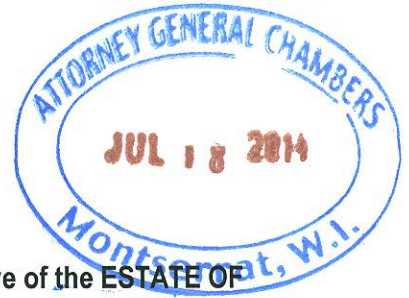


IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
COLONY OF MONTSERRAT
(CIVIL)
A.D 2014



CLAIM NO: MINIHCV2007/0014

BETWEEN:

JULIAN DANIEL (Personal representative of the ESTATE OF BENJAMIN DALY)

Claimant

and

The Attorney General of Montserrat and
Planning and Development Authority

Defendants

Appearances:

Mr. Kharl Markham for the Claimant
Miss Chivone Gerald with him
Mrs. Sheree Jemmotte-Rodney for the Defendants

2014: May 01
2014: July 18

Judgment

- [1] **Redhead, J. (Ag):** This is an application by the Claimant for assessment of damages pursuant to an order of court made in a judgment delivered on 24th May 2011.
- [2] I think it is prudent, in order to appreciate the assessment of damages which will be made in this case, to highlight briefly some of the issues in the substantive case.
- [3] The Claimant is the Personal Representative of the estate of Joseph Benjamin Daly, who died, possessed of a parcel of land 14/16/7 St. John's, Registration Section:

- [4] Parcel 14/6/7 was mutated and produced parcel 14/16/17 measuring 2.8 acres which was transferred to the crown on 18th March 2002 at a price of \$365,249.00 EC.
- [5] After the mutation parcel 14/16/63 was created measuring 22.84 acres registered to the heirs of Joseph Benjamin Daly. This parcel is located to the east of John Osborne airport.
- [6] Prior to the construction of the airport, the estate of Joseph Benjamin Daly represented by Millicent Bass, began representation with other persons who later incorporated the Company Emerald Homes Development Ltd. with a view to develop Parcel 14/16/63 by constructing affordable homes thereon.
- [7] In 1998, the Claimant became a director of Emerald Homes Development Ltd. In order to construct the proposed housing development, the Emerald Homes Development made application in February 1999 to the second named defendant for planning permission.
- [8] The Claimant's proposal for the Housing Development was to subdivide 10 acres of parcel 14/16/63 into forty (40) house plots. On the 17th January 2005, the Chief Physical Planner informed the Claimant that the authority was minded to support the Claimant's application "in principle" but this was conditional upon a number of issues being addressed, these included:
- 1) That the size of the plots, 5000 sq. ft. was too small and would create high density housing development and
 - 2) Concern was expressed at the close proximity of the development to the airport.
- [9] The bottom line is, that on 7th January 2008 the second named Defendant wrote to the Claimant officially communicating to him that he was refused planning permission to develop a housing project on 14/16/63 because the construction of houses on the parcel would compromise the safety of aircrafts departing from the airport.

- [10] In the Judgment it was decided that because of the inability of the Claimant to construct houses on plot 14/16/63, the Claimant was deprived of the full use of his land.
- [11] In fact the Claimant has limited use of Parcel 14/16/63 as it was revealed in evidence at trial, that the Claimant was asked to remove shrubs on his land because they posed a danger to aircrafts leaving the John Osborne Airport.
- [12] According to the Claimant he was taller than the shrubs.
- [13] Mr. Markham in his written submissions refers to **Modern Methods of Valuation by William Britton, Keith Daniels and Tony Johnson**¹. In this work the authors identify the principle methods of valuation as:
- 1) Direct Capital Comparison
 - 2) Investment Approach
 - 3) Residual Approach
 - 4) Profits Approach and
 - 5) Cost and Replacement approach.
- [14] Mr. Markham comments that the Residual Approach is viewed as being appropriate when dealing with land which is to be developed.
- [15] Mr. Markham argues that in its simplest form, this approach (referred to above) proceeds on the premises that market value of the property is the surplus after the cost of developing the land is taken from the notional price of the land. This is the method employed by the expert witness Bertrand Burke for the Claimant.
- [16] Learned Counsel Mrs. Sheree Jemmotte-Rodney, in her written submissions on behalf of the Defendants, submits that the Claimant's claim is not a claim for judicial review of the decision to change the land use for the purposes of facilitating the development of the

¹ 8th Edition

