



HIGH COURT OF AUSTRALIA

2 March 2016

STATE OF VICTORIA v TATTS GROUP LIMITED

[2016] HCA 5

Today the High Court unanimously allowed an appeal from the Court of Appeal of the Supreme Court of Victoria. The High Court held that Tatts Group Limited ("Tatts") was not entitled to payment by the State of Victoria ("the State") under an agreement between them because a "new gaming operator's licence" was never issued. The appeal was heard concurrently with the appeal in *Tabcorp Holdings Ltd v Victoria* [2016] HCA 4.

In 1992, Tatts was granted a "gaming operator's licence" under Pt 3 of the *Gaming Machine Control Act 1991* (Vic) ("the 1991 Act"). That licence was to expire in 2012 and authorised Tatts to conduct gaming on gaming machines at approved venues in Victoria until that time. In 1995, the State and Tatts entered into an agreement ("the 1995 Agreement"). Clause 7 provided for a terminal payment to be paid to Tatts "[i]f the Gaming Operator's Licence expires without a new gaming operator's licence having issued to [Tatts]" but for no amount to be payable if a new gaming operator's licence was not issued at all, or was issued to Tatts or a related entity of Tatts.

In 2003, multiple pieces of legislation in Victoria regulating gambling in its various forms, including the 1991 Act, were re-enacted and consolidated into the *Gambling Regulation Act 2003* (Vic) ("the 2003 Act"). Tatts retained the authority to carry on gaming operations under its gaming operator's licence on substantially the same terms as under the 1991 Act. In 2008, the Premier of Victoria announced that Tatts' gaming operator's licence would not be renewed upon its expiry. In 2009, the 2003 Act was amended so that no further gaming operator's licences could be issued. The amendments also provided for a new authority called a "gaming machine entitlement" ("GME"). A GME permitted the holder to conduct gaming on an approved gaming machine. 27,500 GMEs were created. They came into effect on 16 August 2012, being the day after Tatts' gaming operator's licence expired. Tatts did not apply for, or receive, any GMEs. The result was that the gaming operations which Tatts conducted under its gaming operator's licence ceased and were then carried on by the holders of GMEs.

Tatts claimed it was entitled to payment under cl 7 of the 1995 Agreement. The primary judge found in Tatts' favour, concluding that the reference in cl 7 of the 1995 Agreement to the issue of a "new gaming operator's licence" would have been understood by a reasonable businessperson as the issue of any licence or authority of substantially the same kind as Tatts' existing gaming operator's licence. The Court of Appeal upheld that conclusion. By grant of special leave, the State appealed to the High Court.

The High Court allowed the State's appeal and unanimously held that the phrase "new gaming operator's licence" in cl 7 of the 1995 Agreement referred to a gaming operator's licence granted under Pt 3 of the 1991 Act (as it might be amended, re-enacted or replaced from time to time). As a "new gaming operator's licence" was never issued, Tatts was not entitled to payment under cl 7 of the 1995 Agreement.

- *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.*