

IN THE MATTER of a claim for compensation under the Public
Works Act 1981

BETWEEN **AERO VISTA HOLDINGS LIMITED AT
CHRISTCHURCH (IN LIQUIDATION)**

Claimant

AND **MINISTER OF LANDS**

Respondent

Date of hearing: 2 March 2006

Appearances: Mr P M Cassin for Claimant
Mr M T Parker for Respondent

Date of Decision: 3 March 2006

RULING OF JUDGE J D HOLE

The Application.

1. The claimant has brought a claim against the respondent for compensation arising out of the acquisition of land. The land was for a motorway.
2. In an application dated 15 February 2006 the claimant has applied to the Tribunal pursuant to r 14 of the Land Valuation Tribunal's Rules 1977 for an order that Transit New Zealand, (a body corporate pursuant to s 4 Transit New Zealand Act 1989) be joined as a second respondent to the proceeding.

Background.

3. On 20 January 2004 the Environment Court ordered that Transit acquire the land pursuant to s 185 Resource Management Act 1991. The Court awarded \$68,650.39 costs to the claimant.
4. The claimant states that it has incurred additional expenses amounting to \$158,190.40 which it says come within the definition of disturbance payments as set out in s 66(1) Public Works Act 1981. It claims that Transit New Zealand is obliged to meet these costs as it was the requiring authority which ultimately imposed the motorway designation affecting the land. Transit New Zealand was the respondent in the Environment Court proceeding.

Part 5 Public Works Act 1981

5. The claim for compensation is made pursuant to Part 5 Public Works Act 1981.
6. In the event that a person is entitled to compensation in terms of Part 5 of the Act, s 60(1) of the Act states that:

"the owner of that land shall be entitled to full compensation from the Crown (acting through the Minister) or local authority, as the case may be ..."

7. Section 61 sets out exemptions to rights to compensation and is not relevant in respect of this application.
8. Section 62 sets out the method by which compensation is assessed. Of relevance is 62(1)(f) which indicates that the Tribunal is required to take into account, by way of deduction from any compensation, any betterment which has occurred as a result of the exercise by Transit New Zealand of any power under s 91 of the Transit New Zealand Act 1989.

9. Sections 63 to 68 set out various instances where compensation becomes payable. Included amongst them is s 66 relating to disturbance payments.

Comments on Claimant's Submissions.

10. Various submissions were made on behalf of the claimant. They included the following:

(a) Transit New Zealand is a separate legal entity from the respondent and can be the subject of a discrete claim.

I accept that Transit New Zealand is a separate legal entity from the respondent. However, it does not follow from this that Transit New Zealand can be the subject of a claim under Part 5 of the Act. Section 60(1) applies and limits compensation payable in respect of a public work to either the Crown (acting through the Minister) or the local authority.

(b) The Public Works Act was drawn up at a time when usually there were only two parties to the negotiation, namely the acquiring authority and the compensatee.

A perusal of the Act does not support this submission. Section 59 of the Act (which is the interpretation section) refers to the "notifying authority". The definition of "notifying authority" includes Transit New Zealand. I have already referred to s 62(1)(f) of the Act. It is apparent from these provisions that the Act did not contemplate merely two parties to the negotiation. Indeed, it specifically provided that a notifying authority could be a person which is discrete from either the Crown (acting through the Minister) or a local authority.

(c) In this case, Transit New Zealand was the acquiring authority but was subject to a directive from the Minister of Transport that all land

acquired by it should be bought in the name of the Crown. Thus, the de jure acquiring authority was the Crown but the de facto acquiring authority was Transit New Zealand.

This submission misses the point. It does not matter who the acquiring authority is: if the land is being acquired for a public work the compensation under Part 5 of the Act is payable by either the Crown (acting through the Minister) or the relevant local authority. The claim must be brought against the body liable to pay; not the acquiring authority.

- (d) *When interpreting the Act, the Tribunal must give it an interpretation consistent with achieving its objectives, which include complying with the principle of full compensation.*

Section 5 (1) Interpretation Act 1999 states that “*The meaning of any enactment must be ascertained from its text and in the light of its purpose*”. I accept that the purpose of Part 5 is the provision of full compensation.

Section 5(2) states that indications in an enactment are relevant in determining its meaning. Thus where an enactment is expressed in clear and unambiguous language, there is no justification in attempting to import a purpose which is not expressed in its text.

There is no ambiguity in s 60(1). The principle of full compensation is not prejudiced by the interpretation I have given it.

Conclusion.

11. From the foregoing it is apparent that there is no need for Transit New Zealand to be joined in the proceeding as a second respondent. Such compensation is as properly payable to the claimant under Part 5 of the Act can only be provided (in this case) by the Crown (acting through the Minister). Transit New Zealand is not liable to pay compensation pursuant to Part 5 of the Act. No claim under Part 5 can be brought against it.
12. The application is declined.
13. Costs are reserved.

J D Hole

District Court Judge