

# LAND COURT OF QUEENSLAND

CITATION: *DS Queen Street Mall Pty Ltd v Department of Natural Resources and Mines* [2004] QLC 0089

PARTIES: DS Queen Street Mall Pty Ltd  
(applicant)  
v.  
Chief Executive, Department of Natural Resources and  
Mines  
(respondent)

FILE NOS: AV2004/0044, AV2004/0045, AV2004/0046

DIVISION: Land Court of Queensland

PROCEEDING: Appeal against annual valuation under *Valuation of Land Act 1944*

DELIVERED ON: 15 October 2004

DELIVERED AT: Brisbane

HEARD AT: Brisbane

MEMBER: Dr NG Divett

ORDER: **Decision on the Facts**

CATCHWORDS: Practice – Appeals – Misdescription – Power to correct a  
mistake in the name of the owner – Mistaken identity –  
Decision on the facts

APPEARANCES: Mr R Needham for the appellant  
Mr T Quinn for the respondent

SOLICITORS: Holding Redlich Solicitors for the appellant  
Department of Natural Resources and Mines for the  
respondent

## Finding on the Facts

### Background:

[1] This matter relates to land at 171 and 171A Queen Street, and 162A Elizabeth Street, Brisbane, of property known as The Wintergarden/Hilton Hotel (the complex), and including a viaduct leading from the subject complex across Queen Street Mall to David Jones, and a car parking ramp in Elizabeth Street leading to the subject complex. The lands are described as:

- Lots 1 and 2 on SP 134044 (the complex – AV2004/0044);
- Special Lease SL 0/200560 over Lot 100 on CP 83858 (the viaduct – AV2004/0045);
- Lease SL 0/200559 over Lot 1 on CP 838587 (the ramp – AV2004/0046).

The subject lands have areas of

- The complex – 8296 square metres
- The viaduct – 302 square metres
- The ramp – 112 square metres

[2] The issue before the Court for resolution is whether jurisdiction exists to allow the merits of the matter to proceed. It is agreed that in principle those matters lie on all fours with another matter brought before this Court in respect of *NE Christie (NSW) v Department of Natural Resources, Mines and Energy* [2004] QLC 0063 (300 Adelaide Street, Brisbane). A decision on that matter was handed down on 28 July 2004. That matter is currently under appeal to the Land Appeal Court, and it is agreed that if the current matters are entirely on all fours with *Christie*, then any decision on jurisdiction in this matter should await resolution of the *Christie* matter by the Land Appeal Court. To that end therefore I direct that I will not make any final decision on jurisdiction in these matters until *Christie* is resolved.

[3] However in these matters it is argued that the facts surrounding the lodgement of the objection and appeals, may have some factual differences. On that basis I have decided to investigate those details, and then issue a decision only on the facts in these matters.

[4] Mr R Needham of Counsel, instructed by Holding Redlich Solicitors, appeared for the appellants, calling evidence from Grant Jackson, the registered valuer acting on behalf of the appellant. Mr T Quinn of Counsel, instructed by the Department of Natural Resources and Mines appeared for the respondent. An affidavit of known facts was also

supplied by Mark Eric Harding Anning, the solicitor of Holding Redlich representing the appellant. (Exhibit 1).

### **The known factual matters**

[5] Before examining the evidence surrounding the establishment of the appeal, I list the known factual comparisons of the *Christie* matter and the current matters as follows:

#### **300 Adelaide Street (*Christie*)**

- Valuation issued by respondent on 26 February 2002 to Christie (the owner at the time)
- Trust Company of Australia Ltd (TCA) became the owner on 14 March 2002
- Agent for TCA lodged objection on 26 March 2002 naming (incorrectly) Christie as owner
- Respondent made decision on objection on 30 June 2002 naming Christies as owner
- Agent lodged notice of appeal on 26 July 2002 naming (incorrectly) Christie as owner
- Solicitors for new owner brought change of ownership to court's attention on 21 August 2003

#### **Wintergarden/Hilton Hotel**

- Valuation issued by the respondent on 24 February 2003 to DS Queen Street Mall (the owner at the time)
- Industry Superannuation Trust (ISPT) became the owner on 7 March 2003
- Agent for ISPT lodged objection on 17 March 2003 naming (incorrectly) DS Queen Street Mall as owner
- Respondent made decision on objection on 17 February 2004 naming DS Queen Street Mall as owner
- Agent lodged notice of appeal on 5 March 2004 naming (incorrectly) DS Queen Street Mall as owner
- Solicitors for new owner brought change of ownership to court's attention on 5 April 2004

### **The evidence of Mr Jackson –**

[6] Mr Jackson provides the following evidence of his actions in these matters (Exhibit 2), including the lodgement of the original objection against the valuation, and also the subsequent lodgement of the appeal against the decision by the Chief Executive. In order to understand the circumstances surrounding the factual issues, I will examine those in respect of their chronology of occurrence.

[7] Mr Jackson advises that he is currently involved in some of the many multiple ISPT properties that it owns throughout Australia. To the best of his understanding he believes that ISPT now holds those properties under two distinct ownership arrangements, although he cannot be definitive in respect of whether ISPT holds ownership in other than

the name of the trust. However he advises that there are potential Stamp Duty benefits to an owner, where a purchaser of company shares may be involved. For those reasons Mr Jackson argues that the purchase of the subject land in the name of DS Queen Street Mall did not raise any concerns for him at the time of his original instructions to act on the owner's behalf, as he assumed that the property had been purchased in that name.

- [8] To support his argument that reduced Stamp Duty may sometimes lead purchasers to acquire properties through a share transfer arrangement, Mr Jackson notes advice from Mr Anning in respect of the Stamp Duty subsequently confirmed on the contractor's sale of the subject land for \$153,000,000, at \$5,922,225 (Exhibit 1 - Annexure 1). Mr Jackson notes that significant reduced Stamp Duty payments may result in the transfer of certain properties by other than the straight change of title name. Mr Jackson advises that at the time, he believed that DS Queen Street Mall was an entity of ISPT. However Mr Jackson was unaware whether ISPT had used such a share transaction arrangement in its property dealings throughout Australia.
- [9] Mr Jackson advises that his initial instructions from ISPT to act on its behalf in respect of the subject land, occurred in the form of a verbal instruction sometime before September 2002. Mr Jackson advises further that the purpose of the instruction was to have Mr Jackson provide advice about the existing level of unimproved value of the subject land, which was determined at \$61,000,000 at that time. Mr Jackson advises that he understood that ISPT was considering the purchase of the subject land at that time, and was concerned at the apparent high level of unimproved value assessment as an ongoing cost matter, should the purchase proceed. He advises that neither his company, nor himself, were involved in the purchase arrangements, which were undertaken on separate valuation advice from CB Richard Ellis. Mr Jackson concedes that he had not maintained any written record of his initial verbal instructions.
- [10] Mr Jackson then advises that at about 12 September 2002 he requested a copy of the title of the subject land directly from ISPT, who then instructed its solicitors (Holding Redlich) to provide copies for Mr Jackson. Holding Redlich (Mr Byrom) faxed the copy of the title (in the name of DS Queen Street Mall Pty Ltd) to the property manager of ISPT (Mr Caia), who then on-faxed the copies, including the covering letter, to Mr Jackson on 12 September 2002. The details of the faxes confirmed those arrangements.
- [11] On 17 September 2002 (Exhibit 5) Mr Jackson wrote to ISPT (Mr Caia) providing advice in respect of the unimproved value, potential objection issues, appeal rights, current other appeals in the locality, and recommending a possible successful appeal against their unimproved value of the subject land. Following a request from ISPT (Mr Caia) for a fee

proposal to prepare a report on the subject land, Mr Jackson wrote to ISPT (Mr Caia) outlining his fee arrangements on 18 February 2003.

[12] Following the issue of new valuation notices on 24 February 2003, Holding Redlich (Mr Byrom) wrote to ISPT (Mr Caia) on 27 February 2003 advising of the new valuations. ISPT Property Investment Manager (Mr Gregson) wrote to Mr Jackson on 4 March 2003 instructing Mr Jackson to prepare an objection on the behalf of ISPT (Exhibit 5). The original valuation notices were apparently faxed from Dayson Australia Pty Ltd to Wintergarden on 26 February 2003. While not confirmed, that entity is likely to be the operating entity of the former owner (DS Queen Street Mall Pty Ltd), the valuation notices were addressed to the former DS Queen Street Mall Pty Ltd, and received by that body on 24 February 2003.

[13] Separate to the unimproved value matters, the subject land was entered into a contract of sale from the former to ISPT for \$153,000,000 on 24 December 2002, which was settled on 28 December 2003. The transfer of the title from DS Queen Street Mall Pty Ltd to ISPT Pty Ltd was registered in the Freehold Title Register of the Department of Natural Resources and Mines on 7 March 2003. The title transfer documents were lodged with the Department on 27 February 2003. On that basis the departmental annual valuation notices of 24 February 2003 were issued correctly to the former owner at that date. The ownership of the subject land changed some eleven days later. Transfer of the accompanying Special Leases to ISPT Pty Ltd were approved by the Minister on 5 March 2003, and also registered on 7 March 2003.

[14] However Mr Jackson confirms that he was not party to any matters involved with the sale of the subject land, and in fact has never seen a copy of the contract documents. He notes such contracts are often very confidential and circulated only to restricted audiences. When he then proceeded to lodge the formal objection notices against the valuations, which had issued on 24 February 2003, Mr Jackson was unaware of the then very recent transfer of the property, and he relied, mistakenly, upon the previous title search in the name of DS Queen Street Mall Pty Ltd, which had then been forwarded to him on 12 September 2002. The objection notices (Form 58) were then lodged on 17 March 2003 (Exhibit 1 - Annexure 4), in the name of the former owner.

[15] On 20 March 2003 the Chief Executive wrote to the former owner (DS Queen Street Mall Pty Ltd) confirming receipt of the objections. The address of those (3) notices of receipt were to DS Queen Street Mall Pty Ltd, care of Mr Jackson's address in Melbourne. Clearly at that time the respondent was not aware of the change of ownership. Mr Jackson received those notices on 24 March 2003.

- [16] On 17 February 2004, some eleven months later, the Chief Executive issued decisions on the three objections in the name of the former owner DS Queen Street Mall Pty Ltd, care of Mr Jackson's office, which were received on 18 February 2004. On 23 February 2004, Mr Jackson wrote to the property manager ISPT (Mr Gregson) advising of the decisions on objections and seeking instructions about whether to appeal. On 26 February 2004 Mr Jackson was instructed to lodge notices of appeal by the property manager ISPT (Mr Gregson) against the decisions on objections. On 5 March 2004 Mr Jackson wrote to the registrar of the Land Court lodging formal appeals against the three valuations. In each case those three appeal notices were made in the name of the former owner.
- [17] On 5 April 2004 Holding Redlich wrote to the Land Court advising that they had become aware that the appeals had been lodged in the name of the former owner, and asking for the appeals to be amended to the current owner, ISPT Pty Ltd. On 13 April 2004, the registrar of the Land Court advised that the matters were entered on the Court's records, and that there appeared to be no impediment to the appeals proceeding. Holding Redlich as agent then faxed a request to the respondent on 28 April 2004, suggesting that, with the agreement of the respondent, it seemed prudent to reconstitute the appeals in the name of ISPT, as s.46 of the *Valuation of the Land Act* did not apply, (Exhibit 1 - Annexure 9). That letter of 28 April 2004 also sought a statement of reasons under the *Judicial Review Act 1991*, as to why the Chief Executive had refused the objections.
- [18] On 9 July 2004 the valuer for the respondent, (Mr Denman) wrote to Holding Redlich seeking application for further and better particulars in respect of the matters (Exhibit 1 - Annexure 10). On 15 July 2004 Holding Redlich wrote to the respondent advising that particulars would be forthcoming, once the Chief Executive had provided details of particulars, and matters relied upon in the original assessments, together with the reasons for those decisions, (Exhibit 1 – Annexure 11). On 19 July 2004 the Chief Executive advised Holding Redlich that the respondent would now seek to have the appeal struck out for lack of jurisdiction (Annexure 14).
- [19] In summarising his actions in these matters, Mr Jackson argues that it was a genuine mistake on his behalf to lodge objections and appeals in the name of the former owner. He could see no benefit or reason to do such a thing, and the only reason for his actions was as the result of a genuine mistake. Mr Jackson further argues that the circumstances of the 300 Adelaide Street property (*Christie* appeal) were identical to the subject matter, and they were also a genuine mistake of name on the objection in the appeal forms.

- [20] In respect of how he completes the documentation and appeals in such matters, Mr Jackson agrees that he sometimes uses the services of his administrative assistant, but on all occasions he does a final checking of any details before signing off the appeals or objections. On that basis he argues that any genuine mistake relates entirely to his understanding of the matters. In each case he argues he was fully aware that the objections and subsequent appeals were in respect of his client ISPT Pty Ltd. When making any final checks, Mr Jackson advises that he normally has reference to the copy of the Certificate of Title. In the current matters he had inadvertently checked against the title, prior to the change of ownership on 7 March 2003. (See paragraph [10]).
- [21] Mr Jackson also confirms that he has a clear understanding of the operations of the *Valuation of Land Act 1944*, and at no time would he knowingly lodge an objection or appeal in other than the name of the owner. His actions in having done so in the current matter were a genuine mistake on his behalf. While he accepts that the Chief Executive had in fact circulated inaccurate decisions on these objections, in the name of the former owner rather than to ISPT, he was not entirely led in his actions by that error on the Chief Executive's part. However he agrees that those inaccurate decisions on the objections may have contributed to his mistake.
- [22] Mr Quinn draws attention to Mr Jackson's advice to ISPT of 10 September 2002, in respect of whether Mr Jackson was considering whether ISPT should continue an objection against the 1 October 2001 valuation, should ISPT acquire the subject properties. Mr Quinn notes that on page 4 of that letter Mr Jackson articulates a scenario outlined by s.46 of the Act in respect of a right to continue the former objection in the name of the new owner. Mr Jackson agrees that such a reading of his letter could be construed, but argues that all of his dealings with ISPT have been in relation to the subsequent valuation at 1 October 2002.

**Summary -**

- [23] In summarising the matter for the respondent, Mr Quinn argues that as the original objection was lodged by someone other than the owner, then the objection was invalid, and the current appeals have no legal standing. In respect of an operational mistake, Mr Quinn draws support from the earlier decision of *NE Christie* at paragraph [25]. He notes that Mr Jackson had commenced providing valuation advice in this matter well before the new owners acquired the property. At that time he was aware of the name of the former owner DS Queen Street Mall Pty Ltd. He argues it would extend the element of credibility in this matter to conclude that Mr Jackson would not have been aware that ISPT was soon to become the owner of the property. Mr Quinn argues that the only

reasonable conclusion on the facts was that Mr Jackson proceeded on the footing that the law required for an objection to be continued in the name to whom the notice of valuation was issued. Mr Quinn argues that the *Christie* matter can be distinguished in that proceeding as there had been no evidence provided by Mr Jackson. Mr Quinn also notes that Mr Jackson's current evidence in part relies upon his memory of events, some of which were two years ago.

[24] Mr Needham summarises the matter for the appellant, by noting that Mr Jackson had no involvement in the actual purchase of the subject land, and therefore could have no reason to query whether the property had been acquired in a name other than ISPT. Mr Needham notes that communication between Mr Jackson and the Chief Executive had proceeded on the basis that the name of the owner was DS Queen Street Mall Pty Ltd. That advice was from the same department that as early as 7 March 2003 had registered a change of name to ISPT Pty Ltd. As noted in the *Christie* decision, had the Chief Executive responded to Mr Jackson by noting the change of ownership, then a fresh objection notice could have been issued in the name of ISPT Pty Ltd, and the current issues would not have occurred. Mr Needham argues that as there was no motive for Mr Jackson to pursue the objections and subsequent appeals in the name of the former owner, it was reasonable to conclude that they had been incorrectly addressed as a result of a genuine mistake.

**Conclusion:**

[25] In seeking comparisons with the *Christie* matter, I note that a similar conclusion could be reached as noted in paragraphs [15] and [16] of that decision. If the decisions on objections had in fact been incorrectly issued under s.45(2) of the Act, in the current matter, then it is possible that the decisions on objections have still to be determined by the Chief Executive. But that thought leads me towards a conclusion on the jurisdiction in this matter, which I have agreed I will not pursue until the Land Appeal Court hands down its decision on *Christie*. If I consider then only the factual issues, I seek answers to the comparisons outlined in paragraph [5] in this matter, to note whether those two matters are on all fours in their details.

[26] Having now had the detailed evidence of Mr Jackson, I am persuaded that the actions by Mr Jackson in both objecting, and subsequently appealing, in an incorrect name, occurred as a result of a genuine mistaken belief that DS Queen Street Mall Pty Ltd was the name in which ISPT Pty Ltd now held the land. That has subsequently been shown to be incorrect. On those facts I agree that the current matter is on all fours with the *Christie*

decision, and I adjourn these matters until the Land Appeal Court publishes its findings on the *Christie* matter.

**NG DIVETT  
MEMBER OF THE LAND COURT**