

BRISBANE CITY COUNCIL v AMOS (B47/2018)

Court appealed from: Court of Appeal of the Supreme Court of Queensland
[2018] QCA 11

Date of judgment: 20 February 2018

Special leave granted: 14 September 2018

By Supreme Court proceedings commenced in 2009, the Appellant ("the Council") claimed from Mr Edward Amos the payment of overdue rates levied on eight properties owned by Mr Amos. The claim came to be based on rates notices issued between 1999 and 2012. One of the defences raised by Mr Amos was that those parts of the Council's claim which relied on rates notices issued more than six years prior to the commencement of proceedings must fail, on account of the limitation period prescribed by s 10(1) of the *Limitation of Actions Act 1974* (Qld) ("the Limitation Act"). Section 10(1) relevantly provides:

- (1) *The following actions shall not be brought after the expiration of 6 years from the date on which the cause of action arose:*
...
(d) *an action to recover a sum recoverable by virtue of any enactment, other than a penalty or forfeiture or sum by way of a penalty or forfeiture.*

The Council contended that no part of its claim was barred by s 10(1), because the applicable time limit in the circumstances was that prescribed by s 26(1) of the Limitation Act: 12 years. This was in view of the Council having the benefit of a statutory charge on land for any overdue rates, pursuant to s 97(2) of the *City of Brisbane Act 2010* (Qld) ("the COB Act").

Section 26 of the Limitation Act relevantly provides as follows:

- (1) *An action shall not be brought to recover a principal sum of money secured by a mortgage or other charge on property whether real or personal nor to recover proceeds of the sale of land after the expiration of 12 years from the date on which the right to receive the money accrued.*
...
(5) *An action to recover arrears of interest payable in respect of a sum of money secured by a mortgage or other charge or payable in respect of proceeds of the sale of land or to recover damages in respect of such arrears shall not be brought after the expiration of 6 years from the date on which the interest became due.*

Bond J found in favour of the Council, on 20 June 2016 giving judgment against Mr Amos in the sum of \$807,148.28 including interest. His Honour held that the terms of s 26(1) were specific and therefore governing, operating to the exclusion of s 10(1)(d). Bond J also held that the interest claimed by the Council was not subject to the temporal limitation prescribed by s 26(5). This

was because s 64(1) of the *City of Brisbane (Finance, Plans and Reporting) Regulation 2010* (Qld) ("the Regulation") defined overdue rates to include interest thereon. Such interest therefore was a part of the principal sum secured by the charge created by s 97(2) of the COB Act rather than a separate sum to which s 26(5) of the Limitation Act could apply.

An appeal by Mr Amos was allowed by the Court of Appeal (Fraser and Philippides JJA, Dalton J), which set aside the orders made by Bond J and directed the parties to provide substitute orders. (The latter have not been provided, however, pending the determination of the appeal to this Court.) Philippides JA and Dalton J held that the maxim of statutory interpretation applied by Bond J when considering s 10(1)(d) and s 26(1) of the Limitation Act ought not to have been applied. One of the provisions cannot be characterised as more specific than the other, since they do not deal with the same subject matter (even though an action may fall within both of them). Their Honours also held that the shorter limitation period must prevail, given that both provisions prohibit, rather than permit, the bringing of an action within a certain time. Mr Amos therefore had a good defence, under s 10(1)(d) of the Limitation Act, to the Council's claim insofar as it sought the recovery of sums which had accrued more than six years prior to the commencement of proceedings.

Fraser JA would have allowed the appeal only on the limited basis that the Council's claim for interest on Mr Amos' unpaid rates was subject to the six-year limitation period prescribed by s 26(5) of the Limitation Act. His Honour held that the operation of s 10(1)(d) was excluded by the more specific terms of s 26(1). Fraser JA held that although interest was brought within the charge created by s 97(2) of the COB Act (due to definitions in the COB Act rather than in the Regulation), it was not transformed into principal for the purpose of the limitation period prescribed by s 26(5) of the Limitation Act.

The grounds of appeal are:

- The majority (Philippides JA and Dalton J) erred in holding that:
 - (a) the proceeding by the Council for rates and charges levied pursuant to the *City of Brisbane Act 2010* (Qld) ("the COB Act") falls within the description of actions found both at ss 10(1)(d) and 26(1) of the *Limitation of Actions Act 1974* (Qld) ("the Limitation Act"), which provide respectively for limitation periods of 6 and 12 years, and that the inconsistency between these provisions was to be resolved by applying the shorter limitation period in s 10(1)(d), whereas, on a proper characterisation of the Council's claim, there is no conflict and the Council's claim is or includes an action to recover a principal sum of money secured by charge and therefore s 26(1) of the Limitation Act applies without regard to s 10(1)(d);
 - (b) any conflict between ss 10(1)(d) and 26(1) of the Limitation Act was to be resolved by a detailed consideration of the historical context of the Limitation Act and other related statutes, and case authority of those other statutes and texts, whereas the task of statutory construction must begin with a consideration of the statutory text and so must the

task end (*Federal Commissioner of Taxation v Consolidated Media Holdings Ltd* (2012) 250 CLR 503 at [39]).