



# expert update

Uncovering the latest Expert Witness news with Ferrier Hodgson

## Evaluating the valuers

*APF Properties Pty Ltd v Kestrel Holdings Pty Ltd (No. 2) [2007]  
FCA 1561*

*When a valuer's  
senses suggest  
something smells  
funny it may not be  
the scent of  
pyrethrum in the  
morning.*



This matter involved an interest in three farming properties on the north-west coast of Tasmania held by Robinson family interests ("Robinsons").

A joint venture was created to establish a pyrethrum (a type of flower used in insecticides) farming operation. As part of the joint venture, APF Properties Pty Ltd ("APF") agreed to purchase three properties from the Robinsons. It was agreed that two valuations would be performed so that a price could be agreed for the purchase of the properties. Two valuers, Mr M and Mr C, were appointed to value the properties.

The Robinsons were not happy with the valuations from Mr M and Mr C. They felt that the properties were grossly undervalued. Mr M's valuation of the three properties (the higher valuation) totalled \$2,193,000. APF eventually agreed to pay the higher of the two valuations and on 8 April 2001, it completed the purchase.

In his valuation, Mr M had relied upon an extract of a report faxed to him by the Robinsons alleged to have come from a firm called Agtech Rural and Horticultural Consultants. This report had supposedly been prepared for "potential joint venture partners of Australian Pyrethrum Farms".

The report included statements that one of the three properties, Broadmoor, had 80 hectares of cropping land and 40 hectares of bush and another property, Lower Wilmot, had 80 hectares of cropping land and 66 hectares of bush and pasture.

However, the entity, Agtech Rural and Horticultural Consultants, did not exist. The Agtech report was authored by one of the Robinsons.

By the end of 2003, the joint venture was in trouble. The market for pyrethrum collapsed and prominent insecticide manufacturers switched to a synthetic source. In early June 2004, it was resolved to put the three properties back on the market.



The reserve price for Broadmoor was \$1,000,000, \$450,000 for Lower Wilmot and \$400,000 for Mannings Jetty. Mannings Jetty sold at auction at or about the reserve price. There was only one bidder for Lower Wilmot, and it was passed in at auction, but sold for \$450,000 after negotiations with the only bidder. There were no bids for Broadmoor.

APF sued Mr M for negligently conducting the valuation of the properties.

In *MGICA (1992) Ltd v Kenny & Good Pty Ltd (1996)* Lindgren J held that a valuation report conveyed representations that the opinions expressed were:

- a. Based on reasonable grounds
- b. The product of the exercise of due care and skill
- c. Safe to be relied upon and not outside the latitude properly to be allowed to them

In the trial, much was made of the amount and quality of available cropping land on the Broadmoor and Lower Wilmot properties. Justice Heerey noted that “the amount of croppable land on them was far and away the most important factor in determining their economic worth” and that it was an “objectively discernible fact”.

Accordingly, Mr M was entitled to rely on what the Robinsons told him but not to the exclusion of making his own enquiries if the circumstances so warranted, and in this case Justice Heerey ruled they did warrant further investigation.

Justice Heerey did not suggest that an independent agricultural report was required, but if a valuer does not obtain such a report, the obligation to exercise the standard of care of a reasonably competent valuer would still require the valuer to make a reasonably accurate assessment of croppable land when valuing properties. It is expected that a variance of up to 10-15 per cent would be acceptable. In this case, the variance was out by 50 per cent on the two properties where croppable land was an issue.

Additionally, Mr M utilised comparable sales in support of his assessment of \$9,500 per hectare for the valuation. In his judgment, Justice Heerey pointed to the evidence that the sale of two properties that closely supported his \$9,500 per hectare assessment related to smaller properties that could not be used as a benchmark. Additionally, because Mr M used a “catch all” approach, whereby all classes of land (both primary croppable and secondary croppable land) would be valued at an average value per hectare instead of identifying the various classes of land and applying a specific value per hectare, Mr M’s valuation approach was not reasonable or within an acceptable range.

Damages of more than \$120,000 were awarded against Mr M in favour of APF, despite Mr M being entitled to an indemnity from the Robinsons.



## Significance

A fair and equitable outcome in all circumstances demands that a valuer act independently and with the proper exercise of due care and skill. Parties relying on valuers are entitled to expect that the opinions are the product of these attributes.

It is incumbent on all parties to ensure all relevant information in their possession is provided to the valuer. Clients should also ensure that sufficient time and resources are allocated to allow a valuer to develop a clear opinion of the value of an asset.

Factors critical to the valuer's opinion should not be taken for granted or assumed. Where appropriate, the valuer should make his or her own enquiries – in this case, where there were relatively straightforward, objectively discernible facts available, this was a critical oversight.

The Forensic accounting standard APS 11 provides guidance where a member is instructed, or seeks, to utilise estimates or make assumptions concerning past or future events, facts or amounts, where more accurate data is not available or where the obtaining of better or more reliable data is not appropriate or practicable. In such circumstances, members should ensure that the use of such estimates or assumptions is:

- a. Reasonable in the circumstances
- b. Suitably qualified and disclosed

Where full disclosure of reliance is appropriate, this will highlight the need for the parties who intend to rely on the report to make their own enquiries.



**George Kompos**  
Executive Director, Melbourne  
phone: 03 9604 5150  
email: [george.kompos@fh.com.au](mailto:george.kompos@fh.com.au)

For more information about our forensic services, please contact:

Sydney: Andrew Ross  
+61 2 9286 9906  
[andrew.ross@fh.com.au](mailto:andrew.ross@fh.com.au)

Adelaide: Peter Holmes  
+61 8 8100 7600  
[p.holmes@sa.fh.com.au](mailto:p.holmes@sa.fh.com.au)

Hong Kong: John Tudorovic  
+852 2820 5610  
[jtudorovic@fh.com.hk](mailto:jtudorovic@fh.com.hk)

John Temple-Cole  
+61 2 9286 9919  
[john.temple-cole@fh.com.au](mailto:john.temple-cole@fh.com.au)

Brisbane: Tim Michael  
+61 7 3831 4833  
[tmichael@qld.fh.com.au](mailto:tmichael@qld.fh.com.au)

Singapore: Tim Reid  
+65 6416 1400  
[timr@fh.com.sg](mailto:timr@fh.com.sg)

Melbourne: Greg Meredith  
+61 3 9604 5118  
[greg.meredith@fh.com.au](mailto:greg.meredith@fh.com.au)

Or find out more at:  
[www.ferrierhodgson.com](http://www.ferrierhodgson.com)

FORENSIC ACCOUNTING

FINANCIAL INVESTIGATIONS & FRAUD

BUSINESS VALUATION

FORENSIC IT

