



HIGH COURT OF AUSTRALIA

9 March 2016

MORETON BAY REGIONAL COUNCIL v MEKPINE PTY LTD

[2016] HCA 7

Today the High Court unanimously allowed an appeal from the Court of Appeal of the Supreme Court of Queensland. The High Court held that the respondent ("Mekpine"), the holder of a retail lease in a shopping centre on certain land ("former Lot 6") that was later amalgamated with an adjacent lot of land ("former Lot 1"), did not acquire an interest over the entire amalgamated lot ("new Lot 1"). Accordingly, the High Court held that Mekpine was not entitled to compensation under the *Acquisition of Land Act 1967 (Q)* when part of new Lot 1 that was previously part of former Lot 1 was resumed by the appellant ("the Council").

Mekpine entered into a retail lease in a shopping centre. The terms of the lease relevantly gave Mekpine an entitlement to use the "Common Areas" of the "Land". "Land" was defined in the lease as former Lot 6. The lessor later purchased former Lot 1. In accordance with planning approval to extend the shopping centre, former Lot 6 was amalgamated with former Lot 1 by the registration of a plan of subdivision that created new Lot 1. Subsequently, the Council resumed a strip of vacant land from part of new Lot 1 that was previously part of former Lot 1 ("the Resumed Land"). The Resumed Land was never part of former Lot 6.

Mekpine brought proceedings in the Land Court of Queensland seeking compensation on the basis that it gained an interest in the Resumed Land upon registration of the plan of subdivision that created new Lot 1. In the alternative, Mekpine claimed it had an interest in the Resumed Land because the definition of "Common Areas" in the lease was inconsistent with, and should be substituted by, the broader definition of "common areas" in the *Retail Shop Leases Act 1994 (Q)* ("the RSLA").

The Land Court upheld Mekpine's claim for compensation. The Land Appeal Court of Queensland allowed the Council's appeal from the Land Court's judgment, concluding that the amalgamation of former Lot 1 with former Lot 6 did not confer on Mekpine any interest beyond the land previously comprised in former Lot 6. Mekpine appealed to the Court of Appeal of the Supreme Court of Queensland and the appeal was allowed. The Court of Appeal held that Mekpine had an interest in the Resumed Land because, on registration of the plan of subdivision that created new Lot 1, the reference to "Land" in the lease became a reference to new Lot 1. It also held that the RSLA, in effect, amended the lease so that the "Common Areas" as defined in the lease became the "common areas" in new Lot 1.

By grant of special leave, the Council appealed to the High Court. The High Court unanimously allowed the appeal, holding that, despite the registration of the plan of subdivision that created new Lot 1, the terms of the lease confined Mekpine's interest to so much of new Lot 1 as had previously been comprised in former Lot 6. The Court also held that the RSLA definition of "common areas" did not supplant the definition of "Common Areas" in the lease to give Mekpine a compensable interest in the Resumed Land.

- *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.*