IN THE COURT OF APPEAL [1996] QCA 517

SUPREME COURT OF QUEENSLAND

Appeal No 3289 of 1996

Brisbane

[Cairns Shelfco No 16 Pty Ltd v. State of Qld]

BETWEEN:

CAIRNS SHELFCO NO 16 PTY LTD
ACN 010 327 312

Appellant

AND:

THE STATE OF QUEENSLAND

Respondent

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Fitzgerald P
Pincus JA
Dowsett J

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Judgment delivered 13 December 1996

Judgment of the Court

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**1. APPLICATION REFUSED**

**2. DECLARATION AS BETWEEN THE CAIRNS PORT AUTHORITY AND CAIRNS SHELFCO NO. 16 PTY LTD THAT CAIRNS SHELFCO NO. 16 PTY LTD WAS AT MATERIAL TIMES ENTITLED TO BE ISSUED WITH A NOTICE OF EACH OF THE VALUATIONS MENTIONED IN THE ORIGINATING SUMMONS.**

**3. DECLARATION AS BETWEEN THE CAIRNS PORT AUTHORITY AND CAIRNS SHELFCO NO. 16 PTY LTD THAT CAIRNS SHELFCO NO. 16 PTY LTD COMPETENTLY LODGED EACH OF THE OBJECTIONS THEREIN MENTIONED.**

**4. CAIRNS PORT AUTHORITY TO PAY CAIRNS SHELFCO NO. 16 PTY LTD'S COSTS OF THIS APPLICATION.**

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| **CATCHWORDS**: | **CIVIL LAW - leasing - rental increases dependent upon variations in the unimproved valuation of the demised premises as assessed by the Valuer-General - certificates of valuation - right of objection to valuations made by the chief executive - joinder of parties.**<br><br>**ss. 28, 52 and 74 of the Valuation of Land Act.** |
| Counsel: | Mr D.B. Fraser Q.C. for the applicant<br><br>Mr R.B. Bain Q.C. for the appellant/respondent<br><br>Mr D.G. Bancroft for the respondent |
| Solicitors: | Quinlan Miller & Treston as town agents for MacDonnells, Cairns for the appellant<br><br>Clayton Utz for the appellant/respondent<br><br>Crown Solicitor for the respondent |
| Hearing Date: | 5 September 1996 |

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Before Fitzgerald P
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BETWEEN:

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**JUDGMENT OF THE COURT**

**Judgment delivered 13 December 1996**

On 5 March 1996 this Court gave judgment in an appeal from a decision of a Judge in Chambers. The appellant was Shelfco No 16 Pty Ltd and the respondent was the State of Queensland. We will continue to describe those parties by reference to their respective capacities in those proceedings. Although the facts appear in the reasons for judgment previously delivered, we will summarise them.

In 1988 Cairns Port Authority (the "applicant") leased certain land to the appellant for 75 years at an annual rental, for the first two years of the term, of $250,000. The lease provided for rental increases at two yearly intervals, dependent upon variations in the unimproved valuation of the demised premises as assessed by the Valuer-General (as that officer was then known) in accordance with s.27 (now s.74) of the Valuation of Land Act. It is not necessary to

describe the exact process by which such valuations might affect the rent. In certain circumstances, other valuations made under the Act might also have that effect. The applicant as lessor requested numerous valuations pursuant to s.27/74, which requests were met by the provision of certificates of valuation as contemplated by the section. In each case, the appellant purported to object under the Act to the valuation in question. The chief executive (previously the Valuer-General) disputed the entitlement of the appellant to so object, asserting that the objection provisions of the Act do not apply to a valuation performed pursuant to s. 27/74. The Chamber Judge upheld this assertion, but this Court decided to the contrary. Little point will be served by repeating in full the reasons for the decision, but a brief summary may be helpful. We will hereafter refer to relevant sections by their current numbers.

Part 4 of the Act deals with annual valuations and prescribes an objection process. (See ss. 42, 43 and 44.) These provisions are obviously not relevant for present purposes. Part 6 also provides for objections. S.49 prescribes that:

> "Except to the extent otherwise indicated in this Act, this part does not apply to or with respect to a valuation of land made pursuant to part 4."

Section 52 provides:

> An owner who is dissatisfied with the valuation made by the chief executive under this Act may, within 60 days after the date of issue of the notice of valuation (which date of issue shall be stated in such notice), post to or lodge with the chief executive an objection in writing against the valuation."

This Court held that the right of objection conferred by s. 52 applies to s. 74 valuations. It followed that the appellant had a right of objection to each of the valuations made by the chief executive.

The applicant was not a party to those proceedings. However material filed in this Court suggests that by mid-June 1995, it was aware of the proceedings before the Chamber Judge and of his Honour's decision. In February 1996 the applicant learned that "Cairns Shelfco and the Crown currently have an appeal process before the Supreme Court concerning objections to

Section 74 valuations." On 7 March 1996 the applicant was advised that the appeal had been successful.

As the decision at first instance was favourable to the applicant, it is not surprising that it took no step to intervene when it first became aware of those proceedings. However from February 1996 it knew that the appeal was extant. It is difficult to understand why it took no step to intervene at that time. The applicant was advised on 7 March 1996 that the appeal had been successful but did not bring the present application until 16 April 1996. The applicant now asserts that it ought to have been joined as a party before the Chamber Judge and on appeal and asks that the judgment of this Court be set aside because it was not heard.

The applicant's interest is said to arise from its position as lessor and owner of the land in question and as the party which requested the relevant valuations from the chief executive. Obviously, it will be affected if a reduction in a valuation leads to a reduction in rental. Part 6 does not, however, suggest an intention that the consideration of objections should be a quasi-judicial process at which all affected parties are heard. The prescribed objection process rather appears to be part of the valuation procedure. If that is so, it is difficult to see why a party should be heard on the question of whether or not another party has a right to object. Even if the applicant ought to have been heard on that question, the considerable delay in seeking to intervene may well offer a further hindrance to the success of the present application. In any event, as the applicant concedes that intervention will only be justified if its arguments on the merits lead us to a different view from that previously expressed, it is appropriate that we first consider those arguments.

The applicant's submissions involved a detailed analysis of various sections of the Act, apparently with the aim of identifying an integrated and consistent system of valuation emerging from it. As suggested by Pincus JA in his earlier reasons for judgment, the Act may not lend itself to such analysis. Primarily, it is concerned with the valuation of land for the purposes

referred to in s.72, namely land tax and rating. Section 74 is obviously designed to extend the function of the chief executive to include the preparation of valuations for other purposes. As Pincus JA also demonstrated, it is probable that initially, this function was intended to serve the needs of government departments requiring valuations for purposes other than those connected with rates and land tax.

The applicant summarised its arguments on the merits as follows:

(a) The structure and purposes of the Act do not provide any reason for considering that a "private" valuation under s. 74 should attract the processes of objection and appeal.

(b) The context in which s. 74(5) appears is quite inconsistent with the idea that such a valuation is provisional only.

(c) S. 74(5) while not well drafted is directed to "enabling" the chief executive to do "private" valuations and to the extent that it is ambiguous, it should be given a meaning designed to effectuate the operation of the Act as a whole.

(d) S. 74(5) should not be interpreted in a way that does mischief to the utility of s. 78.

(e) The inconsistencies and anomalies resulting if s. 74(5) is given the meaning contended by Shelfco are considerable.

Although the applicant put its case in a number of ways, the attack principally centred upon the inter-relationship between s. 28(1) and s. 74. Section 28(1) provides:

> "No alteration shall be made in the valuation of any parcel of land during the period during which any general valuation or annual valuation relating to the area in question is in force ...".

The section then provides for a number of exceptions to this general prohibition, none of which includes the making of a valuation pursuant to s. 74. The thrust of the applicant's argument was that if the provisions of s. 74(5) be construed as applying all of the provisions of the Act to the valuation process under s. 74, then s. 28(1) would operate to prohibit the provision of a valuation differing from the latest general or annual valuation.

Section 28 appears in part 3 of the Act which is headed "Valuations". That part commences with s. 13 which provides:

> "The chief executive must decide the unimproved value of the land to be valued for the Acts under which local authorities are established."

S. 15 authorises the use of unimproved valuations under the Act for fixing rent under the Land Act. S. 72(1) provides that such valuations are to be used as the unimproved values for the purposes of the Land Tax Act, the Local Government Act and the City of Brisbane Act. The Acts referred to in s. 13 are presumably the Local Government Act and the City of Brisbane Act. Whilst it may not be absolutely clear, the better view is that part 3 (including s. 28) is concerned with general and annual valuations for the purposes of those Acts (by virtue of ss. 13 and 72), the Land Act (by virtue of s. 15) and the Land Tax Act (by virtue of s. 72). S. 28 should be construed as referring only to general and annual valuations and to the uses to which they may be put. The section cannot usefully be applied to a valuation obtained under s. 74 for a purpose which is, by definition, unrelated to the purposes of the four Acts to which I have referred.

The other major problem identified by the applicant arises out of the difference between a certificate of valuation provided pursuant to s. 74 and a notice of valuation which is a necessary condition precedent to an objection for the purposes of part 6. Pincus JA has previously dealt with this matter and we need not discuss it further.

We therefore respond to the above summary of the applicant's argument as follows:

(a) The applicability of part 6 to valuations under s.74 is a matter of construction of the Act. S. 49 expressly excludes the application of that part to part 4 valuations, strongly suggesting that it is to apply to all other valuations under the Act. S. 74(5) would seem to support this approach.

(b) The reference in argument to a "provisional" valuation is, we understand, intended to convey the proposition that the objection procedure renders any valuation to which it

applies "provisional" pending resolution of that objection. The "context in which s.74(5) appears" is presumably the whole of the section, or perhaps, the Act. We have not identified any provision of the Act which is so inconsistent with the application of part 6 to s.74 valuations as to lead us to abandon the clear meaning of those provisions.

(c) We do not read s.74(5) as "enabling" "private" valuations. S. 74(1) performs that function. S. 74(5) applies the empowering and regulating provisions of the Act to the process of producing such valuations. Section 28(1), on its proper construction, is not intended to apply to s.74 valuations.

(d) S. 78 permits certain named classes of fiduciary to "obtain and use" a certificate under s. 74 for the purposes of his or her duties. We see no reason why the application of part 6 to s. 74 valuations would undermine the efficacy of that provision. It may well be that a fiduciary with notice of an objection could not rely upon such a certificate until the objection had been resolved. Quite apart from the objection process, there will be circumstances in which a fiduciary could not, in good faith, so act. Examples would be where the certificate was obviously wrong or where, to the knowledge of the fiduciary, there had been an error in the valuation process. Without deciding the matter, we expect that s. 78 would only protect bona fide actions in reliance upon such a certificate.

(e) We are unable to identify significant "inconsistencies and anomalies" resulting from the application of part 6 to s. 74 valuations.

In the end, the applicant's argument was simply that the Chamber Judge was correct in treating s. 74 valuations as distinct from other valuations under the Act and as not appropriately subject to part 6 because of their "private" nature. For the reasons given in the previous proceedings, there is no justification for so limiting the application of part 6.

The applicant by its notice of motion seeks to be made a party to the originating summons and to the appeal and further directions as to the re-hearing of the appeal. There is a

serious dispute between the appellant and the applicant as to the proper construction of s.74 and part 6 of the Act. Whether or not the applicant ought to have been joined in the original proceedings, it and the appellant are parties to the current application and the matter has been argued on the merits. It is appropriate that as between the applicant and the appellant, we declare in terms of the declaration made in the earlier proceedings. It follows that the applicant should pay the appellant's costs of this application.