

ON APPEAL FROM THE COURT OF APPEAL
OF THE SUPREME COURT OF VICTORIA

BETWEEN:

10 ECOSSE PROPERTY HOLDINGS PTY LTD

Appellant

and

GEE DEE NOMINEES PTY LTD

Respondent

APPELLANT'S REPLY SUBMISSIONS

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1. The argument at paragraph 22 ignores the words "*in respect of the said premises*" in clause 4 which confine the operation of the obligation to pay imposts to the leased land.

2. It is because these words appear that:

- (a) the parenthesised words of apportionment can be (and on the Appellant's construction need to be) deleted, and
- (b) the other words of the sentence are retained despite their repetitiveness and clumsiness.

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3. The retention of the words "*in respect of the said premises*" would be redundant and tautological if the Respondent's construction was correct. Imposts "payable by the Tenant" in the sense that this phrase is construed by the Respondent must necessarily be related to the leased premises.

4. Contrary to paragraph 38, the words "*Landlord or*" cannot stand if the Lessee is to be liable for all imposts relating to the leased land. The argument fails to appreciate the point sought be made by the Appellant.

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5. In the reading of clause 4 urged by the Appellant, the words "*which shall be payable by the Tenant in respect of the said premises*" are understood as stating again the Tenant's obligation – and tying it to the leased premises. These words mean simply that during the term all rates taxes assessments and outgoings in respect of the premises shall be paid by the Tenant. To fail to delete the words "*Landlord or*" would create confusion because the clause would then say "*all rates taxes assessments and outgoings shall be payable*
10 *by the Landlord or Tenant in respect of the premises.*"

DATED 25 November, 2016

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