



## HIGH COURT OF AUSTRALIA

Public Information Officer

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### HTW VALUERS (CENTRAL QLD) PTY LTD v ASTONLAND PTY LTD

Damages of \$406,194.60 for negligent real estate advice awarded to a couple who bought a shopping arcade were not excessive, the High Court of Australia held today.

After moving to Mackay in central Queensland Lyn and John Foster decided to sell their Brisbane house and invest the proceeds and borrowings in commercial property with a better return. Astonland was the investment vehicle. Mrs Foster was the sole director of Astonland and she and her husband were the sole shareholders. Before buying Central Street Plaza, an arcade of eight shops in Sarina south of Mackay generating nearly \$60,000 rent a year, the Fosters sought advice from Barry Deacon of HTW Valuers about the retail rental market in Sarina, including demand for tenancies and availability of tenants. Based on Mr Deacon's advice that current rental levels were maintainable, Astonland entered a contract to buy the Plaza for \$485,000 in April 1997 and completed the purchase in July. At this time the Beach Road Shopping Centre, a supermarket and 10 speciality shops, was under construction. It opened in mid-1998. Rentals for the Plaza collapsed from about March 1999, dropping to less than \$16,000 a year later. Four shops had been vacant for up to 12 months, rent on another was heavily in arrears and rents on another two had fallen sharply. Astonland has been unable to sell the arcade.

Astonland sued HTW Valuers in the Queensland Supreme Court. Justice Peter Dutney found the collapse in rentals was almost solely due to the opening of the Beach Road Shopping Centre. He found that Mr Deacon negligently failed to qualify his opinion by cautioning that the effect of the new shopping centre was uncertain. The duties breached were those created by the contract under which HTW was paid \$250, by the law of tort in relation to negligent advice, and by section 52 of the *Trade Practices Act* in relation to misleading and deceptive conduct. In March 2000, Jeffrey Dodds, retained by Astonland, valued the Plaza at \$130,000. Justice Dutney awarded Astonland \$355,000, the difference between the price paid and the value it reached due to the effect of the Beach Road Shopping Centre, plus another \$51,194.60, consisting of trading losses, additional purchase costs, refurbishments and interest. The Court of Appeal dismissed an appeal from HTW against the \$355,000 component of the damages award.

HTW appealed to the High Court, which held that in assessing damages courts are not limited to assessing the risk as at April 1997 but are entitled to take account of how those risks later evolved into certainties. The cause of the decline in the value of the Plaza was not independent, extrinsic, supervening or accidental but lay in circumstances crucial to the value of the Plaza when Astonland acquired it, that is, the impending opening of the Beach Road Shopping Centre. The Court held that the damages figure was appropriate in all the circumstances. It unanimously dismissed the appeal.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*