

LAND COURT OF QUEENSLAND

CITATION: *The State of Queensland (Represented by the Department of Housing and Public Works) v Valuer-General*
[2024] QLC 1

PARTIES: **The State of Queensland (Represented by the Department of Housing and Public Works)**
(appellant)

v

Valuer-General
(respondent)

FILE NO: LVA117-23

PROCEEDING: General application

DELIVERED ON: 17 January 2024

DELIVERED AT: Brisbane

HEARD ON: Submissions closed 16 January 2024

HEARD AT: Heard on the papers

A/PRESIDENT: PG Stilgoe OAM

ORDER/S: **1. The General Application filed 12 December 2023 is dismissed.**
2. The appeal is dismissed.
3. Any submissions seeking a costs order in this proceeding must be filed and served within 14 days of the publication of these reasons.

CATCHWORDS: REAL PROPERTY – VALUATION OF LAND – OBJECTIONS AND APPEALS – QUEENSLAND – OTHER MATTERS – where the Valuer-General seeks orders that the appellant rectify a defect in the notice of appeal by filing an amended notice of appeal – where the appellant listed in the notice of appeal is a state government entity – where the land is subleased by the state government to a company – whether the appellant should be ordered to amend their notice of appeal

Land Court Rules 2022 (Qld) r 3
Land Valuation Act 2010 (Qld) s 165
Uniform Civil Procedure Rules 1999 (Qld) rr 69, 375(3)

Re Jackaroo Agencies Pty Ltd [2006] 1 Qd R 332
Tim Gordon Property Group Pty Ltd v Helensvale Property Development Pty Ltd and Anor [2015] QSC 19

APPEARANCES: Not applicable

- [1] This matter is a classic example of the old proverb that two wrongs (or in this case three) don't make a right.
- [2] HSH Hotels (Australia) Limited leases the land currently the site of the Stamford Plaza in Brisbane City.¹ The lessor for the land is the State of Queensland (represented by the Department of Housing and Public Works).² On 31 March 2022, the Valuer-General issued a state land rental valuation notice in the name of the Department.
- [3] HSH lodged an objection notice, with the consent of the Department,³ against that valuation, and eventually an appeal against the decision on objection. Both the decision on objection and the appeal were in the name of the Department.
- [4] The Valuer-General now wants the applicant to be named as HSH, despite the valuation and the decision on objection being issued in the name of the Department.
- [5] The Valuer-General must give the Owner of the land notice of the annual valuation.⁴ "Owner" is defined in the Dictionary to exclude the State⁵ but include a lessee of land held from the State.⁶ The Valuer-General erred in issuing a notice to the Department, which is not an Owner, and failing to issue a notice to HSH, which is an Owner.

¹ Specifically, Lot 2 on Crown Plan SL12006 and Lot 674 on Crown Plan SL11725.

² Technically, for Lot 674 the Department is the Registered Lessee and Sub-Leases to HSH, whereas on Lot 2 the Department is the Landowner and HSH the head lessee.

³ Affidavit of Gerrard Patrick Sammon, *Valuer-General*, filed 12 December 2023, 'GPS-3'.

⁴ *Land Valuation Act 2010 (Qld) s 79(1)*.

⁵ *Ibid* sch 1 (definition of 'owner' para 2).

⁶ *Ibid* sch 1 (definition of 'owner' para 3(c)).

- [6] An Owner may object to a valuation of the Owner's land.⁷ HSH did object but using the name of the Department and specifically referring to the consent of the Department.⁸
- [7] There is no provision in the LVA permitting an Owner to consent to the objection rights being exercised by third party. The Department had no right to object, given it was not an Owner. That means that the objection was invalid. As an Owner, HSH had its own right to object and should have done so in its own name.
- [8] An objector may appeal to the Court against an objection decision.⁹ Because HSH objected in the name of the Department and not in its own name, it was not an objector. Therefore, it could not appeal.
- [9] Counsel for the Valuer-General suggests that there are three ways the Court can cure this problem: under section 165 of the *Land Valuation Act 2010* (Qld), rule 375 (3) of the *Uniform Civil Procedure Rules 1999* (Qld) (UCPR) or rule 69 of the UCPR.

Section 165 of the *Land Valuation Act 2010* (Qld)

- [10] Section 165 states that, if on the hearing of a valuation appeal, the Court considers the valuation appeal notice is defective, it must require the appellant to fix the defect within 7 days.
- [11] Counsel for the Valuer-General submits that the valuation appeal notice is defective because it does not name the correct 'Owner'. That is true but it does reflect the name of the objector and, as I have already noted, only the objector can appeal.
- [12] The valuation appeal notice is more than defective, it is *fatally* flawed. It names a party that has no right to object and, therefore, no right to appeal.
- [13] Reading the whole of section 165, and considering the costs power in section 166, it seems to me that the section is directed to an error discovered during the actual hearing (as the first line of the section says) perhaps through evidence at the

⁷ *Land Valuation Act 2010* (Qld) s 105(1).

⁸ Affidavit of Gerard Patrick Sammon, *Valuer-General*, filed 12 December 2023, 'GPS-3'.

⁹ *Land Valuation Act 2010* (Qld) s 155(1).

hearing. The error here should have been the subject of a requisition by the Registrar under section 164.

- [14] Counsel for the Valuer-General urges me to take a liberal approach to the interpretation of section 165, given that it is a beneficial statutory provision. Even the most liberal interpretation of this section will not cure the fundamental errors perpetrated thus far.

Rule 375(3) Uniform Civil Procedure Rules 1999 (Qld)

- [15] Rule 3 of the *Land Court Rules 2022* (Qld) states that if those rules, an order, or a direction do not provide for a matter in relation to a proceeding in the court and the uniform rules provide for the matter, the uniform rules apply.
- [16] Rule 375(1) of the UCPR gives the Court the power to amend a claim, pleading, application or any other document in a proceeding. Rule 375(3) states that, if there is a misnomer of a party, the Court must allow or direct the amendments necessary to correct the misnomer.
- [17] In *Tim Gordon Property Group Pty Ltd v Helensvale Property Development Pty Ltd and Anor*¹⁰ the Court declined to exercise its discretion because the named plaintiff did not exist, stating that it was not simply a question of a misnomer.¹¹ The Valuer-General has a similar difficulty in this case; this was not a misnomer as HSH was not the objector and, therefore, cannot be the Appellant.

Rule 69 Uniform Civil Procedure Rules 1999 (Qld)

- [18] Counsel for the Valuer General suggests that, if I am not satisfied that this is a case of a misnomer, I can exercise my discretion pursuant to rule 69 because there was a “genuine misunderstanding” as to who was the appropriate appellant.
- [19] Rule 69 gives me discretion to remove a party from a proceeding and to include a person whose presence before the Court is necessary to enable the Court to adjudicate effectively and completely on all matters in dispute.

¹⁰ [2015] QSC 19.

¹¹ Ibid at [12].

- [20] I have been referred to the decision of White J in *Re Jackaroo Agencies Pty Ltd*¹² in support of the submission that rule 69 is apposite.
- [21] That case involved an application to set aside a statutory demand. The application was made in the name of the director of the company, rather than the company itself. The Court held that the mistake was a genuine error about the identity of the applicant, the respondent did not and could not claim to be misled and there was no reason why the amendment could not be made.
- [22] If HSH had been an objector, and therefore entitled to appeal, *Jackaroo* would support the Valuer-General's submission. However, as I continue to note, HSH was not an objector and, therefore, had no right to appeal. I cannot simply substitute HSH into this appeal.
- [23] The notice of valuation was issued in error to the Department. HSH mistakenly objected in the name of the Department. The Registrar failed to requisition the notice of appeal. None of this can be cured by a mere substitution.
- [24] Both the application and the appeal itself should be dismissed. Although I cannot direct accordingly, it would be prudent for the Valuer-General to issue a valuation in the name of HSH, which is an 'Owner' of the land under the *Land Valuation Act 2010* (Qld).

Orders

- 1. The General Application filed 12 December 2023 is dismissed.**
- 2. The appeal is dismissed.**
- 3. Any submissions seeking a costs order in this proceeding must be filed and served within 14 days of the publication of these reasons.**

¹² [2006] 1 Qd R 332.