



Summary of Judgment

SECRETARY TO THE DEPARTMENT OF ECONOMIC DEVELOPMENT, JOBS, TRANSPORT AND RESOURCES V CARADI PTY LTD

[2018] VSC 696

15 November 2018

This proceeding involved a claim for compensation for the compulsory acquisition of land owned by Caradi Pty Ltd, situated at 11-31 Montague Street, Southbank, which is located within the Montague Precinct of the Fishermans Bend Urban Renewal Area (the 'FBURA'). The land was compulsorily acquired on 19 December 2013 for the purposes of the Melbourne Convention Centre Development by the Secretary to the Department of Economic Development, Jobs, Transport and Resources (the 'Authority'). 17 months prior to the acquisition, the FBURA was rezoned by the Minister for Planning, from Industrial 1 Zone to Capital City Zone – Schedule 1 under the Port Philip Planning Scheme.

The main issue in dispute was the market value of the land on the date of acquisition. The Authority initially made an offer of \$16.15 million as compensation for the market value of the land. This offer was rejected by Caradi. In this proceeding, Caradi initially claimed the sum of \$60 million. This was later revised to \$56 million.

The Trial Division of the Supreme Court (Quigley J) received evidence from four valuers as to the market value of the land as at 19 December 2013. Caradi relied on the valuation evidence of Mr Brian Dudakov and Mr Les Brown. The Authority relied on the valuation evidence of Mr Christopher Torr and Mr Mark Murray.

The Court found that the market value of the land as at 19 December 2013 was \$25.3 million, adopting the evidence of the Authority's valuers. The Court considered that the valuations conducted on behalf of the Claimant were unduly influenced by the state of the market in the period after the acquisition in December 2013. It also found that the evidence of Caradi's valuers commenced from a 'rear-view mirror' starting point, as their valuations were undertaken many months after the date of acquisition. In their use of comparable sales evidence, the Court found that the Claimant's valuers had placed undue weight on an incomplete transaction at 60-62 Johnson Street, South Melbourne, valued at \$55.5 million in 2014. In addition, the Court considered that the market of the relatively newly identified FBURA land was 'embryonic' as at 19 December 2013, and that sales in the more established Southbank, Docklands and other inner-city locations were of little assistance to assist in establishing the market value for the land in this context.

In relation to the other items in dispute, the Court determined that Caradi was entitled to compensation for legal, valuation and other professional expenses as a result of the acquisition (\$242,689.49) and for non-pecuniary loss suffered by way of solatium awarding a nominal sum of \$50,000 (the amount claimed was \$1.5m). It refused to award compensation for replacement land costs of \$3.35m, nor for the economic loss (\$1.54m and continuing) as a result of what was claimed to be the consequences of an insufficient offer for the market value of the land at an earlier time, resulting in a lost opportunity to invest in a higher yield asset.

NOTE: This summary is necessarily incomplete. It is not intended as a substitute for the Court's reasons or to be used in any later consideration of the Court's reasons. The only authoritative pronouncement of the Court's reasons and conclusions is that contained in the published reasons for judgment.