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IN THE HIGH COURT OF NEW ZEALAND  
(ADMINISTRATIVE DIVISION)  
AUCKLAND REGISTRY

M. 3/84

IN THE MATTER of the Rating Act,  
1967

1376

- a n d -

IN THE MATTER of an appeal against  
a decision of the  
Land Valuation  
Tribunal at Auckland

BETWEEN COLIN O. & HONORIA  
W. GRAY

APPELLANTS

A N D AUCKLAND CITY COUNCIL

RESPONDENT

Judgment: 9 October 1984  
Hearing: 9 October 1984  
Counsel: G.V. Hubble for Appellant  
R.W. Worth for Respondent

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ORAL JUDGMENT OF CASEY J.

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I have a clear view here that I must exercise my discretion against the Appellants on this application for leave to call fresh evidence. The matter is governed by the Administrative Division Rules which gives the Court a discretion to admit further evidence, the primary rule being that on the re-hearing, the evidence before the Tribunal will be that considered by this Court. The principles accepted by Counsel are summarised in Dragicevich v. Martinovich (1969) NZLR 306. First of all, the evidence must be such that it could not have been obtained with reasonable diligence before the trial. Secondly, that if given, it would have had an important influence on the decision; and

thirdly, it must be believable. The suggested valuation evidence advanced by Mrs Gray, of course, qualifies under the two latter conditions, but I am not satisfied it could not have been available with reasonable diligence before the hearing. Mrs Gray is an experienced Barrister and Solicitor; it is her and her husband's property, and she must be considered to have an ordinary appreciation of the need for expert valuation evidence in a case involving the rateable value of City Council property.

The principles under which those hearings operate are well known. It must have come as no surprise to her to be confronted with evidence from the City Valuer about comparable properties. As I mentioned to Counsel (and it was taken up by Mr Worth), it is quite clear from a perusal of the transcript that she decided to run her case on the basis of a close cross-examination of the City Valuer about surrounding circumstances, in an effort to persuade him to concede reductions which would not otherwise have been made. I do not propose to go through this in detail, but it was very clearly brought to her attention by the Tribunal Chairman how important valuation evidence was. At no stage is it evident from the transcript that she mentioned the difficulties which she now raises in her affidavit about obtaining valuation evidence at short notice, nor did she seek an adjournment. Having foregone that opportunity before the Tribunal, she makes it very difficult for me to determine that the evidence she now seeks to put before this Court could not have been obtained with reasonable diligence and advanced at the first hearing.

The other point is that she knew as far back as August that the matter was going to proceed to the Tribunal for decision. She had four months within which to engage a valuer, yet elected not to do so until virtually the last minute, and it is probably understandable that she was unable to obtain his services in time. This, while it may be

unfortunate for her, does not balance the obligation on me to pay regard to the need of ensuring that litigation proceeds in an orderly fashion, and is brought to an appropriate conclusion. That is what I have to weigh up in the exercise of my discretion, and why the principals have been laid down in the past as applicable to these matters, and enunciated by the Court of Appeal in Dragicevich case.

A further factor, which relates to the "moral" issue Mr Hubble raised, is that it is an annual valuation, and Mr Worth informed me that Mr and Mrs Gray will have an opportunity next year to raise the same objection if they see fit. It is not a case of a person being tied by a decision for an indefinite period. For all these reasons, I am not persuaded that the discretion imposed in me should be exercised in the Appellant's favour and the motion is dismissed.

*Mrs. Casey*

Solicitors:

Honoria Gray, Auckland, for Appellants  
Butler White & Hanna, Auckland, for Respondent