus 1/29th share?"

Many cases were cited in argument.

Miss Phillips' position is exemplified on the classic statement by Brett M.R. in Clarapede and Company v Commercial Union Association (1883) 32 WR_ 262 at 263.

> " the rule of conduct of the court in (an application for amendment of pleadings) is that however negligent or careless may have been the first omission and however late the proposed amendment, the amendment should be allowed if it can be made without injustice to the other side. There is no injustice if the other side can be compensated by costs; but if the amendment would put them in such a position so that they must be injured, it ought not to be made."

Mrs Lee cited many cases in which the court had refused amendments, particularly when the applications were at a similar stage in the trial. She argued that the issues were clear; there was nothing that was needed to be clarified which would make the amendment necessary.

Miss Phillips, on the other hand, disputed this, and urged the court to allow the amendment especially in view of he fact that it was agreed on all sides that this case was the first in which the valuation of a townhouse lot was

being challenged in the court, and therefore a definitive ruling would be in the interest not only of the parties but many other citizens.

It is trite law that amendments at a late stage in the proceedings are not usually given unless there is a very good reason for doing so.

The various cases cited are merely a guide. The court must exercise its discretion in each case. I share with Lord Griffiths the view he expressed in Ketteman v Hansel Properties [1988] 1 All ER 38 that

> "we can no longer afford to show the same indulgence towards the negligent conduct of litigation as was perhaps possible in a more leisured age."

Should leave be granted? I wish to point to two considerations. Firstly the nature of the amendment. It adds an entirely new ground, but to any mind it embraces the evidence already led. Further the court has power to grant or allow an amendment after the expiry of any relevant period of limitation notwithstanding that the effect of the amendment will be to add or substitute a new cause of action provided that the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the action by the party applying for leave to make the amendment. Collins v. Herts C.C. [1947] K.B. 598:

The decisions in two other cases are instructive.

Brickfield Properties Ltd. v. Newton [1971] 3 All E.R328C.A.

An allegation of negligence against an architect in the design of a building arises out of the same or substantially the same facts as an allegation of negligence against him in the supervision of the building and will be allowed after the expiry of the current period of limitation, even though it may thereby be adding a new cause of action.

The "Casper Trader [1991] 2 Lloyd's Rep. 237.

In an action for breach written contract to modify a ship's engines and fuel system, in the face of a defence that the alleged breach was snot covered by the written term, the Court of Appeal dismissed an appeal to allow the plaintiff to amend to add an allegation of breach of a duty of care in the design and the carrying out of the modifications either in contract or in tort, but allowed an appeal and gave leave to amend to add an allegation of breach of an implied contractual term that the modifications would be reasonably fit for their purpose. The Court held that all these allegations were new causes

of action, but only in respect of the last was it satisfied that there was little or no prejudice to the defendant and that it was just to do so.

Secondly: The timing of the amendment. Though it is late, I do not think the Respondent will be prejudiced thereby.

I will therefore grant this application. In doing so I adopt the word of Sellers J. as he then was, in Loufti v Czarnikow Ltd [1952] 2 All ER 823, at 824.

> "Not without some doubt looking at the matter which now has to be decided and contemplating that may have to be considered by other courts in the future, I feel it is undesirable that it should go forward for further consideration without this matter being open."

In view of the lateness of this application, I award costs of this application and any adjournment necessitated by this amendment to the Respondent to be taxed if not agreed.