

Carter Holt Harvey Forests Ltd v Rodney District Council & Ors - Ruling as to costs [2003] NZLVT 9 (2 December 2003)

BEFORE THE AUCKLAND

LAND VALUATION TRIBUNAL LVP No. 003/01

IN THE MATTER OF The Rating Valuations Act 1998

AND

IN THE MATTER OF An Objection to Rating Valuation Assessment 30900/18302

BETWEEN CARTER HOLT HARVEY FORESTS LIMITED

Objector

AND RODNEY DISTRICT COUNCIL

First Respondent

AND LAND INFORMATION NEW ZEALAND

Second Respondent

Before the Auckland Land Valuation Tribunal:

Chair: His Honour Judge J D Hole

Members: P J Mahoney Esq

J W Charters Esq

Counsel: Mr G P Curry & Mr S L Cogan for the Objector

Mr C Mitchell for the First Respondent

Mr M T Parker for the Second Respondent

Date of Ruling: 2 December 2003

RULING OF THE TRIBUNAL AS TO COSTS

Introduction.

1. In broad terms, the result of the decision of 18 September 2003 was:
 - LINZ succeeded on its assessment of the freehold equivalent value; but
 - CHHF succeeded in having the freehold equivalent value reduced by the application of deductions because the land was subject to the Crown Forests Assets regime.
2. The proceedings before the Tribunal were in the nature of a test case. In particular both parties had differing views on what sort of deductions were appropriate where land was subject to the Crown Forest Assets regime and where land not in forestry was being valued for forestry purposes. The latter issue depended on evidence as to the relevant

freehold equivalent value. As there was evidence of the sale of land very similar to the Riverhead Forest available to the Tribunal, the latter issue was not determined.

3. LINZ seeks costs. CHHF considers that costs should lie where they fall.

Incidence of costs.

4. If the facts of this case had enabled the Tribunal to determine both issues, then probably costs would have lain where they fell. It was in each parties' interest to have the issues determined and the usual rule that costs follow the event would have been superseded by the application of s. 37 Land Valuation Proceedings Act 1948.

5. However, ultimately the case did not resolve both principles. Instead it was determined on its facts and, in particular, on the valuation evidence adduced. The end result was one which was very much in favour of LINZ. Overall, then LINZ won; although failed on an issue of principle.

6. In these circumstances costs should follow the event

Quantum.

7. LINZ seeks solicitor's costs and witness fees amounting to 70% of total charged. This would normally be regarded as being at the higher end of what is normal. The actual relevant valuation material, upon which the decision was based, was not particularly difficult.

8. However, the failure of CHHF in its preparation to consider the ramifications of the Whitford forest sale must be taken into account. The reasons for this failure are irrelevant. The result was that the Tribunal was obliged to hear a considerable amount of quite complex evidence which was unnecessary to the decision. Further, LINZ had to call similar evidence to cover the points raised. A significant amount of time was spent on this rather fruitless exercise. This has resulted in considerable costs being incurred by LINZ for which it is entitled to some compensation.

9. On the other side of the ledger is the fact that LINZ did not succeed on the on the deductions applicable to the Crown Forest Assets regime. The Tribunal gained the distinct impression that this was an important part of LINZ's case. The total award of costs should be reduced to take this matter into account.

10. Accordingly, costs are awarded in favour of LINZ against CHHF as follows:

- Solicitors' costs \$14,000.00
- Disbursements \$7,474.26
- Witness Fees \$50,000.00
- Witness Expenses \$13,679.89
- Total \$85,154.15

1. **Judge J D Hole**

(Chairman)