SHORT PARTICULARS OF CASES
APPEALS

BRISBANE
SEPTEMBER 2025

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SHAO v CROWN GLOBAL CAPITAL PTY LTD (IN PROV LIQ) ACN 604 292 140 & ANOR (S46/2025)

Court appealed from: Court of Appeal of the Supreme Court of New South Wales
[2024] NSWCA 302

Date of judgment: 19 December 2024

Special leave granted: 3 April 2025

In March 2015, the appellant advanced $1 million from accounts belonging to her to the first respondent on a 12-month loan. The loan was pursuant to a Facility Agreement ("the Agreement"), in which the appellant and her then husband, Mr Peng, were defined as the "Lender", the first respondent the "Borrower", and the second respondent the "Guarantor".

In accordance with the Agreement, the first respondent issued to the Lender one million Notes, which were redeemable at any time upon the issuance by the first respondent of a Redemption Notice. All Notes were to be redeemed, and the total sum borrowed (plus interest) was to be paid to the Lender by 5 March 2016. This was pursuant to terms of the Agreement set out in clause 4 of an annexed Note Certificate ("Clause 4"), which required the Borrower to pay all money payable under the Notes by cheque '*either delivered personally to the Lender on the due date for payment or deposited into the Lender's bank account as notified by the Lender to the Borrower from time to time*'. Interest payments were deposited quarterly by the first respondent, at Mr Peng's direction, into an account held jointly by Mr Peng and the appellant.

On 6 July 2015, the appellant mentioned to an employee of the first respondent, Ms Edwards, that she and Mr Peng were not speaking and that he was ignoring her, and on 24 August 2015 the appellant informed Ms Edwards that she had separated from Mr Peng, that she was not speaking to him and intended to divorce him, and that he had transferred her money away to make her angry.

On 17 February 2016, Ms Edwards emailed Mr Peng alone ("the email") in relation to the impending expiry of the Agreement, asking him to confirm the account into which all outstanding monies were to be paid. Mr Peng provided the details of an account held solely in his name, and on 25 February 2016 the first respondent transferred $1,018,740 ("the Proceeds") to that account, unbeknown to the appellant. Mr Peng then misappropriated the Proceeds (transferring them to his parents in China).

The appellant commenced Supreme Court proceedings against Mr Peng and the respondents in March 2016 in relation to the Proceeds ("the 2016 Proceedings"). Freezing orders were obtained against Mr Peng, but the appellant discontinued the proceedings as against the respondents. Judgment was then obtained against Mr Peng for the Proceeds (and other monies previously misappropriated by Mr Peng). Following non-payment, Mr Peng was made bankrupt by the appellant in 2019. The appellant subsequently received only $17,416 in bankruptcy dividends.

In February 2022, the appellant commenced fresh proceedings against the respondents, seeking to recover her losses (including her costs of the 2016 Proceedings) in the form of damages for the alleged breach of the Agreement by the first respondent's payment of the Proceeds into an account nominated by Mr Peng alone.

The primary judge, Ball J, held that the email constituted a valid Redemption Notice, and that Clause 4 permitted payment by electronic funds transfer. Clause 4 did not however permit Mr Peng alone to nominate the account into which the Proceeds were to be paid. Consequently, the first respondent's payment of the Proceeds did not amount to a good discharge of the debt under the Agreement, which was owed to the appellant and Mr Peng jointly. His Honour however dismissed the appellant's claim, holding that the appellant had ratified Mr Peng's conduct by obtaining judgment in the 2016 Proceedings. This was because the appellant's assertion of her rights to the Proceeds via Mr Peng necessarily involved an acceptance by the appellant that the payment of the Proceeds by the first respondent had effected the repayment of a debt to which she was entitled. The appellant could not then sue the respondents on the ground that they had not validly discharged their debt owed under the Agreement.

The Court of Appeal (Leeming, Payne and Adamson JJA) unanimously dismissed an appeal by the appellant. Their Honours held that the basis of the 2016 Proceedings was that the first respondent had discharged the debt it had owed, which necessarily involved the ratification by the appellant of Mr Peng's nomination of his bank account for the payment of the Proceeds. The appellant's right to sue the respondents for damages for breach of the Agreement could not survive that ratification, as it would involve permitting the appellant to take the inconsistent position of denying that the first respondent had obtained a good discharge of its debt.

The grounds of appeal are:

- The Court of Appeal erred in holding that the appellant was not entitled to claim damages from the respondents for having repaid loan monies into Mr Peng's bank account in breach of contract, in circumstances where the appellant had previously sued Mr Peng to recover those monies (but had not been made whole).

- The Court of Appeal erred in holding that the appellant's suit against Mr Peng necessarily involved a ratification of the notice given by Mr Peng to the first respondent nominating his bank account to receive the repayment of the loan monies.

By notice of contention, the respondents seek to raise the following ground:

- The Court of Appeal ought to have found that the proceedings were an abuse of process.

BADARI & ORS v MINISTER FOR HOUSING AND HOMELANDS & ANOR (D1/2025)

Court appealed from: Full Court of the Supreme Court of the Northern Territory
[2025] NTCA 1

Date of judgment: 24 January 2025

Special leave referred: 8 May 2025

BADARI & ORS v MINISTER FOR TERRITORY FAMILIES AND URBAN HOUSING & ANOR (D7/2025)

Court appealed from: Court of Appeal of the Supreme Court of the Northern Territory
[2025] NTCA 1

Date of judgment: 24 January 2025

Special leave granted: 8 May 2025

Two separate proceedings arising from the Court of Appeal and the Full Court of the Supreme Court of the Northern Territory are being heard together because they involve facts, issues and questions in common regarding the determination of rent payable for dwellings under the *Housing Act 1982* (NT) ("the Housing Act").

Background

The four applicants/appellants ("the appellants") are tenants in public housing in two different remote communities in the Northern Territory. Due to changes in the Administrative Arrangements Order over the relevant period, four Determinations were made variously by each respondent, being the Minister for Territory Families and Urban Housing and the Minister for Housing and Homelands ("the Responsible Minister").

The Housing Act governs aspects of the provision of public housing in the Northern Territory and establishes an entity called the Chief Executive Officer (Housing) ("the CEOH"), which is a body corporate capable, in its corporate name, of acquiring, holding and disposing of leasehold, real and personal property. The CEOH is listed as the landlord in each of the leases. Three of the four appellants lease residential premises in Gunbalanya (also known as Oenpelli) in Arnhem Land. The fourth appellant leases residential premises in Laramba in the Central Desert. Each of the appellants was eligible for public housing because they were of 'limited means' and were not 'adequately housed'.

Until 2021, the appellants (as with all public housing tenants in remote Northern Territory communities) had their rent set by individual agreement with the landlord (the CEOH), and were afforded rent-related protections under the *Residential Tenancies Act 1999* (NT) ("the RTA"). While the Determination power has been exercised by the Responsible Minister many times since it was introduced in 1982, it had only applied towards urban dwellings. This is the first time the power has been exercised in relation to remote dwellings.

On 23 December 2021, the Responsible Minister made a Determination under section 23 of the Housing Act that affected the mechanism by which rent payable by the appellants was to be assessed and, ultimately, the amount of base rent payable for each leased premises ("the First Determination"). The First Determination was structured to have a two-stage effect. In the first stage, rent was fixed at a specific amount for each of four 'classes' of dwellings, based on the number of bedrooms in the dwelling. In the second stage, weekly rent was fixed at $70 per bedroom for up to four bedrooms.

On 27 April 2022, the Responsible Minister made a Determination in similar terms, but revoked part of the First Determination ("the Second Determination"). On 2 September 2022, the Responsible Minister made a further Determination in similar terms, but revoked part of the Second Determination ("the Third Determination"). In essence, the Second and Third Determinations postponed the commencement date for stage two of the new rent from that set in each of the earlier Determinations. On 1 February 2023, the Responsible Minister made another Determination to further defer the commencement of stage two and prospectively excluded seventeen communities ("the Fourth Determination").

Appeal – D7/2025

The principal matter is an appeal concerning the application of s 41(1) of the RTA to the appellants' tenancy agreements; and the operation of s 23 of the Housing Act, with ss 41, 48 and 49 of the RTA concerning rent increases for those tenancies being impacted by the First, Second and Third Determinations. The appellants challenge the validity of each of these three Determinations, including on the grounds of procedural fairness and unreasonableness, and say that each of the Determinations has had significant financial repercussions on the appellants by increasing their liability to pay rent.

The appellants submit that housing and shelter are basic human needs, and that the provision of social housing to vulnerable people is of real significance and importance. The appellants submit that Parliament would ordinarily be expected to ensure statutory safeguards in such circumstances and against interference with existing contractual relations concerning property. If valid, the Determinations would have five immediate financial and legal impacts:

1. Depriving tenants of the protection against rent increases;

2. Preventing tenants from seeking merits review of their rent rate, including if their house became uninhabitable, unsafe or insecure;

3. Tenants would only be able to challenge their rent by way of judicial review;

4. Rendering the individually agreed rent rates inoperative; and

5. Changing the rent and increasing it for most remote community tenants based on reference to the number of bedrooms regardless of occupancy rates or occupants' incomes.

The respondents submit that the Stakeholder Advisory Group, comprising thirteen peak bodies in the Northern Territory, was consulted and had recommended that a dwelling-based model was preferred (which was later approved by Cabinet); and in fact, the rent liability has decreased for the appellants. The respondents contend

that the appellants' narrative reflects a misunderstanding of the relationship between the schemes under the Housing Act and the RTA. The respondents say that procedural fairness has not been displaced or denied, and that there are no grounds of unreasonableness.

The grounds of appeal are:

1) The Court of Appeal erred in concluding that the power of a Minister to determine rents for public housing under s 23 of the Housing Act was not conditioned by a requirement to afford procedural fairness.

2) The Court of Appeal erred in concluding that it was not legally unreasonable to exercise s 23 of the Housing Act in respect of each of the Determinations made on 23 December 2021, 27 April 2022, and 2 September 2022 including when each:

    a. took no account of the proximity of each affected premises to government, health and education services, especially when compared to determinations made in relation to urban premises; and/or

    b. departed, without explanation or justification, from the model endorsed by the Stakeholder Advisory Group, upon which the Determinations were purportedly based.

Application for special leave to appeal – D1/2025

The second matter is an adjunct to the appeal and seeks to challenge the validity of the Fourth Determination. The appellants sought to challenge the Fourth Determination on a similar ground to those upon which the First to Third Determinations were challenged, but also on other non-similar grounds, which were based on different evidence and have not been considered. The Chief Justice of the Supreme Court of the Northern Territory made orders by which only the similar ground of the Fourth Determination proceeding was referred to the Full Court of the Supreme Court of the Northern Territory, to be heard together with the appeal pursuant to s 21(1) of the *Supreme Court Act 1979* (NT). The Full Court and the Court of Appeal were identically constituted to hear the two matters.

The Court announced at the start of the final hearing that it had declined to accept the referral made by the Chief Justice before determining the proceeding adversely to the interest of the appellants, in circumstances where no oral submissions were made and no documents tendered. Accordingly, the appellants separately seek an order to set aside orders relating to the Fourth Determination, and to have the matter remitted to the Full Court of the Supreme Court of the Northern Territory for hearing on the question of whether it should decline to accept the referral of the proceeding under s 21 of the *Supreme Court Act 1979.*