SHORT PARTICULARS OF CASES
APPEALS

MARCH 2007

No. Name of Matter Page No

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STATE OF NEW SOUTH WALES v CORBETT & ANOR (S2/2007)

Court appealed from: New South Wales Court of Appeal

Date of judgment: 13 June 2006

Date of grant of special leave: 8 December 2006

The first respondent had been a police officer since 1976. He had suffered emotional problems from the early 1990s with periods of mental instability. In February 1998 he attempted suicide and in May of that year he made a second, unsuccessful, attempt on his life. On that occasion he also left a suicide note in which he made threats to the police. As a consequence his existing shooter's licence was suspended. On 3 June 1998 a senior police officer obtained a search warrant for the respondents' property, the stated purpose of which was to search for "unspecified arms". On 4 June 1998 that warrant was executed, but no firearms were located.

The respondents commenced proceedings in trespass against the appellant, alleging that the search warrant was invalid. They submitted that the invalidity arose, inter alia, because the application for that warrant failed to describe a particular offence.

On 22 October 2004 Judge Charteris rejected the respondents' argument that the search warrant was invalid. His Honour however acknowledged that the application for that warrant nominated a repealed Act, being the *Firearms Act* 1989 (NSW) ("the 1989 Act") instead of the *Firearms Act* 1996 (NSW) ("the 1996 Act"). Despite this, Judge Charteris held that there was a rebuttable presumption that the warrant was valid. He also found that the only authority for the issue of the warrant related to a firearms offence, as defined in section 5(1)(b) of the 1996 Act. His Honour further held that there was no evidence that the Justice of the Peace (who issued the warrant) had carried out his duties other than having regard to the *Search Warrants Act* 1985 (NSW) ("the Act") and the offence of "possession of a firearm".

On 13 June 2006 the Court of Appeal (Giles & McColl JJA, Gzell J) unanimously found for the respondents. Their Honours rejected the appellant's submission that section 23 of the Act cured the warrant of any material defects. According to that section, a search warrant is not invalidated by any defect, other than a defect affecting the substance of the warrant in a material particular. The appellant claimed that because there were similar offences under both the 1989 and the 1996 Acts, the incorrect reference to the earlier Act was of no material consequence. Their Honours found however that there were differences to the offences behind the similar wording used in both the 1989 and 1996 Acts. Furthermore, such differences affected the connection between the possession of any firearm found upon the execution of a search warrant and the offence of unlawful possession of a firearm. Accordingly, the Court accepted the respondents' submission that the application for the warrant failed to describe a particular offence for which the searched-for firearms were connected. A retrial on the question of damages was then ordered.

The respondents seek leave to file a notice of contention out of time. They contend that the Court of Appeal decision should be affirmed on two additional grounds including:

- That the Court of Appeal erred holding that Acting Inspector Jago had reasonable grounds for believing at the time of the application for the search warrant that there would be located within 72 hours on the respondents' Goulburn property articles connected with a particular firearms offence.

The grounds of appeal include:

- The Court of Appeal erred in holding that the reasonable belief of Acting Inspector Jago that an offence had been committed had to include a reference to the 1996 Act.
- The Court of Appeal erred in holding that the reference in the application for the search warrant to the 1996 Act was a belief in a non-existent offence.
- The Court of Appeal erred in holding that there had not been a reasonable belief in an offence in respect of which the unspecified firearms were connected.

CHANG & ANOR v LAIDLEY SHIRE COUNCIL (B46/2006)

Court appealed from: Court of Appeal, Supreme Court of Queensland

Date of grant of special leave: 8 December 2006

On 3 December 2004 the appellants, Shu-Ling Chang and Tai-Hsing Chen, applied for development approval to subdivide their lot into 25 lots. The development application was made pursuant to the *Integrated Planning Act* 1997 (Qld). However, prior to making the application a new planning scheme had been adopted by the respondent, under which the appellants' development application was not legally possible, but which permitted the appellants to apply within two years for permission to reconfigure their land under the previous scheme or to obtain statutory compensation in lieu. Within that two-year period, the *Integrated Planning Act* was amended by the *Integrated Planning and Other Legislation Amendment Act* 2004 (Qld) ("amending Act") to include provision for a regional plan, a draft regional plan and regulatory provisions. Draft regulatory provisions in a draft regional plan came into effect on 27 October 2004 which had the effect of prohibiting reconfiguration of the appellants' lot to lots of the size proposed in their development application which was subsequently lodged (that is, on 3 December 2004). A further effect was that the appellants' entitlement under the *Integrated Planning Act* to apply for statutory compensation ceased unless the planning application was "a properly made application" in accordance with the draft regulatory provisions, which, the respondent determined, the appellants' application was not.

Although at trial the appellants raised several grounds, on appeal to the Court of Appeal they sought to agitate only one issue, which was the entitlement to statutory compensation. The Court of Appeal (Jerrard and Keane JJA and Philippides J) dismissed the appellants' appeal. The Court rejected the appellants' argument that the legislative and regulatory provisions should be interpreted in light of principles of statutory interpretation which require that there be a clearly expressed legislative intention to adversely affect or to destroy accrued rights, and that section 20(2)(c) of the *Acts Interpretation Act* 1954 (Qld) applied to raise a presumption against retrospective abrogation of accrued rights. The Court held that the *Integrated Planning Act* created a right to compensation not upon injurious affection of the appellants' property (that is, the decrease in the value of the land they had sought to subdivide) but upon the outcome of the process of assessment by the respondent of an application to reconfigure their land. The appellants had not made "a properly made application". The Court held that the changes to the *Integrated Planning Act* by the amending Act evinced a clear legislative intention that councils such as the respondent should not be able to override the terms of the draft regional plan to consider a planning application, made after the commencement of the amending Act, which accords with the superseded planning scheme but not with the draft regional plan.

The grounds of appeal include:

- Whether the Court of Appeal erred in concluding that the right to statutory compensation under the *Integrated Planning Act* only arose upon assessment of a development application;

- Whether the Court of Appeal erred in concluding that the *Integrated Planning Act* evinced a clear intention to extinguish the appellants' accrued right to have their development application assessed and thereby become entitled to statutory compensation if rejected.