

**The Secretary to the Department of Economic Development, Jobs, Transport and
Resources v Kin Lee - [2017] VSC 504**

IN THE SUPREME COURT OF VICTORIA Not
Restricted

AT MELBOURNE
COMMON LAW DIVISION

VALUATION COMPENSATION AND PLANNING LIST

S CI 2017 01005

THE SECRETARY TO THE DEPARTMENT OF ECONOMIC DEVELOPMENT,
JOBS, TRANSPORT AND RESOURCES Appellant

v

KIN LEE (and others according to the Schedule) Respondents

JUDGE: EMERTON J

WHERE HELD: Melbourne

DATE OF HEARING: 16 June 2017

DATE OF JUDGMENT: 30 August 2017

CASE MAY BE CITED AS: *The Secretary to the Department of Economic Development, Jobs,
Transport and Resources v Kin Lee*

PLANNING & ENVIRONMENT — Application for leave to appeal and appeal from the Victorian Civil and Administrative Tribunal under s 148 of the *Victorian Civil and Administrative Tribunal Act 1998 (Vic)* — Acquisition of residential units — *Land Acquisition and Compensation Act 1986 (Vic)* s 36 — Two notices of acquisition gazetted – Whether the notices require the units and the common property to be valued separately — Construction of notices of acquisition — Applying the ‘technical meaning’ of words — Whether the Tribunal erroneously construed the notices — *Owners Corporation Act (Vic)* ss 11, 14 — *Subdivision Act 1988 (Vic)* ss 27A, 31, 31A, 32 — *Transfer of Land Act 1958 (Vic)* s 27 — Application for leave to appeal granted and appeal allowed.

<u>APPEARANCES:</u>	<u>Counsel</u>	<u>Solicitors</u>
For the Appellant	Mr J Delany QC and Mr S Goubran	Russell Kennedy
For the Respondents	Ms J Forsyth and Mr I Munt	Slater & Gordon

HER HONOUR:

Introduction

1. This is an application for leave to appeal and, if leave is granted, an appeal from a decision of the Victorian Civil and Administrative Tribunal made on 1 March 2017 answering questions of law referred to it for determination at a preliminary hearing. The Tribunal member was in substance asked which of two notices of acquisition gazetted in the Victoria Government Gazette pursuant to the *Land Acquisition and Compensation Act 1986 (Vic)* (‘*LAC Act*’) effected the acquisition of common property in a unit development. The land was compulsorily acquired for the purposes of the planned East-West Link Project (Eastern Section).
2. On 16 October 2014, the Linking Melbourne Authority^[1] acquired all of the interests in land at 91-93 Manningham Street, Parkville, including the estate in fee simple of the registered proprietors,

by publishing 41 notices of acquisition in the Government Gazette. The land in question was a unit development, and the owners of the units were members of the Lee family and a number of other persons ('unit owners'). There were 40 units in total, making up a single strata subdivision development with a large common area in the middle containing a pool and tennis court. The individual unit owners were served with notices of acquisition that specified their unit, named the registered proprietor(s) and acquired, by reference to the title description, that person's interest in the property.

[1] The predecessor in law to the applicant/appellant ('Authority').

3. Members of the Lee family, as the registered proprietors of Unit 26, received a notice of acquisition in the following terms:

Notice of Acquisition
Compulsory Acquisition of Interest in Land

The Linking Melbourne Authority declares that by this notice it acquires the following interests in the land described as Unit 26, 91-93 Manningham Street, Parkville, being the land more particularly described in Certificate of Title volume 9494 folio 517 ('the land'):

The interests acquired in the land are all interests in the land including the estate in fee simple of the registered proprietors Hing-Kin Lee, Hing-Hang Lee and Hing-Lok Lee and the interests of any lessee/occupier.

Published with the authority of the Linking Melbourne Authority.

4. I will refer to this notice as the 'unit notice',
5. Each of the registered proprietors of the 40 units on strata plan 018434 received a notice in relevantly identical form. Each notice described the land by reference to the certificate of title,
6. The certificate of title to which the Lee unit notice referred described the land of which the Lee family members were registered proprietors as follows:

Volume 09494 folio 517 Security No: 124050511370Q

Produced 14/05/2014 10:47am

LAND DESCRIPTION

Unit 26 on Strata Plan 018434 and an undivided share in the common property for the time being described on the plan.

PARENT TITLE Volume 09461 Folio 224

7. On the same day, a further notice effecting the acquisition of the land was published in the Government Gazette. That notice related to the land vested in the owners corporation of the unit development. It was a single notice that stated:

Notice of Acquisition

Compulsory Acquisition of Interest in Land

The Linking Melbourne Authority declares that by this notice it acquires the following interests in land described as 91-93 Manningham Street, Parkville, being the land more particularly described as the common property in Owners Corporation Plan 018434 ('the land'):

The interests acquired in the land are all interests in the land including the estate in fee simple of the Owners Corporation shown in Owners Corporation Plan No. 018434.

Published with the authority of the Linking Melbourne Authority.

8. I shall refer to this notice as the 'common property notice'.
9. A dispute has arisen about how the unit notices and the common property notice should be construed so as to effect the acquisition of the common property of the unit development. The unit owners argue that it should be separately valued. The Lee family has claimed an amount of \$31,250 for their share of the market value of the common property in addition to the amount agreed for the market value of their unit.

Tribunal proceeding

10. On 18 November 2016, the Victorian Civil and Administrative Tribunal referred the following two questions of law to a legal member: [\[2\]](#).

[\[2\]](#) *Lee v The Secretary to the Department of Economic Development, Jobs, Transport and Resources* [2017] VCAT 324, Order [1]-[2.2].

1. In circumstances where:
- (a) individual notices of acquisition dated 16 October 2014 published in the Government Gazette acquired 'all interests in the land' described as a specified unit at 91-93 Manningham Street, Parkville with unit title particulars identified, 'including the estate in fee simple' of the named registered proprietor (being the claimants); and
 - (b) a separate notice of acquisition dated 16 October 2014 published in the Government Gazette acquired 'all interests in the land' described as the common property in Owners Corporation Plan 018434 'including the estate in fee simple of the Owners Corporation shown in Owners Corporation Plan 018434',

does the publication of the notices referred to in paragraph 1.1 or the publication of the notice referred to in paragraph 1.2 above effect an acquisition of a registered proprietor's undivided share in the common property described on Plan 018434?

...

2. If the answer to question 1 is that the unit notices effected the acquisition of the registered proprietors' undivided share in the common property described on Plan 018343:

- 2.1 does the Tribunal have jurisdiction to determine the amount of compensation to be paid for the acquisition of that equitable interest in proceeding P1807/2016?

- 2.2 do the claimants in proceeding P1807/2016 have any further claim for market value in respect of the common property?

11. The Tribunal answered the questions raised for determination as follows: [\[3\]](#).

1. The notice of acquisition published into the Government Gazette on 16 October 2014 (the common property notice) acquired the registered proprietors' undivided share in the land described as common property in Owners Corporation Plan 018434.
2. Having regard to the above finding it is not necessary to answer question 2.

[\[3\]](#) [Ibid \[25\]](#).

12. In its reasons for decision, the Tribunal observed that, absent the common property notice, it was clear that the unit notice would be effective to acquire the claimants' interest in the common property because that interest was specifically referred to and included in the certificate of title, [\[4\]](#). However, the common property notice was given contemporaneously with the unit notice. It had to be assumed that the common property notice was not a nullity or ineffective and the two notices had to be read together, [\[5\]](#).

[\[4\]](#) [Ibid \[14\]](#).

[\[5\]](#) [Ibid \[16\]](#).

13. The Tribunal briefly considered authority on the nature of a unit owner's interest in common property, [6] before concluding as follows:

21. The Tribunal is of the view that the only way in which the two notices of acquisition can be read together so as to give some effect to each notice is to construe the unit notice as acquiring the claimants' interest in the unit and the common property notice as the acquiring [of] the claimants equitable interest in the common property.
22. The Tribunal's attention was drawn to other notices of acquisition which specifically refer to the unit owners interest in common property rather than simply leaving that interest to be included in the acquisition because it forms part of the land described in the Certificate of Title.
23. If that form of notice had been used in this case it would in all probability close the door on the construction that the Tribunal has placed upon the two notices. But that form of notice has not been used, and in any event it would be drawing a long bow to interpret the notices of acquisition in this case by reference to the form of other notices of acquisition used in other cases of compulsory acquisition in different circumstances.
24. Moreover, if the two notices are to be read together the specific reference in the Common Property Notice to the common property and the acquisition of all interest in that land must take priority over the one step removed reference that interest only by virtue of its inclusion in the Certificate of Title, that is, the notice of acquisition refers to the land described in the Certificate of Title, and it is the Certificate of Title that refers directly to the interest in the common property.

[6] Ibid [19] citing *Body Corporate St James Apartments v Renaissance Assets Pty Ltd* [2004] VSC 438 ('*St James Apartments*').

Grounds of appeal

14. The grounds of appeal upon which the Authority relies are as follows:

1. The Tribunal failed to give the words of the unit notice their technical meaning.
2. The Tribunal erred in qualifying its finding that 'the unit notice would be effective' in acquiring the respondents' interest in the common property and reading down the unit notice when there was no reason to do so.

3. The Tribunal erred in its consideration and application of the authority of this Court in *St James Apartments* and s 31(1) of the *Subdivision Act 1988 (Vic)* :
 - (a) when failing to consider and deal with and act on the proposition that the common property notice acquired the separate interests of the owners' corporation;
 - (b) when forming the view that 'the only way' in which the two notices can be read together so as to give some effect to each notice is to construe the unit notice as not acquiring the respondents' interest in the common property;
 - (c) by failing to construe the two notices in a manner which:
 - (i) gave the unit notice the meaning and scope of operation consistent with the titles specified in each of those notices; and
 - (ii) gave the common property notice work to do in the form of the acquisition of the interest of the owners' corporation in the common property, being its interest in the legal estate as 'nominee'.
4. The Tribunal erred in holding that the 'only way' in which the unit notice and the common property notice can be read together so as to give effect to each notice is to construe the unit notice as acquiring the respondents' interest in the 'unit' and the common property notice as acquiring the respondents' equitable interest in the 'common property'.
5. The Tribunal erred in failing to consider all unit notices together with the 'sweeper' common property notice as a whole when published in the single Government Gazette and in failing to have proper regard to the sequence of those notices when construing them.

Analysis

15. Although there are five grounds of appeal, they raise a single issue of substance which is how the notices are to be construed as a matter of law,
16. The Tribunal's reasoning was contained in three propositions:
 - (a) the two notices have to be read together so as to give some effect to each notice; [\[7\]](#)
 - (b) the only way this can be done is to construe the unit notice as acquiring the Lees' interests in the unit and the common property notice as acquiring the Lees' equitable interest in the common property; [\[8\]](#)
 - (c) the specific reference in the common property notice to the common property and the acquisition of all interests in that land must take priority over

the 'one step removed reference' to the common property in the unit notice via the reference to the Certificate of Title, [\[9\]](#).

[\[7\]](#) [Ibid \[16\]](#).

[\[8\]](#) [Ibid \[21\]](#).

[\[9\]](#) [Ibid \[24\]](#).

17. In my view, the first proposition is unobjectionable. However, the second proposition does not follow from the first. The two notices can be made to work together by adopting the Tribunal's construction. But there is at least one other way in which the notices can be construed so as to give each one of them work to do.
18. The third proposition is simply a justification for giving priority to the common property notice over the unit notice for the acquisition of the interests in the common property. As a corollary to this proposition, the Tribunal stated, in effect, that had the unit notice referred to the unit owner's interest in the common property directly, rather than simply leaving that interest to be included in the acquisition because it formed part of the land described in the certificate of title, the Tribunal would have found that the unit notice (rather than the common property notice) effected the transfer of the unit owner's interest in the common property.
19. Thus, the Tribunal held that, because of the existence of the common property notice, the unit notice did not do what it would otherwise have done successfully by describing the interest that was acquired by reference to the certificate of title. This, in my view, involved error.
20. In *Urban Renewal Authority v Obeid*, [\[10\]](#) the Court of Appeal considered how a notice of acquisition served under the *LAC Act* should be construed. The Court rejected the reasoning of the primary judge based on the proposition that the notice of acquisition should be construed as it would by a member of the public reading it as published in the Government Gazette. [\[11\]](#) The Court said: [\[12\]](#).

The question of construction is not to be approached by reference to the knowledge or understanding of an ordinary member of the public. Rather the task is to ascertain the meaning conveyed by the words actually used. Technical language such as 'Registered Proprietor', must be given its technical meaning, ascertained by reference to the relevant body of knowledge — in this case, the legislation (the TLA) which establishes the Register and defines the scope and limits of a registered interest in land.

[\[10\]](#) [\[2013\] VSCA 371](#).

[\[11\]](#) [Ibid \[28\]](#).

[\[12\]](#) [Ibid \[29\]](#).

21. In this case, the notices of acquisition must be construed by giving their words their technical meaning and by reference to the 'body of knowledge' constituted by the legislation that governs the nature and extent of interests in land and how those interests can be transferred.
22. In my view, the second and third propositions upon which the reasoning of the Tribunal was based did not properly reflect the technical terms used in the unit notice or the legislative scheme governing the ownership and transfer of common property in a unit or strata development. That scheme is contained in the [LAC Act](#), the [Transfer of Land Act 1958 \(Vic\)](#), the [Subdivision Act 1988 \(Vic\)](#) and the [Owners Corporation Act 2006 \(Vic\)](#).
23. The LAC Act provides for the compulsory acquisition of interests in land. The identification of the interest acquired is governed by s 19, which provides that the Authority may acquire an interest in land by causing a notice declaring that interest to be acquired to be published in the Government Gazette. Section 21 requires the notice to contain a description 'sufficient to identify the interest in land acquired and the land in which that interest subsists'.
24. The [Transfer of Land Act](#) provides for the keeping of a Register of land [\[13\]](#) that consists of folios in the Register. [\[14\]](#) A folio is a division of the Register that relates to one or more parcels of land. [\[15\]](#) Section 27(8)(c) provides for folios to be created on approval of a plan of subdivision. A folio must name the registered proprietor of the land, along with the interest held.

[\[13\]](#) [Transfer of Land Act 1958 \(Vic\)](#), s 27(1).

[\[14\]](#) [Ibid](#) s 27(4).

[\[15\]](#) [Ibid](#) s 27(5).

25. Section 27A of the [Subdivision Act](#) requires a subdivision plan that contains common property to provide for the creation of an owners corporation. Section 27(4) requires the subdivision plan to specify the lots and the common property to be affected by the owners corporation. 'Lot' is defined in s 3 of the [Subdivision Act](#) to mean a part of any land that can be disposed of separately. Section 30(1)(a) relevantly provides that when a plan containing common property is registered, any common property affected by an owners corporation vests in the owners for the time being of the lots as tenants in common in shares proportional to their lot entitlement.
26. Section 31(1) of the [Subdivision Act](#) provides:

The Registrar of Titles must create folios of the Register for any common property in the name of the relevant owners corporation as nominee for the owners of the common property but must not produce a certificate of title for those folios.

27. Thus, the owners corporation is the 'nominee' on the Register for the owners of the common property, who are the owners of the lots (units). Folios for the common property are created in the name of the owners corporation, but the owners corporation does not hold a certificate of title for the common property.

28. Section 31A(3) of the *Subdivision Act* provides that the Registrar may only record on the folio of the Register for common property anything affecting the common property and not a lot (unit) owner's share in the common property.
29. As for the transfer of common property, s 31A(1)(a) of the *Subdivision Act* relevantly provides that the share in the common property of a member of an owners corporation cannot be dealt with except —
- (a) as part of a dealing with the member's lot; or
 - ...
 - (c) by the owners corporation, in accordance with the regulations.
30. Sections 31A(2) and (4) provide:
- (2) A dealing, encumbrance or notification affecting a lot operates as a dealing, encumbrance or notification affecting the lot owner's share in the common property, even though the share is not mentioned in any document giving effect to the dealing, encumbrance or notification affecting the lot.
 - ...
 - (4) A recording made on the folio of the Register for a lot operates in relation to the owner's share of the common property as if it were also a recording made in relation to that share on the folio for the common property.
31. The ability to transfer the common property independently of a lot is therefore circumscribed. Sections 31A(2) and (4) of the *Subdivision Act* make it clear that if the lot (unit) is transferred, the unit owner's undivided share in the common property follows the lot. It is contemplated that the transfer of the unit owner's share of the common property will occur as a function of the transfer of their interest in the lot (unit). The interest in the common property is attached to the interest in the lot (unit), even if the fee simple to the common property is vested in the owners corporation.
32. Special provision is made for the disposal of the fee simple in the common property in s 32 of the *Subdivision Act*. It can only occur by unanimous resolution of the members, that is, of the lot (unit) owners.
33. The *Owners Corporation Act* adds little of importance to this regime. It explains in Schedule 3 that a person buying into an owners corporation purchases not only the individual property, but also the ownership of the common property. A purchaser of a lot that is part of an owners corporation automatically becomes a member of the owners corporations when the transfer of that lot to the purchaser has been registered with Land Victoria.
34. In *St James Apartments*, [16] Mandie J considered the nature of the respective interests of a unit owner and an owners corporation in common property based on an analysis of the provisions of the *Subdivision Act* and the *Transfer of Land Act*. [17] His Honour concluded that a body corporate

is the registered proprietor of the fee simple in the common property and that the equitable or beneficial ownership, but not the legal ownership, of the common property is vested in the lot owners. *St James Apartments* is therefore authority for there being two types of interest in the common property.

[16] [2004] VSC 438.

[17] Although there have been amendments to both Acts since *St James Apartments* was decided, the amendments are not presently relevant.

35. It is possible to construe the unit notice and the common property notice together so as to give each of them a meaning and scope of operation consistent with the legislative scheme and the technical language that is used. The unit notice effects the transfer of the land described in the certificate of title, which includes the unit owner's undivided share in the common property. The common property notice effects the acquisition of the interest of the owners corporation in the common property, being its legal estate as nominee, together with such other interests in land as might derive from the exercise of powers by the owners corporation under the *Owners Corporation Act*.
36. Thus, by the common property notice, the Authority acquired 'other' interests in the land comprising the common property, including any interests created pursuant to s 11(2)(b) and s 14 of the *Owners Corporation Act*. Section 11(2)(b) provides that the owners corporation may, by instrument or by resolution at a general meeting, delegate any power or function that it has to a 'manager' of the owners corporation. The common property notice would operate to acquire the interest claimed by any manager so appointed over the common property. Section 14 provides that by special resolution, an owners corporation may lease or licence the whole or any part of the common property to a lot owner or other person. The common property notice, when it was expressed to acquire 'all interests', was effective to acquire any interest that may have been created in the common property by the owners corporation pursuant to the power in s 14.
37. The words in the certificate of title for Unit 26 which refer to the Lees' interest in the common property identify the Lees' interest in that land. As the unit owner's interest in the common property cannot be disposed of separately from the unit owner's interest in the lot (unit), it makes sense for the unit notice to be framed to acquire both interests.
38. The respondents submit that under the *LAC Act*, the Authority can divide up the land as it chooses. It can acquire the interest in the units separately from the common property.
39. The Authority does not contend that it does not have the power to separately acquire by compulsory process an interest in common property and an interest in a unit stripped of the unit owner's interest in the common property. However, in this case, that did not occur. The unit notice contains no qualification or limitation, but states that the Authority acquired all interests in the land which is more particularly described in the certificate of title. Those interests, in accordance with the certificate of title, include the registered proprietors' interest in the undivided share of the common property.

40. I have concluded that the Tribunal has misconstrued the unit notice, which was effective in its terms to acquire the Lees' interest in the common property. The Tribunal found, correctly, that the unit notice acquired the relevant interest in the land, including the undivided share in the common property. The existence of the common property notice required no departure from this finding, which was based on a proper construction of the unit notice applying its technical meaning consistently with the legislative scheme. The existence of the common property notice makes no difference to this construction; to hold that the common property notice changes what the unit notice achieves by its clear terms is not warranted.
41. This error can be described in a number of ways. In my view, it is best described by the first or the second ground of appeal. The Tribunal erred, first, in failing to give words in the unit notice their technical meaning and, secondly, in qualifying its finding that the 'unit notice was effective' to acquire the respondents' interest in the common property. It read down the unit notice, when there was no reason to do so.
42. The Lee unit notice acquired the interest of the 'registered proprietor' of the land. It described that interest as 'the land described in Certificate of Title Volume 9494 Folio 517', which included 'an undivided share of the common property on Strata Plan 018434'. The unit notice therefore acquired the registered proprietors' undivided share of the common property on the relevant strata plan. The common property notice acquired the interest of the owners corporation in the common property on the relevant strata plan and any other interest derived from the exercise of powers by the owners corporation.
43. The answer to the first question is that the publication of the notices referred to in paragraph 1.1 (the unit notices) effected an acquisition of a registered proprietor's undivided share in the common property described on Plan 018434.

Leave to appeal and appeal

44. Having identified error of this kind in the Tribunal decision, leave to appeal must be granted. [\[18\]](#)

[\[18\]](#) See *Secretary to the Department of Premier and Cabinet v Hulls* [1999] 3 VR 331 (Phillips JA, Tadgell and Batt JJA agreeing); *Myers v Medical Practitioners Board* (2007) 18 VR 48 (Warren CJ, Chernov JA and Bell AJA agreeing).

45. The appeal is deemed to have been instituted and heard *instanter* and is allowed. In answer to question 1, the Court will declare that the unit notices effected the acquisition of the registered proprietors' undivided share in the common property described on Plan 018434.

The second question

46. The Court having answered the first question in a way that means that the second question arises for determination, it is convenient for the Court to now answer the second question.

47. The second question concerns whether there is a 'disputed claim' for the purposes of s 36(9) of the LAC Act in relation to the market value of the Lees' interest in the acquired land. The Authority contends that the market value of the Lees' interest in the acquired land is no longer in dispute and that the Tribunal therefore has no jurisdiction to determine this question.
48. Whether there is a 'disputed claim' turns on the history of offers and acceptances between the Authority and the Lees. That history is as follows.
49. On 21 October 2014, the Linking Melbourne Authority wrote to the Lees attaching a notice of acquisition for Unit 26. The accompanying Offer of Compensation included an offer of \$610,000 for the market value of the Lees' interest in the acquired land.
50. On 27 August 2015, the Lees' solicitors sent a Response to Offer rejecting the offer in full and claiming \$641,250 for the market value of the Lees' interest in the acquired land. Attached to the Response to Offer were two certificates of valuation: one referring to the interest assessed as 'freehold with vacant possession (based upon 1/40th entitlement)' ('first certificate of valuation'); the second referring to the interest assessed as 'freehold with vacant possession (existing monthly tenancy)' ('second certificate of valuation').
51. The title description on the first certificate of valuation was 'Volume 9494, Folio 517, legally described as Unit 26 on Plan of Strata Subdivision RP18434'. It included the notation, 'Undivided share in common property, with entitlement being 1/40th (100/4000)'. The assessment of the current market value of the undivided share in common property was stated as follows:

Having regard to all relevant factors, we consider the 'unaffected' current market value of the partial interest for the subject property to be \$31,250.

52. The title description on the second certificate of valuation was simply 'Volume 9494, Folio 517, legally described as Unit 26 on Plan of Strata Subdivision RP18434'. The assessment of market value for that interest was \$610,000.
53. On 1 December 2015, the Authority made a Revised Offer containing a market value component of \$610,000. The Revised Offer was expressed to be subject to the condition that '[t]he sum offered is for the compulsory acquisition of your client's interest in the whole of the property, including the undivided share of the common property, and is made in full and final settlement of all claims'. The Revised Offer went on to state as follows:

In response to the claim for market value of the interest in land, the Department notes that the claim contains two separate certificates of valuation, one for the claimants' interest in the Property (as that term is defined in Item 1.1 of the Response to Offer) and one for the claimants' interest in the Common Property (as that term is defined in the Response to Offer).

Insofar as a separate claim is made in respect of the Common Property, the Department rejects the claim for the following reasons –

- (1) The Department's allowance for market value takes into account the claimants' interest in the common property with all of its potential and foreseeable advantages brought into account in the market value assessment.
- (2) The potential of the common property being developed for a higher and better use than that to which it is currently put is speculative.
- (3) The possibility that the common property may be developed for another purpose would not be foreseeable to the hypothetical purchaser at the relevant date.

54. In response, the Lees' solicitors wrote to the Authority on 19 August 2016 stating:

The Revised Offer relates to our clients' interests in Unit 26 (acquired by reason of the Notice of Acquisition dated 16 October 2014 and displayed on page 32 of Victorian Government Gazette S317) and in the Common Property (acquired by reason of the Notice of Acquisition dated 16 October 2014 and displayed on page 51 of Victorian Government Gazette S317).

Our clients accept the Revised Offer of \$610,000 in relation to their interest in Unit 26.

Our clients dispute the Revised Offer in relation to their interest in the Common Property.

55. The letter of 19 August 2016 contained a table with a response 'agree' to market value of \$610,000, but a response 'dispute' to a common property interest value of 'nil'.
56. The Authority submits that as a result of the 19 August 2016 letter, because there is no separate claim for market value arising out of the common property notice in favour of the Lee family, there is no disputed claim in relation to market value. According to the Authority, the Revised Offer was \$610,000 for the unit, which included the share in the common property. That was what was said in the Revised Offer, and that was what was signified as having been agreed in the 19 August 2016 letter.
57. The Lees submit that this is a mischaracterisation of the nature of their acceptance and rejection of different parts of the Revised Offer. The disputed claim relates to the market value of the Lees' interest in the common property, howsoever that interest arises. The claim for compensation for the compulsory acquisition of the Lees' equitable interest in the common property is the disputed claim for the purposes of s 36(9) of the Act.
58. Section 36(8) of the LAC Act provides that if the claimant accepts a revised offer under subsection (6), the claimant may accept it in part, leaving specified matters to be determined by negotiation. Section 36(9) provides that to the extent that the claimant rejects the revised offer of the Authority, or the Authority rejects the claim by the claimant, the claim becomes a disputed claim for the purposes of the LAC Act.

59. The Lees were hamstrung in making out the extent of their agreement and disagreement by the difference in opinion about the legal effect of the unit notice and the common property notice. That question has now been resolved. However, at the time offers and claims were being made by the parties, they were operating from different assumptions about that critical issue. To this extent, their communications passed like ships in the night. However, the Authority must have well understood the basis upon which the Lees made their claims, having received the two certificates of valuation. In my view, the letter of 19 August 2016 makes it plain that the Lees disputed the Revised Offer in relation to their interest in the common property, howsoever that interest arose. They continue to dispute that amount. There is, in my view, a disputed claim.
60. The answer to question 2.1 is, therefore, ‘yes’, as is the answer to question 2.2.

Conclusion

61. This effectively reopens what the Lees have accepted as the market value of the ‘unit’. It will be for the Tribunal to determine what is the market value of the Lees’ interest in the land described in the Certificate of Title, which includes their undivided share in the common property.

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
VALUATION, COMPENSATION AND PLANNING LIST

SCHEDULE OF PARTIES

BETWEEN

**THE SECRETARY TO THE DEPARTMENT OF ECONOMIC
DEVELOPMENT, JOBS, TRANSPORT AND RESOURCES**

Applicant/Appellant

and

KIN LEE Respondents

HANG LEE

LOK LEE HING

DAN NI XIAO

CON EVAN DOUNIS

ANGELA WAI YUNG NG

JACK WAI CHEUK NG

JENNIFER WAI LAN WONG

GARY WILLIAM O'MEARA

HELEN LETITIA O'MEARA

THE ESTATE OF JAMES HERBERT STEPHENS MARTIN (DECEASED)

HELEN CAMPBELL MARTIN