

MORETON BAY REGIONAL COUNCIL v MEKPINE PTY LTD **(B60/2015)**

Court appealed from: Supreme Court of Queensland, Court of Appeal
[2014] QCA 317

Date of judgment: 2 December 2014

Special leave granted: 16 October 2015

In March 1999 Mekpine Pty Ltd (“Mekpine”) entered into a retail shop lease (“the lease”) within the meaning of the *Retail Shop Leases Act 1994* (Qld) (“the RSLA”). This was in respect of Lot 6 on RP 809722 (“Lot 6”). At that time, Lot 6 was the site of a retail shopping centre (“the Shopping Centre”) within the meaning of the RSLA. Under the lease, Mekpine had the right to occupy and use part of a building constructed on Lot 6. The “common areas” of the lease were identified as being those parts of the building (or Lot 6) not leased by the lessor.

Around 2007 the Shopping Centre expanded to include a retail development on adjoining land identified as Lot 1 on RP 847798 (“Old Lot 1”). At that time, Lot 6 and Old Lot 1 were amalgamated by the registration of a plan of survey and existing interests under the *Land Title Act 1994* (Qld). This created Lot 1 on SP 184746 (“New Amalgamated Lot 1”).

In November 2008 the Moreton Bay Regional Council (“the Council”) resumed part of the New Amalgamated Lot 1 (“the Resumed Land”) under the provisions of the *Acquisition of Land Act 1967* (Qld) (“ALA”). The land resumed had previously formed part of Old Lot 1 and had never been part of Lot 6. Mekpine then brought a claim for compensation under the ALA on the basis that, as at the date of resumption, it had an interest in the Resumed Land for the purposes of section 12(5) of the ALA.

On 10 September 2012 the Land Court of Queensland determined a preliminary point as to whether, as at the date of resumption, Mekpine had an interest in the Resumed Land for the purposes of section 12(5) of the ALA. That decision involved a determination of the following questions:

- a) Whether the amalgamation of Lot 6 with Old Lot 1 varied the lease to extend an interest over all of New Amalgamated Lot 1, including parts of New Amalgamated Lot 1 beyond the land that was previously within Lot 6; and
- b) Whether the provisions of the RSLA varied the lease, or otherwise operated, to include an interest in parts of the New Amalgamated Lot 1 identified by the RSLA as “common areas” for the Shopping Centre.

The Land Court answered the first question in the negative, but the second in the affirmative, finding that Mekpine had a relevant interest in the Resumed Land. The Council then appealed to the Land Appeal Court of Queensland, which answered both questions in the negative. Mekpine then appealed to the Queensland Court of Appeal.

On 2 December 2014 the Queensland Court of Appeal (McMurdo P and Morrison JA; Holmes JA dissenting) allowed Mekpine's appeal. The majority found that the registration of the plan of survey to create New Amalgamated Lot 1 and/or the registration of existing interests in Lot 6 on the title of the New Amalgamated Lot 1 varied the lease to include all of New Amalgamated Lot 1. They further found that the provisions of the RSLA operated to vary the lease to include areas defined by the RSLA as "common areas", or otherwise create an interest in the "common areas" as defined by the RSLA.

Holmes JA however found that neither the amalgamation nor the provisions of the RSLA created any interest in land, within the meaning of section 12(5) of the ALA, beyond the existing interests in land within the former boundaries of Lot 6.

The grounds of appeal include:

- The Court of Appeal erred in determining that Mekpine had an interest in land resumed by the Council on 14 November 2008, being part of Lot 1 on SP 184746, for the purposes of section 12(5) of the ALA, in that the Court of Appeal wrongly found that registration of a plan of survey to create a new lot by the amalgamation of two existing lots and/or the registration of existing interests in the two existing lots on the title of the new amalgamated lot varied Mekpine's lease over just one of the existing allotments to include a leasehold interest over all of the new amalgamated lot.