



HIGH COURT OF AUSTRALIA

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Details of Filing

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Important Information

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IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY

BETWEEN:

REDLAND CITY COUNCIL
Appellant

and

JOHN MICHAEL KOZIK & ORS
Respondent

APPELLANT'S OUTLINE OF ORAL SUBMISSIONS

Part I: Publication

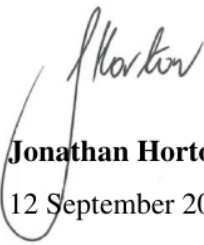
This outline is in a form suitable for publication on the internet.

Part II: Argument

1. **An unrequested benefit (one not bargained for) can be a benefit nonetheless**
 - a. 'good consideration' involves determining whether value moved to the payer (whether or not there was a bargain in a contractual sense);
 - b. 'consideration' means, in this sense, 'value';
 - c. it is not the same as inquiring whether there was a total failure of consideration (contra Majority Reasons CAB55 [60]) – that would be to double-up on the need for a vitiating factor (here, mistake) and to import contractual analysis;
 - d. here, the absence of request is answered by ss 92(3) and 94 of the *Local Government Act 2009* (Qld), which permit a local government to levy special rates and charges and which define the requisite benefit.
2. **Whether the works and services would have been effected (ie Council was obliged to effect them) absent the levying of special charges**
 - a. is irrelevant to the operation of the defence of value received;
 - b. Council's statutory duties about maintaining and cleaning canals and its general obligations as a local Government is no basis to say it cannot recover the funds to do so from the specially benefitting class: the statutory scheme provides for it.

3. **The ‘reason’ for payment of the special charges by the Respondents is also immaterial**
 - a. the payments were made because they had to be, and under a mistake of law;
 - b. to pose the question is to fail to escape the mindset of quasi-contract.
4. **Illegality on Council’s part that attended the levying does not disentitle reliance upon the defence of value received**
 - a. the purpose for the restriction on the Council’s capacity or powers in levying special charges is to ensure transparency and accountability;
 - b. the deficiency here did not compromise that;
 - c. there was no fundamental absence of power;
 - d. the scope and purpose of the statutory regime is not protective: it assists in funding and effecting works from which all payers specially benefitted, and to reduce the cost to each by making all pay who specially benefit;
 - e. illegality in any event is not determinative on its own:
Equuscorp Pty Ltd v Haxton (2012) 246 CLR 498 at 519 [36] (French CJ, Crennan and Kiefel JJ) (JBA4 Tab 25 p 627).
5. **The Regulations do not apply to require ‘return’ of the charges**
 - a. the words ‘**do not apply**’ in s 32 of the *Local Government (Finance, Plans and Reporting) Regulation 2010* (Qld) concern administrative errors in the process of levying (CAB47 [27]), ie:
 - (i) there is an effective resolution to levy the special rate or charge (CAB47 [26])
 - (ii) but there has been some error between the making of the resolution and the sending of rates notices, eg land has been levied that is not in the ‘benefit area’. (Note the similarity of language in s 28(3)(a) of the *Local Government (Finance, Plans and Reporting) Regulation 2010* (Qld) (JBA2, page 33), and s 94(2)(a) of the *Local Government Regulation 2012* (Qld) (JBA2, page 38));
 - (iii) it has always been accepted by the Council that the relevant resolutions were invalid, so this approach does not save rates notices from invalidity, or compel return;
 - b. the words ‘**should not have been levied**’ in s 98 of the *Local Government Regulation 2012* (Qld) (as amended) is directed to the fundamental requirement that special rates and charges be imposed only on land that specially benefits, ie that satisfy the requisite special relationship that the Act requires: CAB48 [31]. But here all the land levied specially benefitted. So this limb of the Regulation does not compel return;

- c. both limbs of the Regulation concern whether the land on which special rates and charges were levied actually benefitted: the earlier one in terms of whether the land is captured by the resolution; the later because of a general lack of the special relationship. That is the ‘mischief’ intended to be remedied;
 - d. in any event, neither Regulation makes clear its application to a case where the funds have been spent (and cannot therefore be ‘returned’) and nor do they exclude the operation of a defence where the money has been spent to the payer’s benefit.
6. **The application of *Woolwich Equitable Building Society v Inland Revenue Commissioners* [1993] AC 70 does not fall to be decided**
- a. the claim here was based on a mistake of law;
 - b. the application of *Woolwich* was not ultimately pressed below by the Respondents because of this;
 - c. *Woolwich*, in any event, would not operate to stifle a defence of value received, and the Respondents accept some defences would subsist.



Jonathan Horton
12 September 2023

Emma Hoiberg