

# SUPREME COURT OF QUEENSLAND

CITATION: *Multiplex Bluewater Marina Village Pty Ltd & Anor v Harbour Tropics Pty Ltd (No 2)* [2016] QSC 192

PARTIES: **MULTIPLEX BLUEWATER MARINA VILLAGE PTY LTD ACN 115 034 083**  
(first applicant)  
**MULTIPLEX BLUEWATER MARINA LOT PTY LTD ACN 115 034 074**  
(second applicant)  
v  
**HARBOUR TROPICS PTY LTD ACN 165 378 736 AS TRUSTEE FOR BLUEWATER TRUST**  
(respondent)

FILE NO: BS12894 of 2015

DIVISION: Trial Division

PROCEEDING: Originating application

DELIVERED ON: 23 August 2016 (ex tempore)

DELIVERED AT: Brisbane

HEARING DATE: 23 August 2016

JUDGE: Mullins J

ORDER: 

- 1. It is declared that on a proper construction of the registered easement 716452824 the second applicant and Marina Berth Users (as that term is defined in the easement) are entitled to the use of 64 carparks on property owned by the respondent described as lot 10 on SP264300 in the county of Nares Parish of Smithfield being all the land contained in Title Reference 50944071 and that such use of any of the 64 carparks may be for a continuous period not exceeding 10 hours;**
- 2. There be no order as to the costs of the application for the relief sought in paragraph 1 of the originating application.**

CATCHWORDS: REAL PROPERTY – EASEMENTS GENERALLY – DEFINITIONS AND CONSTRUCTION – where the court determined the construction of the easement terms – where the parties were invited to agree on the terms of a declaration that reflected the construction of the easement in respect of the use of the car park on the servient tenement – where the parties could not agree as to what period of time would be reasonable as the yardstick for the use of a car park space under the

easement before the use would effectively change from parking to storage

*Multiplex Bluewater Marina Village Pty Ltd & Anor v Harbour Tropics Pty Ltd* [\[2016\] QSC 99](#), related

COUNSEL: M D Martin QC for the applicants  
P W Hackett with A Mirotsos for the respondent

SOLICITORS: MacDonnells Law for the applicants  
Omega Lawyers for the respondent

5 HER HONOUR: I published my reasons in this matter on 10 May 2006 and invited  
submissions on the terms of the declaration that should be made to reflect the rights  
of the second applicant and marine berth users to access and use the marina facilities  
and for access between easement B and lot 1860 under the easement consistent with  
the reasons. The parties have each made further submissions on the terms of the  
10 declaration. In the published reasons, I concluded in paragraph 37 that as a matter of  
construction of the easement:

*...there must be a connection between the exercise of the additional rights  
conferred under clause 2 –*

15 of the easement –

*and the access to and from the dominant tenement.*

I stated in paragraph 37:

20 *A point will be reached where the use of a boat away from the Marina Berth for  
an extended period means that parking in the car park by the relevant Marina  
Berth User loses its connection with the exercise of access to the dominant  
tenement.*

25 At the time that I heard the application, the respondent had attempted to implement a  
car park management plan, where no person could park in the car park for in excess  
of five hours. The respondent conducts a tavern whose patrons park in the same car  
park to which the easement rights have been granted to the second applicant and the  
30 marina berth users, as defined in the easement. I made the point in paragraph 39 of  
the reasons that from the nature of the improvements on the servient tenement:

35 *...the car park is intended for use as a car park by the patrons of the tavern at  
the same time as those persons who claim to use the car park, as a result of the  
rights given under the easement to the grantee.*

I referred to the concept of reasonableness applying to both the grantor and the  
grantee, even where it is not expressly incorporated in the conditions of the  
easement. I was not prepared to nominate the period of time which would result in  
40 the use of the car park by a marina berth user no longer being authorised by the  
easement without the benefit of submissions of the parties and that was the purpose  
of the further submissions made by both parties at the hearing today. The applicant  
sought a declaration that would permit the marine berth users on a proper  
construction of the easement to access a car parking space for a continuous period  
45 not exceeding two nights and three days. The respondent maintained its position that  
parking for up to five hours was sufficient to enable a marine berth user to access the  
marina facilities, including the marina berth, without depriving the tavern patrons of  
use of car parks for a period of time that is unreasonable.

I had been hopeful that after publishing my reasons, the parties would be able to negotiate an agreed outcome in relation to specifying a period of time that could be the yardstick for determining when the connection with the marina berth would be lost by a marina berth user who had taken a boat out of the marina for enjoyment.

5 The parties have been unable to resolve their differences. It was therefore necessary for me to fix on a period of time that would resolve the dispute and reflect the considerations that I could take into account that are recorded in my published reasons.

10 Doing the best I could in the light of the submissions that were made, I determined that the connection with the marina berth would be lost for the purpose of exercising easement rights, if the boat was away from the berth over the weekend, as proposed on behalf of the applicant. It seems to me that overnight use of the boat would not be  
15 reasonable in the circumstances of the easement, the easement plan and the physical characteristics of the dominant and servient tenements.

I have decided that 10 hours would be an appropriate time to designate as the yardstick that would reflect a length of time away from the marina berth that would have the effect of changing the nature of the use of the car park by the marina berth  
20 user from parking to storage. I intend the yardstick of 10 hours to apply to parking by the marina berth user in the car park for the purpose of accessing the marina berth in any instance, whether the boat is removed from the berth or not.

25 On the issue of costs, although I am prepared to make a declaration that reflects the conclusions that I reached in my published reasons, and to that extent, the applicant has had some success in the proceeding, the respondent has also had some success because the declaration fixes a period of time beyond which, on any view, the use by the marina berth users of the car park could not be treated as reasonable. I therefore  
30 considered that it was appropriate that there be no order as to the costs of the application for the relief that was sought in paragraph 1 of the originating application.

I make an order in terms of the amended draft initialled by me and placed with the  
35 file.

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