



HIGH COURT OF AUSTRALIA

13 March 2024

REDLAND CITY COUNCIL v JOHN MICHAEL KOZIK & ORS
[2024] HCA 7

Today, the High Court dismissed an appeal and cross-appeal from a judgment of the Court of Appeal of the Supreme Court of Queensland. Two issues arose for determination: first, whether regulations made pursuant to the *Local Government Act 2009* (Qld) entitled the respondents to recover "special charges" paid to the Redland City Council ("the Council") where those charges were later found to have been levied pursuant to invalid resolutions; and secondly, whether the Council had a defence to the respondents' claim for restitution on the basis that the Council had used the money to conduct works which benefited the respondents.

The respondents owned rateable land in the Redland City local government area that was adjacent to waterways forming part of one of three reserves. Between July 2011 and July 2017, pursuant to powers conferred under the Act, the Council purported to levy the special charges on landowners, including the respondents. The special charges were to fund works on the reserves which the Council was statutorily required to perform, including dredging, maintenance, and monitoring ("the relevant works"). After becoming aware the resolutions were invalid, the Council refunded the portion of the special charges that had not been spent on the relevant works, but it retained the amounts that it had spent on the works.

The respondents commenced proceedings in the Supreme Court of Queensland, seeking repayment of the spent special charges both in debt under regulations made pursuant to the Act, and as money had and received. The primary judge held that, pursuant to regulations providing for the return of incorrectly levied charges ("the return provisions"), the Council was required to refund the special charges. The respondents' action for money had and received failed. On appeal, the Court of Appeal held that the Council was not liable in debt but was liable for restitution at common law on the basis that the special charges had been paid under mistake of law. The Court of Appeal rejected the Council's defence of good consideration.

The High Court unanimously dismissed the respondents' cross-appeal, which contended that the respondents' payments were recoverable in debt pursuant to the return provisions in the regulations. The respondents were not entitled to recovery of the special rates as a statutory debt since the return provisions did not apply where there was no valid resolution to levy the special charge.

By majority, the High Court dismissed the Council's appeal and found that the respondents were entitled to restitution of the money paid by mistake which the Council was not entitled to receive or to retain. The majority rejected the Council's asserted defence of good consideration because (1) the relevant works were performed on the basis of statutory obligations to do so, not on the basis of the payment of special charges; (2) the respondents did not benefit from the relevant works in the sense of requesting or freely accepting the relevant works, and may even have obtained no financial advantage from them; and (3) a defence of good consideration in the circumstances would stultify the operation of the Act.

This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.