PIKE & ANOR v TIGHE & ORS (B33/2017)

Court appealed from: Court of Appeal of the Supreme Court of Queensland [2016] QCA 353

Date of judgment: 23 December 2016

Special leave granted: 16 June 2017

This appeal concerns the power of the Planning and Environment Court to make enforcement orders under s 604(1) of the *Sustainable Planning Act* 2009 (Qld) ("the Act") against a successor in title to the person who owned the land at the time a development approval for reconfiguration was granted, even though the successor in title played no role in carrying out the development. This in turn depends upon whether for the purposes of s 245 of the Act, a development approval for the reconfiguration of land can bind the purchaser of a lot created by that reconfiguration.

The Appellants are the owners of a land-locked residential lot (lot 2) which adjoins land owned by the First Respondents (lot 1) with a frontage to a public road. The Appellants have the benefit of an easement over the First Respondents' land for access, but as a consequence of the position adopted by the First Respondents, they are unable to construct and provide utility services to a house on their land. Both lots were created by a development approval for a reconfiguration of the parent parcel on 29 May 2009, issued by the Second Respondent, the Townsville City Council. That approval was subject to a condition (condition 2) that contemplated that the easement benefitting lot 2 would provide not only for access but also for "*on-site manoeuvring and connection of services and utilities*". The Appellants and the First Respondents later purchased their respective lots from the owner of the original lot.

The Appellants applied to the Planning and Environment Court to compel the First Respondents to comply with condition 2. On 9 March 2016 Judge Durward granted that application, on the basis that condition 2 had been contravened and therefore the First Respondents had committed a "development offence". His Honour then made an enforcement order under s 604(1) of the Act.

The First Respondents appealed to the Court of Appeal of the Supreme Court of Queensland. The Court of Appeal (Fraser, Morrison & Philippides JJA) unanimously allowed the appeal on the basis that the power to make an enforcement order under s 604(1) of the Act arose only upon the Court being satisfied that the First Respondents had committed the alleged development offence, and that since they were not parties to the reconfiguration of the original lot approved by the development approval, condition 2 did not impose any obligation upon them. This relied upon a conclusion that once the survey plan signed off by the Second Respondent was registered under the *Land Titles Act* 1994 (Qld), and lots 1 and 2 created, the development approval was spent.

The grounds of appeal include:

- The Court of Appeal erred in law in failing to conclude that the power of the Planning and Environment Court to make an enforcement order under s 604(1) arose upon that Court being satisfied that the alleged development offence had been committed, whether by the First Respondents or by some other person;

- The Court of Appeal erred in law in concluding that condition 2 of the development approval of May 2009 imposed an obligation only as a condition of completing a reconfiguration which was to be complied with only simultaneously with that event, and so in effectively concluding that s 245 of the Act was not capable of being engaged after the reconfiguration approval was effected by registration of a survey plan.