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signed
12/5/21
30.3.21

STATEMENT OF CLAIM

COURT DETAILS

Court Supreme Court of New South Wales
Division Equity
List ~~Equity General~~ Commercial List
Registry Sydney
Case number 2021/88654

TITLE OF PROCEEDINGS

First Plaintiff Darren Mitchell
Second Plaintiff Rosaline Mitchell
First defendant Roads and Maritime Services (ABN76236371088)
Now known as Transport for New South Wales)
Second defendant Registrar General

FILING DETAILS

Filed for Plaintiffs
Legal representative Alan Segal
Legal representative reference 210123
Contact name and telephone & Legal 02 9328 2944
Contact email asegal@andlegal.com.au

TYPE OF CLAIM

Declaration – Land – Other

This matter has been listed before the Court

on 12/5/21

at 9am

Clerk of the Court

RELIEF CLAIMED

RELIEF CLAIMED

- 1 A declaration that the second defendant is liable to pay compensation under s 120 and/or s129 of the Real Property Act for the Plaintiffs Lands- (the interests in substratum land identified in this Statement of Claim) in respect of the purported compulsory acquisition of their lands by the First Defendant said to be pursuant to section 177 of the Roads Act 1993 and/or the purported subdivision of those Lands by the First Defendant and leave pursuant to 132 (2)(b) of the Real Property Act for that purpose.
- 2 Further and in the alternative a declaration that the purported Substrata Subdivisions (Schedule 1) of the Plaintiffs' and Group Members' Lands are not valid in that each contained an error on the face of the record by purporting to contain a statement of intention to dedicate a public road under s 48 of the Roads Act when the purpose was not for the dedication of a public road under the Act ("the False Declaration").
3. Further and in the alternative, a declaration that the purported Subdivisions were not validly authorised to be registered by s 9 of the Roads Act because there were no true statements of intention to dedicate the specified land as a public road.
4. A declaration that at the time of the making the False Declarations, the First Defendant: knew that the False Declarations were false; or in the alternative; knew that the statutory formalities for executing the dealings, the subject of the statements of intention, had not been satisfied; or in the further alternative and made the said False Declarations recklessly without caring whether they were true or false.

12. Whether pursuant to the deed referred to in 1. above the First Defendant is not constructing the Mainline Tunnel and thus s62 of the Land Acquisition (Just Terms Compensation) Act does not apply
13. Whether the First Defendant acquired the Land for the purpose of resale and thus s179 of the Roads Act 1993 prohibited compulsory acquisition of the Land

PARTIES AND RELEVANT PERSONS

A The plaintiffs and Group Members

1. The proceedings are commenced as a representative proceeding pursuant to Part 10 of the Civil Procedure Act 2005 (NSW) (CPA) on behalf of the plaintiffs and all persons who or which:
 - 1.1 suffered loss or damage by or resulting from the fraud by the First Defendant pleaded in this Statement of Claim (SOC); and
 - 1.2 are not any of the following:
 - a. a party related to the defendants;
 - b. an entity associated with the defendants;
 - c. an officer or close associate of the defendants;
 - d. a Chief Justice, Justice or Registrar of the Supreme Court of New South Wales or the High Court of Australia; or
 - e. an officer or employee of, or other legal practitioner engaged by the law firm Murphy Lyons

PLEADINGS AND PARTICULARS

1. The Plaintiffs (**Plaintiff**) are natural persons and are entitled to sue and be sued.
2. The First defendant (RMS) is and was at all material times a statutory corporation and NSW government agency and is entitled to sue and be sued in its corporate name and style.
3. The Second Defendant is and was at all material times an instrumentality of the government of New south Wales and is entitled to sue and be sued in its corporate name and style.

WestConnex project

4. The First Defendant has executed a deed known as WestConnex M4-M5 Link Project Deed under which WCX M4-M5 LINK PT Pty Limited and WCX M4-M5 LINK AT Pty Limited are respectively in broad terms to design and construct tollway tunnels from Haberfield to St Peters together with certain ancillary works (**Mainline Tunnel**), being stage 3 of WestConnex, and operate and maintain the motorway to be known as WestConnex M4-M5 Link, being both stages 3A and 3B of WestConnex.

Particulars

- i. WestConnex M4-M5 Link Project Deed.

EPA Approval

5. On 17 April 2018, planning approval for the carrying out of the Westconnex M4-M5 Link was granted pursuant to section 5.19 of the Environment and Planning Assessment Act 1979 (EPA Act Approval).
6. Part of the Mainline Tunnels the subject of the EPA Act Approval comprises an underground on-ramp tunnel that will connect the remainder of the Mainline Tunnels to Wattle Street at Haberfield (**On Ramp Tunnel**).
7. The Tunnel will be located under the surface of the land owned by the Plaintiffs described in paragraph [8] below.

Land

8. The Plaintiffs until the time described in paragraph [38] hereof were the registered proprietors of the whole of the land (unlimited as to depth) held under the *Real Property Act 1900* (**RPA**) located at 11 Miller Street, Haberfield (the **Land**).

Tollway

9. Pursuant to section 52(1) of the Roads Act 1993 (NSW) (**Roads Act**), the Minister may, by order published in the Gazette, declare
 - a. any road that is owned by RMS and that is designed to facilitate the movement of motor traffic,
 - b. or any road proposed to be constructed on land owned or to be owned by RMSto be a tollway ("**Tollway**").
10. Any public road that is declared to be a Tollway ceases to be a public road by virtue of the declaration.

Particulars

- i. Section 52(2) of the Roads Act.

11. By virtue of s 52 (3) of the Roads Act a Tollway **is not a road or road related area** within the meaning of section 4 (1) of the *Road Transport Act 2013* for the purposes of any Act or law, or any provision of an Act or law, prescribed by the regulations for the purposes of this section.
12. On 17 August 2018, pursuant to section 52(1) of the Roads Act, an order was published in the Gazette declaring the proposed road to be constructed in the Mainline Tunnel (including the On Ramp Tunnel) to be a Tollway as defined in the Roads Act (**Declaration**).

45. The Mainline Tunnel as part of the WestConnex project was approved as State significant infrastructure under Part 5.1 of the Environmental Planning and Assessment Act 1979 (NSW).

46. The purpose of s 64(1A) of the Roads Act is to confer on RMS “*the functions of a roads authority*” in respect of a road where RMS is not “the roads authority” for that road under s 7 of the Roads Act and section 71 empowers a “roads authority” to “carry out road work” “on any public road for which it is the roads authority” and “on any other land under its control”.

47. However, as pleaded above:

- b. On 17 August 2018, pursuant to section 52(1) of the Roads Act, an order was published in the Gazette declaring the proposed road to be constructed in the Mainline Tunnel (including the On Ramp Tunnel) to be a ‘tollway’ as defined in the Roads Act (**Declaration**); and
- c. By virtue of sections 52(2) and 52(3) of the Roads Act, the Declaration rendered the Mainline Tunnel not to be a public road; or a road or road related area within the meaning of section 4(1) of the Road Transport Act 2013 for the purposes of any Act or law, or any provision of an Act or law, prescribed by the regulations for the purposes of this section.

48. In the premises, the function of carrying out the construction of a road for the purposes of the WestConnex project being conferred on RMS, by operation of s 64(1A) and 71 of the Roads Act, is null and void in circumstances where the Mainline Tunnel, pursuant to the Declaration is not a ‘road’ (**Improper Purpose**).

49. As a consequence of the Improper Purpose, the Substratum Land (below) was brought under the provisions of RPA, the Plaintiffs and the Group Members are entitled to commence proceedings in the Supreme Court against the First Defendant for the recovery of loss and damages suffered.

Particulars

- i. See Substratum Land (see paragraph [39] above); and
- ii. Section 120 of the RPA.

ALTERNATIVE CLAIM

50. In the alternative, as a consequence of the Improper Purpose, causing the Substratum Land (below) being brought under the provisions of RPA, the Plaintiffs and the Group Members are entitled to payment of compensation from the Torrens Assurance Fund

Particulars

- ii. Section 129 of the RPA.

51. In the further alternative, as a result of the Registrations the First Defendant holds the whole of the Land, on trust for the Plaintiffs and the Group Members.

FURTHER ALTERNATIVE CLAIM

52. In the further alternative, the First Defendant has executed a deed known as WestConnex M4-M5 Link Project Deed under which WCX M4-M5 LINK PT Pty Limited and WCX M4-M5 LINK AT Pty Limited are respectively in broad terms to design and construct tollway tunnels from Haberfield to St Peters together with certain ancillary works (**Mainline Tunnel**), being stage 3A of WestConnex, and operate and maintain the motorway to be known as WestConnex M4-M5 Link, being both stages 3A and 3B of WestConnex.

Particulars

i. WestConnex M4-M5 Link Project Deed.

56. The First Defendant has purported to invoke section 62 of the Acquisition Act in order to avoid its obligations to pay compensation to the Plaintiffs.

Particulars

Proposed Acquisition Notices served on the plaintiffs

57. Section 62 of the Acquisition Act only applies if the First Defendant is the entity constructing the M4 – M5 Link tunnel.

58. Pursuant to the WestConnex M4-M5 Link Project Deed, the First Defendant is not constructing the M4 – M5 Link tunnel.

59. The First Defendant is pursuant to section 37 of the Acquisition Act liable to pay compensation to the Plaintiffs and the Group Members for the compulsory acquisition of the Land.

60. The Plaintiffs and the Group Members claim compensation being the depreciation in the market value of the land remaining in their ownership after the compulsory acquisition of the substrata of the Land (section 58 Land Acquisition (Just Terms Compensation Act 1991).

SECOND FURTHER ALTERNATIVE CLAIM

61. Section 179 of the Roads Act 1993 prohibits the compulsory acquisition of land for the purpose of resale.

62. Pursuant to the WestConnex M4-M5 Link Project Deed, the First Defendant sold the land compulsorily acquired by it.

63. The First Defendant's purported compulsory acquisition of the land was prohibited by section 179 of the roads Act 1993 and is null and void.

64. The plaintiffs and the Group Members claim damages from the First Defendant or, alternatively the First Defendant holds the land on trust for the plaintiffs and the Group Members.

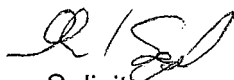
SIGNATURE OF LEGAL REPRESENTATIVE

This statement of claim does not require a certificate under clause 4 of Schedule 2 to the Legal Profession Uniform Law Application Act 2014.

I certify under clause 4 of Schedule 2 to the Legal Profession Uniform Law Application Act 2014 that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim for damages in these proceedings has reasonable prospects of success.

I have advised the plaintiffs that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature



Capacity

Solicitor

Date of signature

30 March, 2021

NOTICE TO DEFENDANT

If you do not file a defence within 28 days of being served with this statement of claim:

- **You will be in default in these proceedings.**
- **The court may enter judgment against you without any further notice to you.**

The judgment may be for the relief claimed in the statement of claim and for the plaintiff's costs of bringing these proceedings. The court may provide third parties with details of any default judgment entered against you.

HOW TO RESPOND

Please read this statement of claim very carefully. If you have any trouble understanding it or require assistance on how to respond to the claim you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the claim from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

You can respond in one of the following ways:

- 1 If you intend to dispute the claim or part of the claim**, by filing a defence and/or making a cross-claim.
- 2 If money is claimed, and you believe you owe the money claimed**, by:
 - Paying the plaintiff all of the money and interest claimed. If you file a notice of payment under UCPR 6.17 further proceedings against you will be stayed unless the court otherwise orders.
 - Filing an acknowledgement of the claim.
 - Applying to the court for further time to pay the claim.
- 3 If money is claimed, and you believe you owe part of the money claimed**, by:
 - Paying the plaintiff that part of the money that is claimed.
 - Filing a defence in relation to the part that you do not believe is owed.

Court forms are available on the UCPR website at www.ucprforms.justice.nsw.gov.au or at any NSW court registry.

REGISTRY ADDRESS

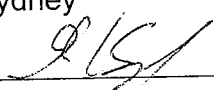
Street address	Law Courts Building, Queens Square Sydney
Postal address	GPO Box 3, Sydney NSW 2001
Telephone	9230 8111

AFFIDAVIT VERIFYING

Name Alan Lewis Segal
 Address Level 3, 376 New South Head Road, Double Bay, NSW 2028
 Occupation Solicitor
 Date 30 March 2021

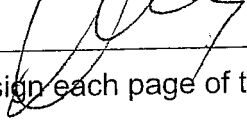
I say on oath:

- 1 I am the solicitor for the plaintiffs.
- 2 I believe that the allegations of fact in the statement of claim are true.

SWORN at Sydney
 Signature of deponent 
 Name of witness John Denes
 Address of witness 376 New South Head Road, Double Bay, NSW 2028
 Capacity of witness Solicitor

And as a witness, I certify the following matters concerning the person who made this affidavit (the **deponent**):

- 1 I saw the face of the deponent.
- 2 I have known the deponent for at least 12 months.

Signature of witness 
 Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.

[* The only "special justification" for not removing a face covering is a legitimate medical reason (at April 2012).]

[† "Identification documents" include current driver licence, proof of age card, Medicare card, credit card, Centrelink pension card, Veterans Affairs entitlement card, student identity card, citizenship certificate, birth certificate, passport or see Oaths Regulation 2011.]

#PARTY DETAILS

PARTIES TO THE PROCEEDINGS

<p>Plaintiffs Darren Mitchell and Rosaline Mitchell, Plaintiffs</p>	<p>Defendants Roads and Maritime Services – now known as Transport for New South Wales, First Defendant</p>
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FURTHER DETAILS ABOUT PLAINTIFF[S]

Plaintiffs

Name	Darren Mitchell and Rosaline Mitchell
Address	11 Miller Street, Haberfield NSW 2045

Frequent user identifier -

Legal representative for plaintiffs

Name	Alan Lewis Segal
Practising certificate number	7611
Firm	& Legal
Contact solicitor	
Address	Level 3, 376, New South Head Road, NSW Double Bay 2028

DX address

Telephone 02 9328 2944

Fax 02 9328 7324

Email asegal@andlegal.com.au

Electronic service address asegal@andlegal.com.au

First Defendant

Name:	Roads and Maritime Services – now known as
Transport for New South Wales	

27-31 Argyle Street
Parramatta NSW 2150

Second Defendant

Registrar General
McKell Building
2-24 Rawson Place
SYDNEY NSW 2000

SCHEDULE 1

Deposited Plan Nos.

1248055

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