



HIGH COURT OF AUSTRALIA

Public Information Officer

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WESTFIELD MANAGEMENT LIMITED v PERPETUAL TRUST COMPANY LIMITED

Westfield is not entitled to use an easement to access two extra shopping malls it has acquired next to the one originally serviced by the easement, the High Court of Australia held today.

Westfield owns Skygarden and Perpetual the adjacent Glasshouse shopping complex. Both face Pitt Street Mall in Sydney's CBD, while Glasshouse also fronts King Street. It has a private underground laneway running off King Street behind it and stopping at the boundary of Skygarden. Westfield now owns the neighbouring Imperial Arcade and Centrepont, which also face Pitt Street Mall, and it wants to redevelop all three sites into a single complex. In 1987, in return for Glasshouse granting Skygarden access via its laneway to help keep the then new Pitt Street Mall pedestrian precinct free of delivery vehicles, Sydney City Council allowed the Glasshouse developers to construct a larger building. In 1988, the original owners of Skygarden and Glasshouse agreed to terms for the easement and it was registered under the Torrens system. Westfield now wishes to use the laneway to access all three of its sites from King Street.

In the New South Wales Supreme Court, Westfield successfully sought a declaration that the easement permitted vehicles using the laneway to continue under Skygarden to access driveways, parking spaces and loading docks to be built on the Imperial Arcade and Centrepont sites. The Court of Appeal allowed an appeal by Perpetual. Westfield appealed to the High Court.

The Court unanimously dismissed the appeal. It said that it was significant that the terms of easement did not use the word "across" in relation to Skygarden but the words "to and from". It rejected Westfield's argument that the phrase "for all purposes" encompassed the purpose of accessing Skygarden and from there travelling to some further property. The Court held that the phrase had to be read as part of the longer expression "for all purposes with vehicles to and from [Skygarden] or any such part thereof across [Glasshouse]" and did not include going to and from and across Skygarden.

It also held that Westfield could not use extrinsic material to ascertain the intention or contemplation of the parties to the grant of the easement beyond the terms of the grant itself. The easement was registered but third parties inspecting the register cannot be expected to look for extrinsic material which might establish facts or circumstances existing at the time of registration of the kind relied upon by Westfield. The use of such material is inconsistent with the definitive nature of the Torrens register.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*