

CROWN MELBOURNE LTD v COSMOPOLITAN HOTEL (VIC) PTY LTD & ANOR (M253/2015)

Court appealed from: Court of Appeal, Supreme Court of Victoria
[2014] VSCA 353

Date of judgment: 22 December 2014

Date special leave granted: 11 December 2015

The appellant ('Crown') operates the Melbourne Casino and Entertainment Complex. Between 1997 and 2005 the respondents ('the tenants') operated two restaurants at the Complex. Crown wanted the tenants to undertake significant refurbishment of the two premises, and to rent them for a period of five years. The tenants sought a longer period of tenancy in light of the substantial financial outlay in refurbishing the premises. Following lengthy negotiations the tenants signed leases which set the length of each lease at five years.

After the expiration of the leases, Crown did not renew and the tenants vacated the premises. The tenants sued Crown in the Victorian Civil and Administrative Tribunal ('VCAT') over the non-renewal of the leases, alleging that Crown had told them that, if they entered into the leases and completely refurbished the restaurants at their expense, they would be 'looked after at renewal time'. VCAT held that Crown had breached a collateral contract with the tenants. Crown sought leave of the Supreme Court of Victoria to appeal that decision. Justice Hargrave granted leave, and allowed the appeal, on the basis of his finding that the statements made by Crown were representational and not promissory.

The tenants' appeal to the Court of Appeal (Warren CJ, Whelan and Santamaria JJA) was upheld despite the Court's finding that the trial judge was correct to find that the statement was not promissory. The Court found that Crown was estopped from denying the existence of a collateral contract.

Whelan JA (with whom Santamaria JA agreed) identified the relevant principles as follows: (a) a representation which is too uncertain to constitute a contractual obligation may found a proprietary or promissory estoppel; (b) it is essential to show that the statement was of such a nature that it would have misled any reasonable man and that the person to whom the statement was made was in fact misled by it; (c) if there is a 'grey area' in what is represented or promised, but it was reasonable for the representee to interpret it as extending at least to the lower limit of that 'grey area' and to act in reliance on it as so understood, the Court should regard the representation or promise as sufficiently certain up to this lower limit; (d) particular care needs to be taken to ensure that business people pursuing their commercial interests, who are fully aware of what is contractually agreed and what is not, do not have judges' views of what is required by good conscience imposed upon their negotiated bargains; and (e) where a representation is made and relied upon so that it is unconscionable for the representor to resile, *prima facie* equity will give relief which compels the representor to perform or make good what was represented, but this *prima facie* position is subject to the qualification that it is also necessary to do justice to the representor and to third parties who might be affected.

Their Honours noted that neither VCAT nor the trial judge had addressed estoppel on the basis of the factual findings which VCAT had made but by reference to the 'lower limit' of what was meant by 'looking after' the tenants at renewal. A claim couched in those terms was within the case that was pleaded and put at VCAT but had never been adjudicated upon. As no submissions had been heard upon the claim formulated in that way, their Honours ordered that the matter be remitted to VCAT for determination of what equitable relief, if any, should be granted in respect of the tenants' estoppel claim.

The grounds of appeal include:

The Victorian Court of appeal erred in finding that:

- A promissory estoppel can be made out merely by proving the making of and resiling from an ambiguous representation, without the need to prove the way in which the representation was understood by the representee, whether that understanding was reasonable and whether that understanding was relied upon;
- The statement that the respondents would be 'looked after' at the time for renewing their leases was sufficiently clear and unequivocal to found a promissory estoppel, though not the promissory estoppel pleaded by the respondents;
- Treating the promissory estoppel as operating at an undefined and undetermined 'lower limit' of what was meant by 'looking after' the tenants at renewal.

The respondents have filed a cross-appeal, the grounds of which include:

- The Court of Appeal erred in holding that the appellant stated and identified as the subject matter of its appeal from the Tribunal to the Supreme Court any question or questions of law pursuant to s148 of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic).