



HIGH COURT OF AUSTRALIA

20 July 2016

CROWN MELBOURNE LTD v COSMOPOLITAN HOTEL (VIC) PTY LTD & ANOR

[2016] HCA 26

Today the High Court, by majority, allowed an appeal from a decision of the Court of Appeal of the Supreme Court of Victoria. A majority of the High Court held that the Court of Appeal erred in finding that a claim in estoppel was made out and in remitting the matter to the Victorian Civil and Administrative Tribunal ("the VCAT") for further consideration, but was correct to conclude that there was no collateral contract.

The appellant ("Crown") is the owner of the Melbourne Casino and Entertainment Complex. The respondents ("the tenants") held leases of two areas in the Complex under which, after 1 September 2005, they operated two restaurants ("the 2005 leases"). The 2005 leases were limited to a term of five years and did not contain an option for renewal. However, in the course of negotiations for the 2005 leases, Crown made a statement to the tenants to the effect that they would be "looked after at renewal time" ("the statement").

Clause 2.3 of the 2005 leases provided that Crown was to give at least six months notice to the tenants prior to the expiration of each lease stating whether Crown would: (a) renew the lease, and on what terms; (b) allow the tenants to occupy the premises on a monthly tenancy; or (c) require the tenants to vacate the premises. In December 2009 Crown gave notice, pursuant to cl 2.3(c), requiring the tenants to vacate the premises on the expiration of the leases on 31 August 2010.

In July 2010, the tenants commenced proceedings in the VCAT in which they alleged that Crown had represented in the statement that they would be given a further term of five years following the expiration of the 2005 leases. These representations were said to amount to a promise that Crown would exercise its power under cl 2.3(a) and offer a renewal for a further five year term. The tenants claimed that the terms of the further leases that Crown was obliged to offer them were to be the same (or the same, *mutatis mutandis*) as the 2005 leases.

The VCAT did not find that Crown had made representations in the terms claimed by the tenants. However, it did find that the statement gave rise to a collateral contract obliging Crown to offer to renew the leases for a further five year term and that Crown was able to stipulate the other terms of the renewal. Alternatively, the VCAT concluded that Crown was estopped from denying the existence of the collateral contract. The decision of the VCAT was set aside on appeal to the Supreme Court of Victoria. The Court of Appeal granted the tenants leave to appeal but dismissed the appeal save with respect to the estoppel issue, which it remitted to the VCAT for determination of what relief, if any, should be granted.

The High Court, by majority, held that the statement was not capable of giving rise to a collateral contract or founding a claim for estoppel. In respect of the estoppel claim, the tenants did not act on the basis of an expectation in the terms identified by the VCAT, namely, that the tenants would be offered further five year leases at renewal time on terms to be decided by Crown. Therefore, there was also no utility in the order for remittal made by the Court of Appeal.

- *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.*