LAND COURT OF QUEENSLAND

CITATION:	*Nucifora v Valuer-General* [2013] QLC 19
PARTIES:	Salvatore Nucifora & Albina Nucifora (Appellants) v Valuer-General (Respondent)
FILE NO:	LVA312-11
DIVISION:	General Division
PROCEEDINGS:	An Appeal against valuation under the *Land Valuation Act*
DELIVERED ON:	6 May 2013
DELIVERED AT:	Cairns
HEARD AT:	Cairns
MEMBER:	His Honour, Mr WL Cochrane
ORDERS:	**1. The appeal is dismissed.**
CATCHWORDS:	Statutory valuation — *Land Valuation Act* 2010 - unimproved value – improved land – farming land - presumption of correctness – evidentiary onus. *Pajares v State of Queensland* [2003] QLC 0044 *Lawson v Valuer-General* [2012] QLC 0027
APPEARANCES:	Mr S Nucifora, in person for the appellants. Mr GJ Smith, for the respondent.

Background

[1] This is the decision in an appeal against the valuation of the Valuer-General in respect of land located at 410 Walter Lever Estate Road via Silkwood in the Cassowary Coast Regional Council area of far north Queensland.

[2] The land is otherwise described as Lots 7 and 8 on RP 704848, Lots 2 and 3 on SP 132056 in the Parish of Japoon and Lots 1 and 2 on RP 714693 in the Parish of Mourilyan and has an area of 91.5809 hectares. The land was valued on 1 October 2010 with a date of effect from 30 June 2011.

[3] The original valuation valued the land at $300,000 but on 9 August 2011 the Valuer-General notified the Nucifora's that as a consequence of an objection against valuation the objection had been allowed and the valuation had been altered to $285,000 on the basis that when compared to similar properties the delegate decided a reduction in the valuation should be made.

[4] It is against that amended valuation which Mr and Mrs Nucifora bring this appeal.

[5] Mr and Mrs Nucifora set out the grounds of appeal in the following terms:

> "Property is situated in super wet tropic between Tully and Babinda. From 1950 land was improved by substantial underground drainage to become sustainable under modern farming practices. These underground drains are beginning to fail and to continue farming cane need to be replaced at a cost of approximately (of) $100,000.
>
> Cane production over the past 10 years has dropped substantially caused by excessive wet years and two category 5 cyclones in 5 years evidenced by production figures supplied rendering the property unsustainable for cane.
>
> We believe weather change to be the cause of abnormally wet years accompanied by cyclonic events. Category 5 cyclones have the effect of substantially reducing production from 3 to 4 years as evidenced by production figures supplied. In 2010 production was returning to normal but 2010 being a super wet year ending in Yasi 2/2/2011 damaging further damaged crop, destroying totally all sheds and also badly damaging farm machinery. Farming without sheds comes to a standstill until rebuilt. The super wet of 2010-2011 and cyclone Yasi has reduced cane crop to less than 82000 tonnes.
>
> Due to changing weather patterns cane farming is no longer viable on this property. We are supplying production figures substantiating our claim."

[6] The appellant's contend in their notice of appeal that the valuation of the land should be at a figure of $150,000.

The Subject Land

[7] The valuer called by the respondent, to whose evidence I will refer below, has provided an apt description of the situation and access to the land. He said this[1]

> "The subject property is situated approximately 35.5 kilometres south of Innisfail by road and approximately 36 kilometres north of Tully. The closest urban settlement in the area is Silkwood which is located approximately 3.85 kilometres south east of the subject on the southern side of Liverpool Creek. Access is by means of Walter Lever Estate Road, which is bitumen sealed with grass shoulders. The formed gravel Gullotta and Cuthill Roads, provide access to the rear of the property. Telephone and electricity are connected to the subject."

[8] As to the nature of the land Mr Roberts[2] described the land this way:

> "The subject property is an irregular shaped aggregation of generally ex-coastal tropical rainforest country. Recent 2011 aerial photography indicates that approximately 79 hectares has been cleared and developed for cane land. The remaining 12.45 hectares comprises creeks, gully lines and timbered areas intersecting the arable area.

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1 Exhibit 3 p. 2.

2 *Ibid*.

> Approximately 85% of this parcel possesses arable potential and the soils vary from easy sloping clay loam to loamy clay to depressions. Soils on the property are predominantly first and second class arable represented by the Tully series with poorer schist soils on the foothill country."

[9] Pursuant to the Johnstone Shire Planning Scheme, gazetted on 16 May 2005, the subject land is zoned as Rural.

The Valuation Process

[10] This is one of the first decisions to be made pursuant to the provisions of the relatively recently enacted *Land Valuation Act* 2010.

[11] The *Land Valuation Act* 2010 made a number of significant changes to the valuation process which had previously been carried out pursuant to the *Valuation of Land Act* since 1944.

[12] The *LVA* retains the obligation upon the Valuer-General to carry out a valuation of all properties throughout Queensland for the purpose of rating, land tax and other associated purposes.

[13] The respondent is required to comply in its conduct with the requirements of the *LVA* when undertaking the various valuations required.

[14] The *LVA* has wrought a change to the valuations process insofar as under the *Valuation of Land Act* all valuations were of unimproved value while under the *LVA* valuations are broken into two categories namely non-rural land which would embrace residential, commercial and industrial land and rural land.

[15] Pursuant to the provisions of the *LVA*[3] the value of land to be valued by the respondent is, in the case of non-rural land, its site value which term is defined in the *Act* and for rural land, its unimproved valued.[4]

[16] The *LVA* also draws a distinction between the unimproved value of improved land (Chapter 2, Part 2, Subdivision 4) and the value of unimproved land (Chapter 2, Part 2, Subdivision 5).

[17] Section 26 of the *LVA* provides a meaning to the unimproved value of improved land in the following terms:

> "**26 What is the unimproved value of improved land**
>
> (1) If land is improved, its unimproved value is its expected realisation under a bona fide sale assuming all site improvements and non-site improvements on the land had not been made.
>
> (2) However, the land's unimproved value is affected by any other relevant provisions of this chapter."

[18] Similarly, s.29 provides a meaning for the value of unimproved land in the following terms:

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3 Part 2, Division 1 s.7.

4 See the discussion of the valuation process by His Honour Mr Smith in *Lawson v Valuer-General* [2012] QLC 0027.

"**29 What is the site value and unimproved value of unimproved land**

If land is unimproved, both its site value and its unimproved value are its expected realisation under a bona fide sale."

[19] The Dictionary in the Schedule 2 the *LVA* defines "unimproved" in the following terms:

"***unimproved***, for land, means land in its natural state."

[20] Section 23 of the *LVA* provides a meaning to "site improvements" and identifies at s.23(1) identifies what site improvements are. That section provides:

"**23 What are site improvements**

(1) Site improvements, to land, means any of the following done to the land—

(a) clearing vegetation on the land;

(b) picking up and removing stones;

(c) improving soil fertility or soil structure;

(d) if the land was contaminated land as defined under the *Environmental Protection Act* 1994—works to manage or remedy the contamination;

(e) restoring, rehabilitating or improving its surface by filling, grading or levelling, not being irrigation or conservation works;

(f) reclamation by draining or filling, including retaining walls and other works for the reclamation;

(g) underground drainage;

(h) any other works done to the land necessary to improve or prepare it for development.

(2) However, a thing done as mentioned in subsection (1)—

(a) is a site improvement only to the extent it increases the land's value; and

(b) ceases to be a site improvement if the benefit was exhausted on the valuation day."

[21] As is clear from the terms set out in the grounds of appeal this rural property is improved not least by underground drainage which was installed since 1950.

[22] Accordingly, in the present case it seems to me that this valuation exercise is one which requires the determination of the unimproved value of improved land.

[23] In the *Lawson* decision footnoted above His Honour Mr Smith referred to a decision of His Honour Mr Isdale in *Steers v Valuer-General* where His Honour was obliged to consider the valuation of rural land pursuant to the *LVA*.

[24] His Honour Mr Isdale said:

[8] The use of sales to provide comparisons of value is well established. In *NR and PG Tow v Valuer-General* (1978) 5 QLCR 378, the Land Appeal Court constituted by Stable SPJ, Mr Smith and Mr Carter said at page 381:

> "Courts of the highest authority have laid down that the best test of value is to be found in the sales of comparable properties, preferably unimproved, on the open market round about the relevant date of valuation and between prudent and willing, but not over-anxious parties."

[9] This Court is required to follow the decisions of the Land Appeal Court and accordingly must prefer the evidence of comparable sales to the method contended for by the appellant, simply increasing a previous value by a factor of 10. Mr Steers did not explain why this particular multiplier and not some other one should be applied.

[25] His Honour Mr Smith in *Lawson* decision[5] also observed as follows:

> [14] I consider it remains a relevant feature under the LVA, to consider market value. As then President Trickett said in *Fairfax v. Department of Natural Resources and Mines*[6].
>
> > "[11] The principles for determination of the 'market value' of land were established by the High Court in *Spencer v The Commonwealth* (1907) 5 CLR 418. In that case, the High Court found that the value of land is determined by the price that a willing but not over-anxious buyer would pay to a willing but not over-anxious seller, both of whom are aware of all the circumstances which might affect the value of the land, either advantageously or prejudicially, including its situation, character, quality, proximity to conveniences or inconveniences, its surrounding facilities, the then present demand for land and the likelihood of a rise or fall in the value of a property. (See Griffith CJ at 432 and Isaacs J at 441).
> >
> > [12] It has been well established that the unimproved value of land is ascertained by reference to prices that have been paid for similar parcels of land in *Waterhouse v The Valuer-General* (1927) 8 LGR (NSW) 137 at 139, Pike J said that:
> >
> > > 'Land in my opinion differs in no way from any other commodity. It certainly is more difficult to ascertain the market value of it but-as with other commodities-the best way to ascertain the market value is by finding what lands comparable to the subject land were bringing in the market on the relevant date-and that is evidenced by sales."
>
> [15] Despite the legislative change, it is refreshing that the views expressed by the High Court in Spencer, now well over a century ago, remain just as current and relevant today as they did when they were first uttered. It is certainly my view, at least at this stage until other authorities may prove me wrong,[7] to continue to apply the Spencer test under the LVA."

[26] In addition to the changes with respect to the valuation process the regime established by the *Land Valuation Act* also brings a change in the evidentiary onus.

[27] Under s.3 of the *Valuation of Land Act* the valuation made by the Valuer-General was deemed to be correct until proved otherwise either upon objection or appeal.

[28] The *Land Valuation Act* does not retain that evidentiary onus but rather provides at s.169(3):

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5 *Ibid*.

6 [2005] QLC 11, at paragraphs 11 and 12.

7 Noting, of course, the provisions of s.18 of the *LVA.*

"However, the appellant has the onus of proof for each of the grounds of appeal.[8]

The only grounds of appeal which are able to be contemplated at a hearing are those grounds stated in the valuation appeal notice.

[29] Accordingly, the Nucifora's are limited to those matters which are recited above and extracted from their notice of appeal.

[30] Having regard to the onus of proof set out above and the grounds of appeal contended for by Mr and Mrs Nucifora they bear the onus of proving that the appropriate valuation is $150,000 and in addition they will need to demonstrate that due to changing weather patterns, cane farming or any other rural activity is no longer viable on their property.

The evidence of the Nucifora's

[31] Mr and Mrs Nucifora did not engage a valuer to provide a valuation report for them. Instead they relied upon a statement signed by both of them to which was attached

i. an article about Nitrous Oxide Emissions from Soils in Australian Sugarcane Production Systems;

ii. records of payments made by Bundaberg Sugar Limited from the South Johnstone Mill on 16 April, 14 May, 18 June 2011 and;

iii. other documentation.

[32] Included in the other documentation was some correspondence from Messrs Minter Ellison Lawyers on behalf of Bundaberg Sugar Limited referring to some threat by the Nucifora's to take action against Bundaberg Sugar Limited in respect of payments to them by that company.

[33] The Nucifora's statement also exhibited photographs showing damage wrought to the property by Cyclones Larry and Yasi.

[34] The statement from Mr and Mrs Nucifora with the attachments became Exhibit 2.

[35] Mr Nucifora gave oral evidence.

[36] In the course of his oral evidence Mr Nucifora referred to having previously raised very similar contentions in respect of the value of his land before the Land Court.

[37] It appears that he refers to a decision of the then President delivered on 29 May 2002[9].

[38] In the course of that decision the following appears:[10]

> "Mr S Nucifora appeared and gave evidence on behalf of the appellants. He explained that their challenge to the valuation was based on their opinion that for the last four years there had been a climate change, with erratic and dramatic changes in the weather. Instead of the usual wet season after December, the area had experienced excessive rainfall in an unseasonal and erratic manner from September to December, with eight inches falling in August two years ago. This unseasonal rain washed out plant cane and

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8 Section 169(3).

9 *Albina & Salavtore Nucifora v Chief Executive, Department of Natural Resources and Mines* (unreported), 29 May 2002.

10 Page 6.

> damaged growing cane. Mr Nucifora explained that their farm is regarded as a "wet farm", requiring extensive underground drainage. While they can cope with excessive rainfall during the usual wet season, it was the unseasonal and erratic rainfall that adversely impacted upon their production of sugarcane, as it fell during the planting and growing periods.
>
> According to Mr Nucifora, the property is becoming an unviable business, with losses over the past four years amounting to $40,000; they are preparing to cease cane production in the coming season. At the production figures achieved for the last four years, he was of the opinion that canegrowing was no longer a sustainable business. Although he expects a better tonnage this year, the price of cane is substantially down and he considers that it is uneconomic to plant cane under those conditions. In his view, the climate change is probably going to be permanent.
>
> If the property ceased to grow cane, Mr Nucifora said that the only alternative use would be to run cattle, or for agistment. While he conceded that part of the subject land would be suitable for growing bananas, he contended that bananas had reached saturation point in the district. He said it would be impossible for all canegrowers to convert to bananas; if the appellants did so, they would have to join the queue and find a market for their bananas."

[39] The tenor of the evidence given by Mr Nucifora in the present case very closely reflects what was so aptly summarised by the then President in the earlier decision.

[40] I note that Mr Nucifora's contentions back in 2002, as reflected in the judgment, were that he proposed to cease cane production in the coming season i.e. 2003. The material attached to his statement clearly illustrates that that cessation of production did not occur and Mr Nucifora continues to grow cane.

[41] The learned President concluded in the 2002 judgment that:

> "Mr Nucifora was convinced that there had been a dramatic climate change in the area, which had led to excessive and unseasonal rainfall which affected the production of sugarcane and had significantly reduced the value of the land. On the other hand, Mr Donnelly thought that weather patterns are cyclical and that there was no evidence of a permanent climatic change. While it was most unfortunate that there have been three bad years, on the evidence presented in this case, I must agree with Mr Donnelly, that it does not mean there has been permanent climate change."[11]

[42] Mr Nucifora spent some time taking me through what he said were the ramifications of the rainfall figures contained in Appendix 6 to the report of Mr Roberts, the valuer called by the respondent.[12]

[43] Mr Nucifora complained of the unseasonal heavy rain in October, November and December of the 2010 and 2011 growing seasons. Those heavy rainfall events coincided with cyclones.

[44] He went on to point to an article appended to his statement written by Thorburn Biggs and Probert[13]. That article raised the issue of the denitrification of land used for sugarcane production and a careful reading of the article reveals that it deals with measures which might

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11 Page 13.

12 Exhibit 3, Appendix 6, page 30 and 31.

13 Nitrous Oxide Emissions from Soils in Australian Sugarcane and Production Systems, Peter Thorburn, Jodie Briggs and Merv Probert, Nineteenth World Congress of World Science, Soil Solutions for a Changing World 1 – 6 August 2010 at Brisbane.

be adopted in an attempt to reduce nitrous oxide emissions from cane land by a range of measures including reduction of and changes in the pattern of administering nitrogen fertilisers to cane land.

[45] I do not regard the article as supporting the case advanced by Mr Nucifora.

[46] I accept that Mr Nucifora has been influenced by what is contained in the article and indeed I accept his evidence that he has been attempting to reduce nitrogen emissions from his soil.

[47] Mr Nucifora also tendered an extract from a publication prepared by the Bureau of Sugar Experiment Stations on an uncertain date dealing with SmartCane Plant Cane Establishment and Management.

[48] That document became exhibit 4 and contains a definition of "denitrification" and a very short explanation of processes which might result in loss of nitrogen from the soil and causing of potential environmental harm. Once again, however, the content of that document does not, in my view, advance the case raised by Mr Nucifora.

[49] Under cross-examination by Mr Smith for the respondent, Mr Nucifora conceded that back in 2001 he had asserted that he was going to go out of business but subsequently stayed in the cane farming industry and had some periods of very good production.

[50] He also conceded that having produced 3,330 tonnes of cane in 2001 and 3,127 tonnes in 2000 he managed to expand production to 5,000 tonnes in 2010 which he contends was a bad year.

[51] One of the matters which seemed to influence Mr Nucifora's views as to the viability of continuing to farm which emerged in cross-examination was the reduction in returns which he has suffered over the last couple of years.

[52] Mr Smith counsel for the respondent elicited from Mr Nucifora a concession that one of the problems that he suffered was a reduction in the CCS (which is a measure of the content of cane sugar in the cane as crushed) in respect of the 2010 season.

[53] Further cross-examination yielded information that to some extent that reduction may have been due to the age of the cane as well as to the variety of cane and the wet season.[14]

[54] Mr Nucifora also conceded that he had always had very productive cane throughout the last decade.[15]

[55] Mr Nucifora also conceded that his was not a stand-alone cane farm but rather was "in a sea of cane farms".[16] He conceded that there were numerous cane farms in and around his which were planting again.

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14 T1-34 – 36.
15 T1-36 L 12.
16 T1-37 L20.

[56] Mr Nucifora also explained[17] that his approach to the valuation exercise to reach his figure of $150,000 was "on the basis of its value to me".

[57] It also became clear in the course of cross-examination that the drainage system which had been put in place by Mr Nucifora over the years had been taken into account in what was referred to as the 2010 decision.[18]

[58] Despite Mr Nucifora's assertions about denitrification of his soil it became clear[19] that his assertions about denitrification after rainfall events were pure speculation or assumption not based upon the results of any soil testing or any other investigation.

[59] To be fair to Mr Nucifora he at no time to contended that the land was not productive agriculture land, rather, his focus was on the difficulties which he says he has experienced with the sugarcane yield achieved on the property.

The evidence of the respondent

[60] The respondent adduced evidence through a registered valuer Mr Roberts.

[61] Mr Roberts's written report became Exhibit 3.

[62] Mr Roberts identified his basis of valuation in the following terms:[20]

> "**Basis of Valuation**
>
> The Direct Comparison approach has been adopted and is considered the most appropriate method of valuation. In undertaking a valuation using the Direct Comparison approach the subject property has been compared to sales of similar primary production use.
>
> Primary production sales that occurred between October 2009 and January 2011 throughout the Cassowary Coast region are considered the most appropriate for comparison purposes and have been considered as primary evidence."

[63] Mr Roberts identified four sales which he contends are relevant to the valuation exercise.

[64] Sale 1 was a sale from Rameo to Singh of 186.041 hectares exclusive of road licences on 17 January 2011.

[65] The Rameo land is located at Stephens Road Goolboo and had a sale price of $2,000,000 which represented $10,400 per hectare on average.

[66] Mr Roberts acknowledged that sale was slightly after the date of valuation and observed that the property incorporates five freehold titles and is superior, in his opinion, in size to the subject land. Further, Mr Roberts observes "the property is considered to be superior to the subject overall though inferior on a rate per hectare basis."[21]

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17 T1-38 L6.
18 T1-39 L30.
19 T1-40 and 41.
20 Exhibit 3 p 3.
21 Exhibit 3, p 4.

[67] Mr Roberts analysed that sale and produced an applied value of $550,000 representing $2,956 per hectare.

[68] Sale 2 was a sale from Holdcroft to Walsh of 64.671 hectares on 24 March 2010.

[69] The Holdcroft land is located at Mourilyan Harbour Road, Mourilyan Harbour and had a sale price of $750,000 which represented $11,597 per hectare on average.

[70] Mr Roberts acknowledged that the sale land was inferior in size with just over 50% of the arable area available to the subject with inferior soil types and included a larger balance forested area of approximately 21 hectares on the hill slopes to the north of the property. Mr Roberts analysed that sale and produced an applied value of $197,500 representing $3,054 per hectare.

[71] Sale 3 was a sale from Calleja to Darveniza of 80.215 hectares on 7 June 2010. The Calleja land is located at 6 Branch Road at South Johnstone and a sale price of $1,273,000 which represented $15,870 per hectare on average.

[72] Mr Roberts expressed the view that the sale property was irregularly shaped parcel of mainly good quality arable country with some poor elevated sections towards the west of the property but which had a significant 2.8 kilometre South Johnstone River frontage.

[73] Mr Roberts also acknowledged that the majority of the Calleja land was considered to be class1 or class 2 sugar suitability soil types largely comparable to that of the subject site. There was a smaller area of class 3 and 4 soil structures.

[74] Mr Roberts expressed the view that the Calleja was overall considered superior to the subject land in spite of an inferior arable area which was approximately 11 hectares less than the subject land.

[75] Mr Roberts analysed sale number 3 and produced an applied value of $310,000 representing $3,865 per hectare with an applied value of $290,000 excluding a water allocation which produced a figure of $3,615 per hectare.

[76] Sale 4 was a sale from Vitale to Brazier of 65.377 hectares on 4 October 2009.

[77] The Vitale land was located at Gullotta Road in the Walter Lever Estate and had a sale price of $375,000 which represented $5,736 per hectare on average.

[78] That land was improved with underground piping, gully crossovers and clearing.

[79] Sale 4 occurred 12 months prior to the date of valuation but was included by Mr Roberts as relevant evidence on the basis of its proximity to the subject site, its smaller productive area of generally lesser quality productive arable country and a high percentage of balance land.[22]

[22] Exhibit 3 p 7.

[80] Mr Roberts analysed that sale and produced an applied value of $152,500 representing $2,333 per hectare.

[81] By way of summary Mr Roberts reported as follows:[23]

> "The net arable rate range of the above analysed sales is:
>
> (Sale 1) $3,207 to (Sale 4) $10,293 per hectare for cleared arable land which a corresponding applied value range of $2,987 to $7,192 per hectare.
>
> As per the calculation on page 12, the subject property has an applied net arable rate (after allowances) of $3,520 per hectare with a balance land rate of $500 per hectare for its remaining 12.45 hectares comprising creeks, gully lines and timbered areas intersecting the arable area."

[82] The calculation on page 12 referred to in the extract above is as follows:

> "The subject property has been assessed as at the 1/10/2010 as follows;
>
> 79.0809 hectares Arable @ $4,400 per ha –
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> | | | |
> |---|---|---|
> | | $347,955 | |
> | Less Allowances: | | |
> | Drainage (10%) | $34,796 | |
> | Workability (10%) | $34,796 | |
> | | $69,592 | |
> | | $278,363 | |
> | Net arable reflects ($3,520/ha) | | |
> | Plus Balance Land: | | |
> | 12.5 Ha @ $500 per hectare | $6,250 | |
> | 91.5809 ha | $284,613 | ($3,107/ha) |
>
> The unimproved valuation has been rounded to $285,000 reflecting $3,112/ha per hectares overall, reflecting a 9% reduction in value since the 1st of October 2009."

[83] The figure of $500 per hectare as adopted by Mr Roberts derives from an earlier decision of this Court in *Pajares v State of Queensland*[24].

[84] Reliance upon the same case for exactly the same value was advanced by another valuer for the respondent in another case[25]. In that case, as in the present case I have some reservation about adopting the figure of $500 per hectare.

[85] In the earlier case of *Franklin* I observed as follow:

> "[68] It should be noted immediately that *Pajares* was a resumption case not a valuation case. In the *Pajares* case the valuer for the dispossessed landowner contended that entirely unusable mangrove land was valued at $775 per hectare

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23 Exhibit 3 p 8.

24 *Pajares v State of Queensland* [2003] QLC 0044 (June 2003).

25 *Franklin v Valuer-General* [2013] QLC 10.

> but provided no basis for that opinion. The valuer for the respondent department contended for $250 per hectare because of the lack of utility in the land and the statutory restrictions preventing development.
>
> [69] The only real comfort I take from that decision is confirmation of the notion that such restricted land still has some value.
>
> [70] I note that the resumption occurred nearly a decade before the relevant date for the valuation exercise which I must carry out here, i.e. a resumption in 19 November 1999 compared to a valuation of land as at October 2009.
>
> [71] I accept that the market would have changed substantially in the decade between the *Pajares* exercise and the current one.
>
> [72] At the end of the day I am left only with credible evidence from Mr Donnelly that the value of the unusable uncleared land is $500 per hectare and I accept that figure.
>
> [73] In any event Mr Donnelly in his report informs the Court as follows:
>
> > "Smaller non-arable balance lands have been valued at $500 per hectare throughout farming land valuations in Cassowary Coast Regional Council Local Government area with a lower rate applied per hectare for areas of balance land greater than 100 hectares."
>
> [74] If that is correct and I accept the assertion by Mr Donnelly in that respect then to disturb that valuation would, in my opinion, upset the relativities between the subject land and all other land in the Cassowary Coast Regional Council Local Government area. I am disinclined to do that."

[86] I retain the same reservations as in that earlier decision but the reality is that there was no challenge to the evidence advanced by Mr Roberts with respect to the $500 per hectare. Mr Nucifora asked him no questions about that aspect of his valuation whatsoever.

[87] None of the sales evidence advanced by Mr Roberts was in any way effectively challenged by Mr Nucifora who, it must be remarked, failed to identify any sales himself.

[88] Unfortunately for Mr Nucifora, suffering the disadvantage of no legal training and little experience in cross-examination, he failed to make any inroads into the views adopted by Mr Roberts and articulated in his report.

[89] It was clear that Mr Nucifora disagreed in a substantial way with the views of Mr Roberts and it must be fairly observed that Mr Nucifora as a cane farmer with long experience in the area may well have had some detailed knowledge of the condition and viability of some of the farms referred to by Mr Roberts in his report but Mr Nucifora himself, notwithstanding the opportunity to present a written statement and the opportunity with some wide latitude to give oral evidence, failed in his evidence in chief to address those issues.

[90] Similarly with respect to the issue of denitrification Mr Nucifora found himself in a position where he had concede that he had no concrete evidence dealing with the issue of denitrification either on his own property or on other properties.[26]

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[26] T1-54-55.

[91] Mr Nucifora in his cross-examination of Mr Roberts did manage to extract from him a concession that he had no real knowledge of whether or not the Nucifora's land or indeed any of the sales relied upon by Mr Roberts were subject to the process of denitrification. At the end of the day that seems to matter little because there is no probative evidence with respect to nitrification in any event and it played no role in any of the analyses done by Mr Roberts.

[92] Mr Nucifora also got Mr Roberts to concede that properties in the area are affected during wet years and that during dry years the properties generally have better returns, better yields, and better production figures.[27]

[93] Even if it was to be accepted that climate change is now a reality (which is not the case, because the issue of climate change is still subject to very considerable public debate) Mr Nucifora in his evidence and in his cross-examination has failed to satisfy me that his farm has been devalued as a consequence of the effects of any climate change.

[94] I accept Mr Nucifora's concerns about the impact of wet seasons and it seems irrefutable that from time to time his returns have diminished but nothing in the evidence before me serves to satisfy me that Mr Nucifora has made out any of the matters raised by him in his notice of appeal so as to permit me to set aside the valuation contended by the respondent and supported in his report, in his evidence-in-chief and under cross-examination by Mr Roberts called for the respondent.

[95] Accordingly, I find that the appellant has failed to discharge the onus placed upon him as a consequence of s169(3) of the *Land Valuation Act* and accordingly must dismiss the appeal.

HIS HONOUR, WL COCHRANE
MEMBER OF THE LAND COURT

[27] T1-61 L 42.