HIGH COURT OF AUSTRALIA

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Details of Filing

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Important Information

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IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY

BETWEEN:

REDLAND CITY COUNCIL
Appellant

and

JOHN MICHAEL KOZIK
First Respondent

SIMON JOHN AKERO
Second Respondent

SARAH AKERO
Third Respondent

NEIL ROBERT COLLIER
Fourth Respondent

OUTLINE OF ORAL SUBMISSIONS OF THE ATTORNEY-GENERAL OF THE COMMONWEALTH (INTERVENING)

PART I INTERNET PUBLICATION

1. This outline of oral submissions is in a form suitable for publication on the internet.

PART II PROPOSITIONS TO BE ADVANCED IN ORAL ARGUMENT

A. The need to decide the status of *Woolwich*

2. The Court should only decide the status of *Woolwich Equitable Building Society v Inland Revenue Commissioners* [1993] AC 70 (**JBA Vol 7, Tab 55, p. 2123**) as a matter of Australian law — including whether the resulting principle derives any support from the Constitution — if it is necessary in order to do justice in this case: **CS, [6]**.

3. The need to decide *Woolwich* arises only if the Court decides that the respondents are not entitled to statutory restitution and, while *prima facie* entitled to restitution on the basis of their mistake, the appellant can rely on a "value received" defence: **CS, [7]-[9]**.

4. The Court need not decide the status of *Woolwich* in order to decide whether a "value received" defence is available to meet the respondents' claim based on mistake: *cf* **Respondents' Reply to Interveners, [13]**. The Court must decide whether the circumstances to which the appellant points would make an order for restitution unjust: *David Securities Pty Ltd v Commonwealth Bank of Australia* (1992) 175 CLR 353 at 379 (**JBA Vol 3, Tab 24, p. 565**).

5. If an equivalent to the *Woolwich* principle were to be recognised in Australia, it would supply a policy-based reason for restitution, which sits outside the transaction between the plaintiff and defendant, and is supported by a different normative justification than that which underpins existing qualifying and vitiating factors. The respondents appear to accept this: **Respondents' Reply to Interveners, [10(c)], and fn 12**.

6. The availability of a novel, policy-based ground for restitution has no immediate bearing on whether a defence of good consideration (albeit rebadged "value received") is available in respect of an existing unjust factor; i.e., a payment made under an accepted mistake of law. If the Court is able to resolve the case without resort to "another reason" (**RS, [51]**), being the status of *Woolwich*, that is the preferable course where it is not necessary to resolve the dispute and Constitutional considerations are invoked.

7. The appellant and respondents are *ad idem* that the "special charges" at issue are taxes: **Appellant's Reply, [16]; Respondents' Reply to Interveners, [14]-[15];** ***cf*** **CS, [13]-[16]**. Accordingly, if the Court were to accept that the *Woolwich* principle is part of Australian law, it is asked to do so only in respect of invalidly imposed taxes, and not in respect of any other kinds of impost: **RS, [15]**.

8. Four of the issues identified in **CS [10]-[12]** would arise for resolution in this case if the status of *Woolwich* is determined.

   (a) *First*, whether the principle extends to unlawfulness grounded in failure to comply with legislative procedures: **Appellant's Reply, [16]; QS, [18]; Respondents' Reply to Interveners, [4]**.

   (b) *Secondly*, the relationship between the *Woolwich* principle and the existing unjust factors: **QS, [35(a)], Respondents' Reply to Interveners, [9]**.

   (c) *Thirdly*, whether *Woolwich* is a "qualifying or vitiating factor falling into some particular category": **QS, [50]-[51]; Respondents' Reply to Interveners, [10(c)]**.

(d) *Finally*, whether there is a "value received" defence to a *Woolwich* claim: **RS, [63]-[64]; Appellant's Reply, [15]**.

9. The fact that the Court would need to resolve these consequential issues militates against determining the status of *Woolwich* unless necessary.

B. The Constitution provides no positive support for *Woolwich*

10. If the Court decides the status of *Woolwich*, the Constitution neither provides support for, nor stands against, the recognition of the *Woolwich* principle as part of the common law of Australia: **CS, [27]-[32]**.

11. Section 83 of the Constitution does not support the existence of the *Woolwich* principle, given it concerns payment of moneys *out of* the Consolidated Revenue Fund and not payment of moneys *into* it: **CS, [30]-[31]**.

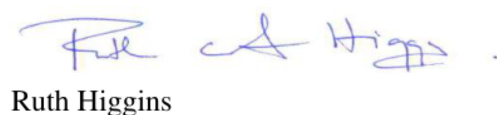
12. Even accepting that the common law principle in *Auckland Harbour Board v The King* [1924] AC 318 "gains weight" from its inclusion in s 83 of the Constitution, it is irrelevant to the question of whether a taxpayer is *prima facie* entitled to restitution of invalidly imposed taxes paid *into* the Consolidated Revenue: *cf* **Respondents' Reply to Interveners, [15]**.

C. The availability of defences

13. If an equivalent of the *Woolwich* principle were recognised in the common law of Australia, the starting point should be that ordinary restitutionary defences are available: **CS [34]**.

14. However, the respondents accept that defences other than the appellant's "value received" defence need not, and should not, be decided in this case: **CS, [33]**; **Respondents' Reply to Interveners, [16]**. And there is no occasion to consider the defence of change of position, which the appellant has disavowed: **CAB, p 52, [48]; RS, [9].**

Dated: 13 September 2023



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