LAND COURT OF QUEENSLAND

CITATION:	*McDowall Village Shopping Centre Pty Ltd as Trustee v Commissioner of Land Tax* [2009] QLC 1
PARTIES:	McDowall Village Shopping Centre Pty Ltd as Trustee (appellant) v. Commissioner of Land Tax (respondent)
FILE NO:	A2007/0831
DIVISION:	Land Court, General Division
PROCEEDING:	Appeal against land tax assessment
DELIVERED ON:	15 January 2009
DELIVERED AT:	Brisbane
HEARD AT:	Brisbane
MEMBER:	Mrs CAC MacDonald, President
ORDER:	**The appeal is dismissed**
CATCHWORDS:	Land Tax – Liability for land tax – Partial resumption of appellant's land – Issue of new certificate of title for balance land – Whether averaged unimproved value to be calculated under s.3AA(1)(a) or s.3AA(1)(b) of the Act – *Land Tax Act 1915*; *Valuation of Land Act 1944*
APPEARANCES:	Mr J Shaw, Solicitor, for the appellant Mr DW Marks of Counsel, for the respondent
SOLICITORS:	Blake Dawson for the appellant Mr C Lohe, Crown Solicitor, for the respondent

Background

[1] Pursuant to the provisions of the *Land Tax Act 1915* (the Act), McDowall Village Shopping Centre Pty Ltd (the appellant) has appealed against an assessment of land tax

issued by the Commissioner of Land Tax (the respondent) in respect of land owned by the appellant which is situated at 109 Becketts Road, McDowall and used as a drive-in shopping centre. The assessment was for the financial year from 1 July 2007 to 30 June 2008 and levied land tax in respect of land owned at midnight on 30 June 2007.

[2] The relevant facts are not in dispute. Prior to 8 December 2006, the appellant's land was described as Lot 103 on RP 910532 and contained an area of 1.891 hectares. On 8 December 2006, 140 m² of land was resumed from Lot 103 on RP 910532. Consequently, a new Certificate of Title issued to the appellant for the balance land of 1.877 hectares, described as Lot 103 on SP 193334. The land identified in the Notice of Assessment is Lot 103 on SP 193334.

[3] As explained in more detail below, the land tax assessment that issued in respect of the "new land" (Lot 103 on SP 193334) was calculated using an "averaged unimproved value" under s.3AA(1)(b) of the Act. The appellant contended that the respondent was in error in applying the averaged unimproved value under s.3AA(1)(b) and that the correct provision to be applied was s.3AA(1)(a).

Relevant statutory provisions

[4] Section 8 of the *Land Tax Act* provides that land tax shall be levied and paid upon the relevant unimproved value of all lands within Queensland which are owned by tax payers and which are not exempt from taxation under the Act.

[5] The term "relevant unimproved value" of land, is defined in s.3 to mean the lesser of the following -

> "(a) the unimproved value of land that applies for the financial year;
>
> (b) the averaged unimproved value of the land for the financial year."

[6] Section 3C(2) provides that in relation to improved land, "unimproved value" means 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, at the time at which the value is required to be ascertained for the purposes of the Act, the improvements did not exist.

[7] Section 3AA(1) provides

> "**3AA Meaning of *averaged* unimproved value**
>
> (1) The averaged unimproved value, of land, for a financial year, is –
>
> (a) if, in addition to the land having an unimproved value that applies for the financial year, the land had unimproved values that applied for each of the previous 2 financial years – the amount calculated as the average of the 3 unimproved values; or

> (b) in any other case – an amount equal to the unimproved value of the land that applies for the financial year multiplied by the averaging factor for the financial year."

Section 3AA(2) goes on to provide a formula whereby the averaging factor referred to in s.3AA(1)(b) may be calculated.

[8] Where s.3AA(1)(a) applies, the averaged unimproved value is calculated by averaging the unimproved values of the subject land over three years. Where s.3AA(1)(b) applies, the averaging factor is calculated by dividing the total of the unimproved values for all land valued under the *Valuation of Land Act 1944* over three years by the total of the unimproved values of such land for the financial year multiplied by 3. The factor applied in this matter was .89.

[9] It can be seen that s.3AA is an averaging provision which, it appears, was designed to confer a benefit on the taxpayer. Mr Shaw, for the appellant, said that the intention of parliament in enacting the averaging clause was to allow land-holders to better plan a budget for their land tax liability from year to year[1] and to alleviate the effect of sharp land value increases upon land tax liability by averaging land values over a three year period.[2]

The issues

[10] As mentioned above, the respondent applied s.3AA(1)(b) to determine the averaged unimproved value for Lot 103 on SP 193334 and since that value was less than the unimproved value of that land for the relevant financial year, land tax was assessed on that averaged unimproved value. Counsel for the respondent, Mr Marks, contended that the land owned by the appellant as at 30 June 2007 was not land which had an unimproved value that applied for each of the previous two financial years because the new land had different metes and bounds, was the subject of a new title issued in consequence of the subdivision and had a new lot on plan description. Land with other metes and bounds, the subject of a different title and with a different property description had unimproved values that applied for each of the previous two financial years. Accordingly, Mr Marks submitted, the respondent had correctly applied the averaging provision under s.3AA(1)(b).

[11] The appellant submitted that the critical issue concerned the meaning of the word "land" in the Act and whether valuations carried out on a piece of land in previous financial years could be considered under s.3AA(1)(a) despite the fact that there had been a change in the real property description of the land. The land owned by the appellant as at 30 June

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1 Appellant's Outline of Submissions (AOS) [21], citing Queensland, Parliamentary Debates, Legislative Assembly, 13 November 1996, 3989 – 3990.

2 AOS [21], citing Explanatory Memorandum, *Revenue Lands Amendment Bill (No 2)* 1996 (Qld) 2 – 3.

2007 was, for all practical purposes, the same land as that which was owned by the appellant for the previous two financial years and therefore the averaging provision under s.3AA(1)(a) should have been applied by the respondent.

[12] In support of his primary submission, Mr Shaw said that -

- Because the term land is not defined in the Act[3] there was no reason to take the view that the word "land" in the Act referred to the real property description of the land. Rather, the term should be construed according to its ordinary and popular meaning.
- In this case, despite the change in the real property description, the land was the same in a practical sense because the resumed area represented an insignificant portion of land (approximately .74% of the total area), the address of the land had not changed as a result of the resumption, the existing town planning approvals in relation to the land had not changed and the land was able to be used and is being used for the same purposes.
- The stated purpose of the *Land Tax Act* is the imposition of a land tax upon relevant unimproved values. The Act is, accordingly, concerned with taxing the value of the land not the land itself and, therefore, the word "land" in the Act should be read as referring to land in a valuation sense rather than to land as defined by its real property description.
- To interpret the word "land" as referring to its real property description could lead to absurdity because if the area of the land were reduced by 1 cm^2 and the real property description changed, then the land would not be considered to be the same land for valuation purposes, even though there had been no change in the value of the land.
- The appellant's land was able to be characterised as the same land for valuation purposes as evidenced by an affidavit of Mr AJ Matson, a registered valuer, who deposed that, in his opinion, the unimproved capital value of the land had not changed as a result of the resumption.
- The authorities draw a distinction between the juridical concept of terms such as property or real property and the tangible asset that is the subject of the property right (*Sterling Guardian Pty Ltd v Commissioner of Taxation*[4]). In this case the question to be answered is whether the juridical concept or valuation identity test applies.

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[3] Section 36 of the *Acts Interpretation Act 1954* provides that "land" includes messuages, tenements, and hereditaments, corporeal or incorporeal, of any tenure or description, and whatever may be the interest in the land. The definition is not of assistance in determining the issue in this matter.

[4] (2005) 220 ALR 550 at [35]).

- In *Sterling Guardian*, Stone J said that to determine which interpretation should apply it is necessary to consider the legislature's purpose in enacting the relevant legislation.[5] Section 14A(1) of the *Acts Interpretation Act 1954* also provides that in the interpretation of a provision of an Act, the interpretation that will best achieve the purpose of the Act is to be preferred to any other interpretation.
- The purpose of the relevant provisions in the *Land Tax Act* is to provide for averaging either on a case by case basis where applicable or using the State-wide average. Where the land can be valued as the same land or as if it is the same land, then the case by case basis is available.

Conclusions

[13] It is clear from the *Sterling Guardian* case and other authorities cited by the parties that in determining whether or not the juridical concept or another interpretation is to be applied to concepts such as land or property, the primary role of the Court is to interpret the words of the relevant statute.[6] A statutory provision is not to be interpreted in isolation but is to be considered in the context within which it sits (*CIC Insurance Ltd v Bankstown Football Club Ltd* (1995) 187 CLR 387 at 408).

[14] Section 3AA(1)(a) applies where, in addition to the land having an unimproved value that applied for the financial year in question, the land had unimproved values that applied for each of the previous two financial years. The question to be determined, therefore, is whether Lot 103 on SP 193334 had unimproved values for each of the 2 financial years preceding the year under assessment.

[15] Section 3C(2) provides that unimproved value means the capital sum which the fee simple of the land might be expected to realise if sold under the appropriate conditions. I consider that the use of the term "fee simple" in s.3C(2) indicates that it is the estate in the land which is to be valued for the purposes of the application of the *Land Tax Act*. In *Harry v The Valuer-General*[7] the Court was dealing with s.5(1) of the *Valuation of Land Act 1971* (SA) which defined "unimproved value" of land as "the capital amount that the unencumbered estate of fee simple in the land might reasonably be expected to realise upon sale …". Wells J said[8]

> "One starts with this: that what is to be valued is not the inanimate, tangible thing, land, but rights in land. The Act directs the Valuer-General to value an estate in fee simple in the land, but the purpose of a direction in that esoteric form is, in my view, to ensure that what the Valuer-General values is a congeries of the most ample proprietary rights recognized by law "projected along the plane of time"…

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5 At [33].

6 At [35]. See also *Sportscorp Australia Pty Ltd v Commissioner of State Revenue* (2004) 213 ALR 795 and *Brady King Pty Ltd v Commissioner of Taxation* [2008] FCAFC 118.

7 (1975) 12 SASR 446.

8 At 454.

[16] In my opinion, the same reasoning should be applied in this matter. What is to be valued is not the "inanimate tangible thing, land", but "rights in land" because s.3C(2) requires that the unimproved value of the fee simple is to be determined. Put another way, I consider that in interpreting the word "land" in s.3AA the juridical concept is to be applied because s.3C requires that the unimproved value of the fee simple in the land is to be determined.

[17] The unimproved values of land used for levying land tax are those determined by the Chief Executive under the provisions of the *Valuation of Land Act 1944*.[9] Section 37 of that Act requires the Chief Executive to make annually a valuation in an area, with certain specified exceptions, and s.13 requires the Chief Executive to decide the unimproved value of the land to be valued for the Acts under which local authorities are established.

[18] In *Harry v The Valuer-General*, Wells J said[10] that the definition of unimproved value in the South Australian legislation[11] coupled with the section that imposes the duty to value[12] -

> "… assumes that there is already in existence an identifiable *res* – "land" or "the land" – that is to be the subject matter of the valuation. The identification of the land, by location, metes and bounds, is treated by the definition as given; the statutory duty to attribute an unimproved value only arises where the land is finally and unequivocally so identified. Ordinarily, of course, there is no uncertainty; the land to be valued is there; it is the whole of the land comprised in a certificate of title, a land grant, or a description of land (most probably incorporating a plan) contained in a common law conveyance of unregistered land."

[19] Although there is some difference in the language of the relevant provisions of the Queensland and South Australian *Valuation of Land* Acts, I do not consider that the differences are such as to affect the application of the principle articulated by Wells J. As with s5.(1) of the South Australian Act, the definition of "unimproved value" in s.3C(2) of the Act assumes that there is in existence identifiable land that is to be the subject of the valuation. The statutory duty to attribute an unimproved value only arises where the land is finally and unequivocally identified. What is to be valued is the whole of the land comprised in a certificate of title.

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9 Section 72(1)(a) of the *Valuation of Land Act 1944* provides that the valuation (other than a valuation for rental purposes) of any land made under that Act shall be the unimproved value of that land for the purposes of the *Land Tax Act 1915*.

10 (1975) 12 SASR 446 at 452, 453.

11 Section 5(1) of the *Valuation of Land Act 1971* (SA) defines "unimproved value" of land as "the capital amount that the unencumbered estate of fee simple might reasonably be expected to realise upon sale …"

12 As quoted by Wells J, s.11(1) and (2) of the *Valuation of Land Act 1971* (SA) provides:

11(1) The Valuer-General shall, as soon as practicable after the commencement of this Act, make or cause to be made a general valuation within each area of the State.

(2) For the purposes of each such general valuation, the Valuer-General shall determine or cause to be determined, with respect to all land subject to the general valuation, the annual value, the capital value, the site value and the unimproved value thereof so far as those values are required by a rating or taxing authority for the purpose of levying or imposing any rate, tax or impost."

[20] The result is that I consider that the word "land" in s.3AA(1)(a) of the Act is to be interpreted as referring to the whole of the land contained in a certificate of title. It follows that s.3AA(1)(a) is not applicable in the circumstances of this case because the land described as Lot 103 on SP 193334 as at 30 June 2007 was not the whole of the land described as Lot 103 on RP 910532 to which unimproved values were applied for each of the previous two financial years.

[21] It is acknowledged that the facts in this case have lead to an anomalous result for the taxpayer. The resumption of the small portion of land, which was an event outside the control of the appellant, has increased its land tax liability by approximately $30,000 - $40,000 for 1 year and $60,000 to $80,000 over 3 years according to Mr Shaw's estimate. While it is clear that s.3AA is intended to provide a beneficial outcome to a taxpayer during periods when land values are rising, subs(1)(a) and (1)(b) provide for different methods of calculating the applicable concession. There is no discernable legislative intention that the taxpayer has a choice as to which methodology is to be applied in any given case. Rather, the decision as to the appropriate methodology to be applied is determined by the wording used in each subparagraph.

Order

The appeal is dismissed.

CAC MacDONALD
PRESIDENT OF THE LAND COURT