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MACFIE JUDGMENT.

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BRAAMFONTEIN ESTATES LIMITED vs THE MUNICIPALITY OF
JOHANNESBURG.

(Parkview Estate.)

JUDGMENT.

This valuation appeal came before me on the 19th of November last. On that date a special Case was stated for the opinion of the Supreme Court. The Judgment of the Supreme Court was given on the 21st December last and was against the contentions of the Municipality. An abortive attempt was then made by the Municipality to appeal to the Appellate Division. The matter did not come before me again until the 14th June last.

On that date evidence was given on both sides as to the probable value of properties in question on an actuarial basis. As I could not accept some of the premises on both sides, I wrote a note of what in my opinion was the proper basis for an actuarial calculation of probable value. The case has now been set down again, as the Municipality does not accept that basis.

2. Before dealing with their objections to that bases I wish to point out again the following facts which appear quite plainly on the face of my note of 14th June last.

(1) The idea of arriving at a value by an actuarial calculation is not mine; but both parties have asked me to fix a value by such a calculation.

(2) Such a method cannot be either general as to all cases or constant as to any case because it can in no case be applied to a non-revenue producing property, nor can it safely be applied twice to a revenue producing property since it might conceivably pay an Owner of a Township to keep down his

sales in order to decrease his rates on his unsold stands.

(3) The true question is :-

"what sum might a purchaser be fairly expected to give for the whole of his unsold stands in the Braamfontein Estate if offered for sale at the time of valuation on the terms and conditions and with due regard to the consideration mentioned in the Ordinance".

I repeat again, and I hope there will be no further misunderstanding in the matter that that and no other is the question in the matter except so far as both parties agree upon some other methods of valuation.

(4) I hoped that in that Note I had made it plain, and if I was wrong in so hoping, I will make it plain now, that I entertained the idea of an actuarial calculation only because:-

(a) there was in this case no direct evidence as to what a purchaser might fairly be expected to give.

(b) both parties asked me to value on an actuarial basis.

(c) that basis was probably in the case of this Estate as nearly right as it is possible to be.

(d) it was probably also the basis on which an intending purchaser would in fact estimate what he would offer.

(e) any kind of valuation of such an Estate is essentially speculative.

(3) But the Municipality says that basis is wrong because they have not agreed and it is not the fact that the town Valuer's valuation of each stand is approximately what it will realise in the course of time if the stands are sold conservatively. I thought that it was agreed, but, if it was not, the Municipality is not bound by my Note. If I was

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mistaken as to that at least the mistake was excusable; and the Municipality certainly agreed to the value of the unsold stands being arrived at by an actuarial calculation, and still agrees that is a factor which may properly be taken into consideration. The only dispute is therefore as to what was the basis of the Town Valuer's valuation. He values the 845 unsold stands at £82,080 which was reduced by the valuation court by 10%. He said in his evidence on the 14th June last that "I took into consideration the prices obtained; and blocked out the estate allowing accessibility to the tram. Some lots I valued as low as £40---- - those farthest away from the tram."

"I took it they would be sold at the present rate.

I thought that if these were offered within the present two or three years they would realise about £40, a price much less than they were actually getting."

Well it has always been the common cause that some of the Stands in this Estate will be sold during the next two or three years; and it is plain that none of these £40 Stands are being sold today by the Appellant Company for more than £40. Of course the annual average revenue on the basis I have suggested will be less than the present annual revenue because at present the most accessible and best and therefore the more valuable stands are being sold; but it will almost certainly be more than the annual revenue when the remote and less favoured stands have to be sold; and as an estimated annual average over the whole life of the Estate it is probably as nearly right as it is possible to get. Mr. Macphail says that the £40 refers to the remote stands which are in effect not saleable at present, but which he thinks will be saleable at £120 each at some remote

3

period when the Estate is largely built on and further tram lines are made. As the value which was contended for the Council on Mr. Macphail's report is £39,000 only, and I am now invited by the Municipality to value at £24,553, I take it that the Town Valuer's £82,000 is recognised to be wholly untenable. But when it is suggested that he did not arrive at the valuations appealed against by taking the figure at which other Stands are being sold by the Appellate Company and that he made his value less than the Appellate Company is now selling similar Stands at, I am not able to accept the suggestion.

In the Special Case stated by both parties for the opinion of the Supreme Court it was agreed specifically that the contention of the Municipality was that the unsold stands should be valued on the basis of the price at which the Township Company now offers a single Stand or block of two or more stands for residential purposes.

That contention is obviously wholly inconsistent with the suggestion now made. The position is made even more clear in the Judgment of Mr. Justice Wessels on the Special Case in which it was stated that "the Municipality contends that no distinction can be drawn between stands sold and those still held by the Company, that each individual stand still held by the Company must be valued on the same basis as each stand that has been parted with and registered in the name of some individual. Mr. Lucas puts it thus :- If Stand No. 1 has been sold and transferred to A. and the adjoining Stand No. 2 is unsold, then the Valuer must value No. 2 in the same way as he would value No. 1. He must take into consideration that the Braamfontein Estates Company has an upset price and that there are some 800 stands yet to be sold.

He must consider the facts both as regards No. 1 and Stand No. 2 and then fix their value. Mr. Stratford contends that

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in valuing the township's interest in the unsold Stands the valuer is not entitled to say that each stand is to be valued on the basis that the Company will not part with a stand for less than a certain price. I agree with this contention, I do not think that the Valuer is concerned with the Pretium affectionis, the price the owner puts upon his property, or with this estimate of its value. It is almost unnecessary, but I would point out also that the decision of the Supreme Court was that :- "The stands are not to be valued on the basis of the price at which Appellants now offer for a single stand or block of two or more stands for residential purposes. They are to be valued as if the Company were a bona-fide seller at the present time of all the unsold stands in the possession under such terms and conditions as would be required where there was a bona-fide intention to get rid of the interest."

(4) The argument which is really deserving of consideration is that put forward for the first time by Mr. Macphail in his report viz:- that these stands at present valued at £40 will eventually realise £120. He says that it is reasonable to assume that. It seems to me to be rather a forlorn hope, and I do not think it is reasonable to assume anything of the sort.

Mr. Macphail is an Actuary whose work is deservedly held in the highest respect; but he is not a Valuer or a prospective purchaser of this Estate, nor is his report evidence of the statements made to him. £40 is the value which the Town Valuer put on these stands on the erroneous basis he adopted, and there is not a vestige of evidence nor is there in my opinion any reason to think that a purchaser would offer a price for this Estate based on any idea that these stands will ever fetch more than £40, if as much. Of course I may possibly be mistaken as to that. Only

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judging from the difficulty we in the Southern Suburbs have, for instance, in getting tramways and roads in densely populated areas where they are wanted badly by the actual residents, I doubt whether the visions of the Municipal tramways and roads to open up the remote recesses of the Northern Area are likely to materialise for a good many years to come, but if I am wrong as to that there will be ample opportunity at some of the numerous Valuation Courts which will be held before this Estate is sold off, to put matters right before any appreciable harm has been done. After all it should not be forgotten that the valuation is only in force for a period of three years.

(5) On the evidence before me it appears to me therefore to be in the first place perfectly plain that the Town Valuer's valuation was based on the assumption that the unsold stands would fetch in the future what similar sold stands have fetched in the past; and there is no evidence, nor do I think, that increased prices will be obtained in the remote future. If therefore an actuarial basis be adopted I see no reason to depart from the opinion I have already expressed as to what stand basis should be; But my difficulty is that I am bound under Section 13 of Ordinance No. 6 of 1912 to inquire into the valuation and give a decision as to value, and that I cannot do so on an actuarial basis unless both parties are agreed to not only that I should do so but also as to the premises upon which the actuarial calculation should be made.

They are not so agreed, and therefore I must fall back on the plain language of the Ordinance as interpreted by the Supreme Court taking as I am asked to do, an actuarial calculation into account only as one of the elements to be considered, and to my mind not the most important element because you cannot assess the commercial value of a speculative

property by a mathematical calculation.

(6) The actuarial calculation made for the Municipality on the basis they are willing to accept shews a value of £24,553 for unsold stands, but only by not allowing a margin for what a purchaser would want, as I pointed out in my note of the 14th June last, both as profit and to cover risks on such a large investment. Mr. Read says that on an investment such as this he would want a margin of 40% or 50% and that there is no evidence to contradict him.

Obviously, and that is really the only question as to this in which I disagree with the Municipality, you must make some allowance on these actuarial figures both for profit and for risk of loss. Any bona-fide purchaser would insist upon it. It is not a question of buying ground rents secured on property of many times their value. Taking only half of Mr. Read's minimum estimate of what allowance would be wanted, you get a value within a few pounds of the £18,700 at which the Appellant Company has arrived by actuarial calculation on the basis they are willing to accept.

(7) But it is necessary to rely on either calculation because I have now some evidence as to the value on the basis provided by the ordinance, i.e. what a bona-fide purchaser might fairly be expected to give for the property if offered for sale on the terms and conditions prescribed by the Ordinance. It is true that that evidence is all on one side but it is not for me to call evidence. The evidence called is shortly that £18,700 would be such a value. It is not contradicted, and I see no reason to doubt it in our present circumstances.

It is also supported by collateral evidence of

relevant facts. It is agreed that in the past the average selling price as to individual stands has been £131.10.0. but it is plain that this included both £20 for the laying on of light and water and about £79 as to the value of the Building Loan given by the Company to the purchaser. This leaves only about £41. 10. 0. as the selling value of the stand itself. I hope however, that it is not necessary to point out again that you cannot arrive at the value of an Estate by multiplying the price obtained for one stand by the number of unsold stands. Further, Section 7(1) of the Ordinance of 1916 enjoins me to have due regard to comparative factors, and I think the facts as to the adjoining Suburbs of Parktown are comparative factors. In that suburb, acre stands were selling for £1,700 in 1904 and they are now selling for £450. In 1904 this whole Estate was bought for £107,000. It then consisted of 1094 stands, so that the purchase price was a little under £98 a Stand as an average. The Town Valuer's present valuation is still at £97. 3. 8. per stand as an average, but if the comparative factor of Parktown be applied to the value of the 845 unsold stands in this Estate would be only £21,862. 6. 2. i.e. a little under £26 per stand. As a matter of fact, it would inevitably be less, because depreciation affects the selling price of a large Building Estate as a unit much more than it does of an individual stand since the former is essentially a purchase as a speculation, and the latter is usually a purchase for occupation. That is of course not conclusive, but Hurd says he is not contradicted, and I see no reason to doubt his statement, that these 845 stands could not at the present time be sold in one lot for £20 each.

(6) It is however contended by the Municipality that in any event the Appellant Company is bound by the estimate of value viz:- £27,500 which they inserted in their obligations

objections to -

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to the original valuation and that their appeal should be regarded as an appeal, against so much of the valuation as it is above that amount. If the Municipality has then accepted that estimate I think the Company would have been bound, but they did not accept and at this stage the Ordinance makes it my duty, I think, to inquire into the valuation and use my own judgment on the evidence put before me in fixing the amount.

(9) I desire to add that if a case like this comes up again I would like to hear the evidence of possible purchasers of such estate as this, either as one unit or in a few large lots in accordance with the usual conditions of sale, as to what they would in fact be prepared to give for such properties on such a sale as the Ordinance contemplates. I suppose there must be some possible purchasers of large buildings Estates in the vicinity of Johannesburg, such as Insurance or Investment Companies, Building Societies or Builders. It may possibly be that even the private investor with sufficient capital to buy and develop such an Estate is yet not extinct. The evidence of such possible purchasers as to what they would give in hard cash for such an Estate would I am sure, be as valuable as interesting. I do not think we would be embarrassed by the number of witnesses. Such Estates are no doubt valuable but the number of persons who would in these days be prepared to pay a good many thousands in hard cash for a large Suburban Estate, and to find say 250,000 in hard cash to finance purchasers of Stands in building on good and easy terms, as the Appellant Company is doing, must be rather limited.

(10) For the reasons already given, I fix the value of the unsold and the sold but untransferred Stands in the Parkview Township at £23,087, viz. £18,700 for the 845 unsold stands and £4,387 for the 35 stands sold but not transferred.

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I agree that at first sight this contrast between the two sets of figures is startling, but the fallacy of assessing the collective value of a large number of unsold stands by the prices obtained for a small number of sold stands has already been dealt with sufficiently. I would merely add that when you bear in mind that two-thirds of the sums realised are payments for expenditure of loans and one-third only for land, and that third as to the unsold stands can be realised only over a long period of years, those figures are not in the least in conflict.

The Council is ordered to pay costs.

JOHANNESBURG.

11th August 1917.

(Sgd.) T.C.MACFIE

MAGISTRATE.

J.H.T.23/12/18.

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