

This decision has been amended. Please see the end of the decision for a list of the amendments.

Land and Environment Court New South Wales

Case Title: Rafailidis v Roads and Maritime Services (No 3)

Medium Neutral Citation: [2014] NSWLEC 21

Hearing Date(s): 18 March 2014

Decision Date: 18 March 2014

Jurisdiction: Class 3

Before: Sheahan J

Decision: The Notice of Motion of 6 March 2014 is dismissed with no order as to costs

Catchwords: COMPULSORY ACQUISITION OF LAND: Notice of Motion by applicant to reopen the decision of the Court - Powers and Principles

Legislation Cited: Land Acquisition (Just Terms Compensation) Act 1991
Land and Environment Court Act 1979
Uniform Civil Procedure Rules 2005

Cases Cited: Rafailidis v Road and Maritime Services (No 2) [2014] NSWLEC 9
Teoh v Hunters Hill Council (No 3) [2009] NSWLEC 121; 167 LGERA 432
Young v King (No 4) [2012] NSWLEC 236

Category: Principal judgment

Parties: Koula Rafailidis (1st Applicant)
Efrem Rafailidis (2nd Applicant)
Roads and Maritime Services (Respondent)
Attorney General of New South Wales (Intervenor)

Representation

- Counsel: Self represented (1st Applicant)
No appearance (2nd Applicant)
Mr M Brady, solicitor (1st Respondent)
Ms G Namey, solicitor (2nd Respondent)
- Solicitors: Self represented (1st Applicant)
No appearance (2nd Applicant)
Clayton Utz (1st Respondent)
Crown Solicitors Office (2nd Respondent)
- File Number(s): 30195 of 2013

JUDGMENT

- 1 These class 3 proceedings 13/30195 against Roads and Maritime Services involved a challenge to an award of compensation for the compulsory acquisition of some of the land owned by Koula and Efrem Rafailidis at 955 Camden Valley Way, Catherine Field, and a constitutional challenge to the relevant New South Wales statute, the *Land Acquisition (Just Terms Compensation) Act 1991* ('the Act').
- 2 Koula Rafailidis represented the applicants at the hearing before Craig J on 3 to 5 February 2014, counsel appeared for the respondent, and the New South Wales Attorney General was also represented.
- 3 His Honour delivered judgment on 11 February 2014 (No 2 - [2014] NSWLEC 9), dismissing the challenge to the constitutional validity of the Act (see [13] -[32]), and determining the appropriate amount of compensation payable to Koula and Efrem Rafailidis ([33] - [115]).
- 4 It is clear from reading his Honour's judgment, with which I respectfully agree, that, during the course of the hearing, Koula complained that the matter was not being dealt with by a jury, that this Court lacked jurisdiction,

and that his Honour was not properly appointed. His Honour found against the claimants on all these issues.

- 5 In respect of the compensation aspect of the proceedings, his Honour overlooked the unusual aspects of the presentation of the matter by Koula Rafailidis, and performed the duty imposed upon him by the Act, namely to determine the compensation. His Honour entertained, sympathetically, all material favourable to the applicants' position.
- 6 The orders his Honour made in his judgment were then entered, on 21 February 2014.
- 7 No appeal has been lodged against his Honour's reasons and orders.
- 8 Instead, the applicants have brought before the Court today (1) a Notice of Motion ('NOM') seeking to have the Court "make null and void all orders, judgements in" this matter, and (2) a "Notice - Challenge to the Jurisdiction of the Court", both of which were filed on 6 March 2014. Again, today, Roads and Maritime Services and the Attorney General were represented.
- 9 The "challenge" document, in brief, asserts that all the proceedings were fraudulent, that Koula Rafailidis did not understand the procedure, that the judges of this Court should not have allowed the proceedings to continue, and that the NOM should be heard by a special jury. That document ran through eight substantive pages, followed by a page headed "Public Notice", which asserted inter alia, that: all Courts are common law courts, that there is an "inalienable" right to trial by jury, that the denial of that right constitutes "treason", that jurors are empanelled to judge "the facts and law", and that this Court lacked jurisdiction to proceed summarily, in the absence of consent.
- 10 In support, Koula Rafailidis also relies on an "Asseveration of Truth", filed on 11 March 2014, in which she asserts, in summary, and on oath:

- (a) that she has "no lawful binding contract" with the acquiring authority, this Court, Biscoe J, and/or Craig J
- (b) that she "was deceived by all people involved with this matter"
- (c) that she "did not give expressed (sic) and unequivocal consent to [the] matter being heard summarily"
- (d) that "any orders/judgments" were not properly made and documented
- (e) that the court's determination was the product of bias, deception, and/or fraud
- (f) that Craig J did not demonstrate that he was properly appointed and sworn as a Judge, and "allowed the proceedings to continue fraudulently"
- (g) that unrelated class 4 proceedings (40855 of 2011) exhibited similar failings
- (h) that interference with property without consent is "terrorism"

11 These assertions are supported by a number of biblical quotations, legal maxims, and quotations from historical legal documents, including Magna Carta, and texts such as Halsbury's Laws of England, but are supported by no material which demonstrates any error on his Honour's part.

12 As no appeal documents appear to have been lodged at the Court of Appeal, and, as no appeal lies **within this Court** against a decision such as this, I have entertained the applicants' NOM and "Challenge", and their supporting documentation, as an application by the applicants to reopen the proceedings, pursuant to Part 36 of the Uniform Civil Procedure Rules 2005, especially Rules 36.15 and 36.16. The respondents were comfortable with that course.

- 13 In her oral presentation in chief, Koula Rafailidis reiterated her written materials. Each respondent made brief oral submissions, and, in reply, Koula Rafailidis insisted on reading her filed documents into the transcript. Efrem Rafailidis did not appear.
- 14 The principles applicable to consideration of an application such as this remain as I stated them in *Teoh v Hunters Hill Council (No 3)* [2009] NSWLEC 121; 167 LGERA 432, at [43] - [61], and updated them in *Young v King (No 4)* [2012] NSWLEC 236, at [360 - [392].
- 15 Most of what is put in the filed documents revisits what Koula Rafailidis had unsuccessfully put before Craig J, at directions hearings and at trial.
- 16 There is no power for the Court to summon a jury in class 3 proceedings (Land and Environment Court Act 1979 ('the Court Act'), ss 6 and 33(1)).
- 17 Section 56 of the Court Act stresses the finality of judgment in proceedings such as were heard by Craig J. Koula Rafailidis has brought before the Court no evidence of fraud, bias, irregularity, illegality, or lack of good faith, such as would engage Rules 36.15 and 36.16. Disappointment and suspicion are not sufficient.
- 18 The applicants' NOM is dismissed.
- 19 I make no order as to costs.

Amendments

25 Mar 2014 Coversheet - deletion first case cited Paragraph [2] Paragraphs:
- 'respondents' changed to 'respondent' Paragraph Coversheet, [2]
[3] - 'of' deleted twice, now reads "... the and [3]

consitutional validity ... determining the appropriate"

25 Mar 2014

Paragraphs: