



## Supreme Court of New Zealand

11 November 2011

### **MEDIA RELEASE – FOR IMMEDIATE PUBLICATION**

***Lisa Marie Colleen Mandic and Stephen Neil Dohnt v The Cornwall Park Trust Board (Inc)***  
**(SC 4/2011)**  
**[2011] NZSC 135**

### **PRESS SUMMARY**

**This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at [www.courtsofnz.govt.nz](http://www.courtsofnz.govt.nz).**

A group of lessees brought proceedings in the High Court under the Declaratory Judgments Act 1908 seeking to challenge the way that the Cornwall Park Trust Board had interpreted perpetually renewable 21 year leases, sometimes known as Glasgow leases. The lessees were dissatisfied with the Board’s approach to valuation and sought declarations regarding the interpretation of the leases. The focus was on the correct approach, under the terms of the lease, to valuing “the then gross value of the fee simple of the land” and also “all substantial improvements ... made or acquired by the Lessee”. The lease provides that the difference between these two valuations is the residual value for the land upon which the rental is calculated.

The High Court largely found in favour of the Board. The Court suggested that the Board was entitled, in its calculation of the ground rent, to view the residual figure on which ground rent is charged as being equivalent to the bare or unimproved value of the land. The Court found that, while zoning and town planning requirements could be taken into account in

ascertaining the gross value of the fee simple of the land, user restrictions could not be taken into account. It noted, further, that improvements to the land could be valued on a market basis.

The Court of Appeal, after expressing a view on the limited availability of declaratory relief under the Declaratory Judgments Act 1908, dismissed the lessees' appeal on all grounds. The Court of Appeal's judgment was more adverse to the lessees in that it expressed the view that a highest and best use approach to valuation was appropriate at all stages of the valuation process. It also suggested that a correct application of the formula might produce a residual value which would not correspond to the unimproved value of the land.

A majority of four judges of the Supreme Court (Elias CJ dissenting in part) has dismissed the lessees' appeal to the Supreme Court. The Supreme Court has held unanimously that, under the terms of lease, it may be appropriate to ascertain the value of the improvements by subtracting the value of the land as if unimproved from the gross value of the fee simple of the land. All five judges have agreed, too, that the gross value of the fee simple of the land should be valued on a highest and best use basis, without taking into account existing developments. Four of the five judges found that user restrictions should not be taken into account in determining the gross value of the fee simple. The Chief Justice dissented on this point. All judges also expressed disagreement with the approach of the Court of Appeal to declaratory relief.

Contact person: Gordon Thatcher, Supreme Court Registrar (04) 914 3545