

**ARGOS PTY LTD ACN 008 524 418 & ORS v. SIMON CORBELL, MINISTER FOR THE ENVIRONMENT AND SUSTAINABLE DEVELOPMENT & ORS (C3/2014)**

Court appealed from: Court of Appeal of the Supreme Court of the Australian Capital Territory [2013] ACTCA 51

Date of judgment: 29 November 2013

Special leave granted: 21 May 2014

This appeal purports to raise a question as to whether there is a general rule that economic interests are insufficient to ground standing under the “person aggrieved” test in s 5(1) of the *Administrative Decisions (Judicial Review) Act 1989 (ACT)* (“the ADJR Act”).

The first appellant, Argos Pty Ltd, holds a lease of Crown land at the Kaleen Local Centre. An IGA Supermarket is located in the centre but it is not operated by Argos, rather it is operated by the second appellant, Cavo Pty Ltd as a sub-lessee. The third appellant, Koumvari Pty Ltd, is a trustee for the Vizadis Family Trust. The Trust holds a sub-lease of the Crown Lease for the site of the IGA Supermarket at the Evatt Local Centre and conducts the IGA Supermarket at that address.

The first respondent, (“the Minister”) granted approval to a development application made by the second respondent on behalf of the third respondent. That application sought approval for a supermarket and speciality shops on land known as the Giralang Local Centre, being the land at Blocks 4 and 5, Section 74, Giralang, ACT.

The appellants challenged the Minister’s decision on the following grounds:

- (1) The Minister did not have jurisdiction to approve the development application as it was inconsistent with the relevant code, contrary to s 119(1)(a) of the *Planning and Development Act 2007 (ACT)* (“the Planning Act”);
- (2) the decision was not authorised under the enactment under which it was purportedly made, namely the Planning Act;
- (3) the decision was an improper exercise of the power given under the Planning Act to approve development proposals because the Minister failed to take into account relevant considerations, or in the alternative the making of the decision was an exercise of power that was so unreasonable that no reasonable person could have so exercised the power;
- (4) the Minister breached the rules of natural justice; and
- (5) the decision involved an error of law.

Burns J found that the appellants did not have standing to claim the relief sought. Further, although it was not necessary for his Honour to make findings with respect to the substantive grounds of the application, he did so and dismissed each ground.

The appellants appealed this decision. The Court of Appeal (Penfold and Cowdroy JJ and Nield AJ) found that except for each applicant’s alleged interest in the maintenance of the hierarchy of commercial centres in the ACT they had not identified any special interest over and above their respective economic interests and held that the decision of the primary judge was correct in deciding that the

appellants lacked standing to apply for judicial review. Accordingly, the appeal was dismissed.

The ground of appeal is:

- The Court of Appeal erred in holding that the first, second and third appellants were not, within the meaning of the then terms of s 5(1) of the ADJR Act, persons “aggrieved by” the decision made by the first respondent on 17 August 2011 pursuant to s 162 of the Planning Act approving a development application made by the second respondent.