

Land and Environment Court

New South Wales

Medium Neutral

Citation:

**Rafailidis v Roads and Maritime Services
[2013] NSWLEC 131**

Hearing dates:

9 August 2013

Decision date:

09 August 2013

Jurisdiction:

Class 3

Before:

Craig J

Decision:

1. The parties are to exchange their expert valuation evidence by 6 September 2013;

2. A joint valuation experts' report is to be served by the experts on the parties by 20 September 2013.

3. List the matter for further directions on **Friday 11 October 2013.**

4. In the event that either party fails to take any step or provide any document required by these orders to be taken or provided or is the party retaining an expert witness who fails to take any step or provide any document required by these orders and remains in default of the orders at the expiration of 14 days after such step is required to be taken or document required to be provided, the respondent must, on giving two days' notice to the applicants, apply to the Registrar for the purpose of having the matter re-listed for further directions and orders.

Catchwords:

PRACTICE AND PROCEDURE - directions for preparation and exchange of evidence - refusal by applicants to accept the making of any directions or orders - self-represented litigants - case management of proceedings by the Court - directions sought by respondent in accordance with the Court's Practice Note - directions given

Legislation Cited:

Civil Procedure Act 2005 (NSW)

Judiciary Act 1903 (Cth)

Land Acquisition (Just Terms Compensation) Act

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| | 1991 (NSW) |
| | Land and Environment Court Act 1979 (NSW) |
| | Imperial Acts Application Act 1969 (NSW) |
| | Magna Carta |
| | The Commonwealth Constitution |
| Category: | Procedural and other rulings |
| Parties: | Koula Rafailidis (First applicant) Efrem Rafailidis (Second applicant) Roads & Maritime Services (Respondent) |
| Representation: | Self represented N Eastman (Respondent) Self represented Clayton Utz (Respondent) |
| File Number(s): | 30195 of 2013 |

EX TEMPORE JUDGMENT

- 1 Koula and Efrem Rafailidis commenced proceedings in this Court on 15 March 2013 pursuant to s 66 of the *Land Acquisition (Just Terms Compensation) Act 1991 (the Compensation Act)*. Part of their land at 955 Camden Valley Way, Catherine Field was compulsorily acquired by Roads & Maritime Services (**RMS**) upon publication of notice to that effect in the Government Gazette on 16 November 2012.
- 2 The Application Class 3 filed by Mr and Mrs Rafailidis sought to have the compensation to which they are entitled under the Compensation Act determined in the sum of \$214,500 "with the right to review (following completion of valuation expert witness evidence)". The compensation determined by the Valuer-General pursuant to s 41 of the Compensation Act was \$96,500.
- 3 The application was first listed before me in the Court's Valuation and Compensation List on 19 April 2013. At that time Mrs Rafailidis appeared unrepresented by a legal practitioner. She then agreed in directions that I made, referring the proceedings to an early conciliation conference to be presided over by a Commissioner of the Court. This course was taken, given the relatively small difference between the compensation determined by the Valuer-General, whose determination was accepted by RMS, and the compensation sought by Mr and Mrs Rafailidis. The only step to be taken by the parties before participating in that conference, which was to be conducted under s 34 of the *Land and Environment Court Act 1979 (the Court Act)*, was the preparation and exchange of their respective "position papers". The latter

was meant to be a short, informal document summarising the evidence and contentions of each party, thereby avoiding the necessity for detailed statements and expert reports that would be necessary if the matter was being prepared for a final hearing. It was a process intended to minimise costs and facilitate a negotiated resolution.

- 4 The conciliation conference was held on 25 July 2013. It was conducted before an Acting Commissioner of the Court who had valuation expertise. The report prepared by the Acting Commissioner in accordance with s 34(4) of the Court Act records that no agreement was reached at the conference with the consequence that it was terminated on that day.
- 5 The proceedings next came into my list on Friday 26 July. Mrs Rafailidis again appeared and RMS was represented by Mr N Eastman of Counsel. Mr Eastman provided draft short minutes of directions that he sought to have the Court make in order to have the matter prepared for hearing. The terms of the directions then sought generally conformed with the form of "Usual Directions at First Directions Hearing" identified in the Court's Practice Note applicable to proceedings of the present kind. He indicated that he or his instructing solicitor had sought to hand to Mrs Rafailidis a copy of the document setting out the proposed directions, but that she had declined to accept the document.
- 6 I informed Mrs Rafailidis that the directions sought were of the kind ordinarily made in proceedings seeking compensation following the compulsory acquisition of land and that they appeared to accord with the Court's Practice Note. I asked her to accept and read the document proffered to her on behalf of RMS. I then stood the matter down in the List so as to afford Mrs Rafailidis the opportunity of reading the proposed directions.
- 7 When the matter was called later that morning, Mrs Rafailidis stated that she had read the draft minutes but opposed the making of any orders or directions in the proceedings. She further asserted that RMS had no power to acquire her property and that any legislation that purported to provide such a power was contrary to the Commonwealth Constitution and therefore invalid. Mrs Rafailidis further stated that she proposed to commence proceedings in the Supreme Court seeking damages from RMS and that she did not wish to continue the proceedings in this Court. The present proceedings had only been commenced in this Court, so she said, because she had been misled into believing that it was necessary for her to do so.
- 8 Having listened to Mrs Rafailidis, I indicated to her that her interests would best be served if she sought legal advice before embarking upon her proposed course of action. She indicated that she was prepared to do so. In particular, I indicated:

(i) that in seeking advice she should ask whether there was any reason why the directions proposed by RMS should not be made, given that they were in the form usually made by the Court when managing proceedings commenced under the Compensation Act, and

(ii) that it would be unwise to discontinue the present proceedings without first obtaining legal advice as such a step, if taken, may prejudice her entitlement to seek compensation in any further proceedings that she may bring.

9 Having made those observations and on the understanding that legal advice was to be sought, I refrained from giving any directions at that time. Instead, I stood the proceedings over for one week to enable Mrs Rafailidis to seek the advice that she contemplated obtaining.

10 When the matter was next before me on 2 August, Mrs Rafailidis again appeared on her own behalf and on behalf of her husband. She stated that she still opposed the making of any order or the giving of any directions in the proceedings that were intended to prepare the matter for hearing. Her claim that the land in question had been unlawfully acquired by RMS was repeated with added reference to *Magna Carta* and the *Imperial Acts Application Act 1969*.

11 Importantly, Mrs Rafailidis stated that she had commenced proceedings in the Supreme Court against RMS and wished to discontinue her proceedings in this Court. When I enquired of her whether she had sought advice on that particular course of action from the person she had consulted, her response was equivocal. Again, I reiterated that:

(i) I was not finally determining her claim for compensation but only seeking to give directions to ensure that evidence was prepared for hearing, and

(ii) discontinuing the present application to the Court may have serious consequences upon her entitlement to maintain a claim for compensation subsequently made if that claim was founded upon the acquisition of land by the RMS on 16 November 2012.

12 The equivocal nature of Mrs Rafailidis' response to my question made apparent to me that such advice had not been sought. I inferred that some person who may not have been a practising lawyer had given her advice upon the lawfulness of the acquisition but that the procedural matters upon which I had encouraged her to seek advice had not been addressed.

13 I remained concerned as to the consequences for Mrs Rafailidis and her husband if she took the course of discontinuing the proceedings. Again, I enquired of her whether she was prepared to seek further advice from a practising lawyer

before discontinuing the proceedings. She agreed to take that step. As a consequence, I stood the proceedings over for a further week without giving any directions to have the matter prepared for hearing. However, I indicated to Mrs Rafailidis that unless the proceedings were discontinued or otherwise resolved during the week, I would make appropriate directions on 9 August for the preparation and exchange of evidence so that the matter could be listed for hearing.

- 14 Mrs Rafailidis has again appeared today on her own behalf and on behalf of her husband. She continues to oppose the making of any order or direction in the proceedings. A copy of a Notice said to have been given by her pursuant to s 78B of the *Judiciary Act 1903* (Cth) has been handed up in Court. However the consequence of giving that Notice and the course proposed to be taken in the proceedings by reason of the matter identified in the Notice is neither stated nor made apparent from what has been said. Mrs Rafailides maintains that she seeks compensation "on just terms" while also seeking to assert that RMS was not legally entitled to act as it did in acquiring part of her property.
- 15 Understandably, RMS continues to seek that I give appropriate directions preparatory to the matter being listed for hearing.
- 16 Although Mrs Rafailidis and her husband instituted the present proceedings, the management of them rests with the Court. In seeking to secure the "just, quick and cheap" resolution of the proceedings, conformably with the requirement of s 56 of the *Civil Procedure Act 2005* (NSW), it is necessary to consider the interests of both parties conformably with the dictates of justice. While these proceedings remain current, RMS has an entitlement to a "just, quick and cheap" determination of the compensation that it is liable to pay to Mr and Mrs Rafailidis under the provisions of the Compensation Act. Accordingly, I propose and I give the following directions:
 1. The parties are to exchange their expert valuation evidence by 6 September 2013;
 2. A joint valuation experts' report is to be served by the experts on the parties by 20 September 2013.
 3. List the matter for further directions on **Friday 11 October 2013**.
 4. In the event that either party fails to take any step or provide any document required by these orders to be taken or provided or is the party retaining an expert witness who fails to take any step or provide any document required by these orders and remains in default of the orders at the expiration of 14 days after such step is required to be taken or document

required to be provided, the respondent must, on giving two days' notice to the applicants, apply to the Registrar for the purpose of having the matter re-listed for further directions and orders.

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Decision last updated: 12 August 2013