

Glenthams Pty. Ltd.

Appellant

v.

City of Perth

Respondent

FROM

THE FULL COURT OF THE SUPREME COURT
OF WESTERN AUSTRALIA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 22ND MAY 1986

Present at the Hearing:

LORD BRIDGE OF HARWICH
LORD BRIGHTMAN
LORD MACKAY OF CLASHFERN
LORD ACKNER
LORD GOFF OF CHIEVELEY

[Delivered by Lord Bridge of Harwich]

This is an appeal from a decision of the Full Court of the Supreme Court of Western Australia (Burt CJ., Wallace and Brinsden JJ.) affirming on different grounds the judgment of Rowland J. in favour of the respondent whereby he ordered specific performance of a lease dated 26th June 1984.

Early in 1981 the appellant was proposing to construct a multi-storey office block in Perth comprising three levels of car parking, a plaza, foyer and mezzanine level, and fifteen levels of office accommodation. It was intended that the appellant should grant to the respondent a lease of two of the car parking levels. On 22nd May 1981 the appellant's solicitors wrote to the Town Planning Board in the following terms:-

"An agreement is being negotiated between our client and Perth City Council whereby the Perth City Council will agree to take a lease of two of the car parking levels to be comprised in the proposed building for a term which will if all options of renewal are exercised correspond to the life of the building.

We enclose copy of plans intended to be attached to the proposed Agreement showing outlined in red the area of the proposed building proposed to be leased."

It is common ground that the Town Planning Board gave unconditional approval to the grant of the proposed lease pursuant to section 20(1)(a) of the Town Planning and Development Act 1928-1979 of Western Australia.

The multi-storey block was duly erected and by the lease dated 26th June 1984, of which the respondent seeks specific performance, two car parking levels were demised to the respondent. The plans showing the area of the demise, however, differ from the plans by reference to which the approval of the Town Planning Board was first granted in two particulars. First, a staircase has been constructed in a different place from that proposed as shown in the 1981 plans and this has resulted in a small modification of the demised area. Secondly, the 1981 plans show all 136 car parking spaces on the two levels as included in the demise; under the 1984 lease certain spaces are reserved to the appellant as lessor. For the first six months of the term the respondent will be entitled to occupy only 99 spaces and for the balance of the term 125 spaces, leaving 11 spaces permanently reserved to the lessor.

The Full Court unanimously held that for the purposes of section 20(1)(a) of the Act the approval granted in 1981 was effective to sanction the lease granted in 1984. Whether any differences between the subject matter of the demise as described in the 1981 application to the Town Planning Board and as granted by the 1984 lease were material differences for the purpose of any approval required under the relevant section must depend on the policy of the enactment, the mischief to which it is directed and the administrative and social conditions in which it operates. These are matters pre-eminently within the knowledge and experience of the local courts and wholly outside the knowledge and experience of this Board. Having given the matter their best consideration, their Lordships can detect no error of fact or law in the reasoning of the Full Court or in the conclusion at which they arrived.

Accordingly their Lordships will humbly advise Her Majesty that the appeal should be dismissed. The appellant must pay the respondent's costs.



