LAND COURT OF QUEENSLAND

CITATION:	*Jensen & Anor v Valuer-General (No 3)* [2023] QLC 19
PARTIES:	**Matthew Ronald Jensen and Stewart Christian Jensen as Tte** (appellants) v **Valuer-General** (respondent)
FILE NO:	LVA198-21
DIVISION:	General
PROCEEDING:	Application for costs
DELIVERED ON:	30 October 2023
DELIVERED AT:	Brisbane
HEARD ON:	Submissions closed 23 October 2023
HEARD AT:	Heard on the papers
A/PRESIDENT:	PG Stilgoe OAM
ORDERS:	**1. The Jensens must pay the Valuer-General's costs of and incidental to the notice issued by the Jensens under section 78B of the *Judiciary Act 1903* (Cth) on a standard basis.** **2. Unless ordered otherwise, each party is to bear their own costs of and incidental to the appeal.**
CATCHWORDS:	REAL PROPERTY – VALUATION OF LAND – OBJECTIONS AND APPEALS – QUEENSLAND – COSTS – where parties both seek costs under the *Land Valuation Act 2010* – where Valuer-General submits that application was frivolous or vexatious – where Appellant submits that Valuer-General did not properly discharge her responsibilities – whether costs should be awarded. *Land Court Act 2000* (Qld) s 27A *Land Valuation Act 2010* (Qld) s 171

Casley v Commissioner of Taxation [2007] HCATrans 590, distinguished
GPT RE Limited v Valuer-General [2019] QLC 8, distinguished
Reed v QCoal Sonoma Pty Ltd & Anor [2014] QLAC 8, applied
Williams v Department of Environment and Resource Management [2014] QLAC 10, distinguished

APPEARANCES: Not applicable

[1] Both parties have applied for cost orders in the wake of my decision[1] about the value of the Jensens' land at Yungaburra.

[2] There are three different issues.

1. The reserved costs of the Valuer-General's application to set aside a subpoena filed 19 June 2023.

2. The Valuer-General submits that the Jensens should pay the costs of and incidental to the Jensens' submission that the Court had no jurisdiction to hear the appeal because their land was part of a separate sovereign nation.[2]

3. The Jensens say that the Valuer-General should pay their costs of the hearing.

The reserved costs

[3] The Valuer-General submits that each party should bear their own costs. The Jensens submit that the Valuer-General should not have her costs of that application. The effect of the submissions is the same; that the Valuer-General should not have her costs of the application. I agree.

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1 *Jensen & Anor as Tte v Valuer-General* [2023] QLC 13
2 *Jensen & Anor as Tte v Valuer-General* [2022] QLC 23

The costs of the jurisdiction submission

[4] The Valuer-General relies on section 171(2)(a) of the *Land Valuation Act 2010* which provides that the Court may make a costs order if all or part of the appeal was frivolous or vexatious.

[5] The Valuer-General submits that the jurisdiction submission was frivolous and/or vexatious by reference to my comments in the reasons for decision:

1. That none of the Federal Court determinations about native title rights extended to the area on which the Jensens' land sits.[3]

2. That the Jensens did not provide any evidence that they were one of the native title holders identified by the Federal Court.[4]

3. That the subject land was freehold and, therefore, native title had been extinguished.[5]

4. That the issue of sovereignty cannot be challenged in a municipal court and that the Land Court is a municipal court.[6]

[6] At the hearing, the Jensens demonstrated their capacity for fine reasoning and articulate argument. It is unfortunate that they were distracted by an unmeritorious argument.

[7] There was never any prospect that the Jensens' submission about sovereignty would succeed. The evidence they submitted and the arguments they made in support of their position were, on any objective view, untenable.

[8] The Valuer-General has referred me to the transcript in *Casley v Commissioner of Taxation*[7] to support her submission that the Jensens' submission was fatuous, frivolous and vexatious.[8] The reference is inapt. The self-proclaimed '*Prince*

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3 *Jensen & Anor as Tte v Valuer-General* [2022] QLC 23 [3].
4 Ibid.
5 Ibid, [5].
6 Ibid, [7].
7 [2007] HCATrans 590.
8 Respondent's Submissions on Costs, *Valuer-General*, filed 13 October 2023, 13.

Leonard of Hutt' trying to avoid income tax is a very different proposition from First Nations people challenging the jurisdiction of a Court to value their land in a way which may not align with their cultural values.

[9] The meaning of frivolous and vexatious was considered at length by the Land Appeal Court in *Reed v QCoal Sonoma Pty Ltd & Anor.*[9] Essentially, they take their ordinary meaning. A proceeding will be frivolous if it has no reasonable grounds. A proceeding will be vexatious if it was taken purely to cause trouble or annoyance.

[10] I do not accept that the Jensens' submissions were vexatious within any of these definitions even though the appeal was delayed by some months while I dealt with the question. I could not detect any wrongful motive in their application. However, there were no reasonable grounds for the jurisdiction argument, the Valuer-General pointed that out at an early stage, and yet the Jensens persisted.

[11] The Jensens rely on section 27A(2) of the *Land Court Act 2000* to resist an order for costs. The section provides that if the Court does not make an order under subsection (1), each party to the proceeding must bear the party's own costs for the proceeding. They submit that, because I did not make a costs order when I handed down that decision, each party must bear their own costs.

[12] Section 27A is concerned with the costs of a proceeding, not an interlocutory application. Further, the general costs power in section 27A must give way to the specific costs power in section 171 of the *Land Valuation Act 2010.*

[13] The Jensens should pay the Valuer-General's costs of and incidental to their application to dismiss the appeal on jurisdictional grounds.

The Jensens' costs of the hearing

[14] The Jensens were self-represented for most of the proceeding. They did get legal assistance for the drafting of their final submissions and they want the Valuer-General to pay those costs.

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9 [2014] QLAC 8.

[15] The Jensens rely on section 171(2)(f) of the *Land Valuation Act 2010* which allows the Court to make a costs order if a party did not properly discharge their responsibilities for the appeal. They say that the Valuer-General did not properly discharge her responsibilities because of my comments about the valuer, Mr Moroney.

[16] The Jensens referred me to two cases in support of their submission. The first is *GPT RE Limited v Valuer-General.*[10] In that case, the Member awarded costs to GPT because, in two different cases, the Valuer-General adopted two different methodologies of analysing the same sale. The Member held that this was a breach of the Valuer-General's duty as a model litigant and that GPT incurred additional costs because of that breach.

[17] It cannot be said that the nature of Mr Moroney's evidence caused the Jensens to incur additional costs. They were always going to file final submissions and those submissions (presumably) would have been critical of Mr Moroney. The fact that they chose at this late stage of the proceedings to engage legal assistance does not mean that they are additional costs.

[18] The second case the Jensens referred me to is *Williams v Department of Environment and Resource Management.*[11] The Jensens rely on the Land Appeal Court's comments:

> The respondent had an obligation from the outset of the appeal to promptly finalise the gathering of any further relevant evidence and delay no further. If as part of that process it were to engage an expert, its obligation was to ensure that it promptly engaged an appropriately professional expert, equipping that expert with the means of promptly gathering any further relevant information and promptly providing an expert report. In so doing and announcing to the appellants that the expert so engaged would be its expert in the proceeding, the respondent had a responsibility to thereafter behave consistently with that representation.[12]

[19] The Jensens submit that the current case is analogous because the Valuer-General did not appoint an appropriately professional expert because Mr Moroney was the original valuer in the mass appraisal system.

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10 [2019] QLC 8.
11 [2014] QLAC 10
12 *Williams v Department of Environment and Resource Management* [2014] QLAC 10 at [74].

[20] The circumstances in *Williams* were very different from the present case. In *Williams*, there was a suggestion of witness shopping. The respondent delayed the proceeding while looking for a new expert witness and "strung the appellants along".[13] The Court found that the respondent did not carry out its statutory duties when it made the decision which was the subject of the Court's first decision. None of these circumstances existed in the Jensens' appeal.

[21] In the appeal decision I noted that there was tension when the independent expert evidence is provided by a valuer who is an employee of the party, and that it was preferable to appoint an expert who is objectively independent.[14] My comments should not be construed as a statement that a valuer employed by the Valuer-General is not an appropriately qualified expert. In this case, during cross examination there were indications that Mr Moroney's mind may have been affected by his previous involvement in the mass appraisal system, but I am not persuaded that he was not an appropriately professional expert.

[22] The fact that I did not always agree with Mr Moroney's observations do not justify an order for costs against the Valuer-General. That fact that Mr Moroney's report fell short of the standard required by the Court is unfortunate, but not fatal.

[23] I am not persuaded that the Jensens are entitled to the costs incurred in providing final submissions.

Orders

1. **The Jensens must pay the Valuer-General's costs of and incidental to the notice issued by the Jensens under section 78B of the *Judiciary Act 1903* (Cth) on a standard basis.**

2. **Unless ordered otherwise, each party is to bear their own costs of and incidental to the appeal.**

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13 Ibid at [71].

14 *Jensen & Anor as Tte v Valuer-General* [2023] QLC 13 at [57].