

**IN THE HIGH COURT OF NEW ZEALAND
ROTORUA REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TE ROTORUA-NUI-Ā-KAHU ROHE**

**CIV-2018-463-000005
[2018] NZHC 1687**

UNDER the Local Government (Rating) Act 2002
and the Declaratory Judgments Act 1908

BETWEEN MARIE DEANNE CASTLE
Applicant

AND WHAKATANE DISTRICT COUNCIL
Respondent

Hearing: 4 July 2018

Appearances: Applicant in person
C Robertson for the Respondent

Judgment: 10 July 2018

JUDGMENT OF WOOLFORD J

*This judgment was delivered by me on Tuesday, 10 July 2018 at 1:00 pm
pursuant to r 11.5 of the High Court Rules.*

Registrar/Deputy Registrar

Solicitors: Brookfields Lawyers, Auckland

[1] The applicant, Marie Deanne Castle, owns two properties at 6 Karamea Street, Murupara and 10 Hinau Place, Murupara (the properties). She has failed to pay the rates assessed by the Whakatane District Council (the Council) on the properties. The Council took District Court proceedings against Ms Castle and obtained judgment against her on 12 September 2016. Steps have been taken by the Council to enforce the judgment.

[2] Ms Castle has now filed an originating application in this Court for a declaration that the rates assessed by the Council are invalid. The application is opposed by the Council.

Factual background

[3] The Council obtained an order from the Rotorua District Court on 17 February 2018, declaring the properties to be abandoned land pursuant to s 77 of the Local Government (Rating) Act 2002 (the Act) and authorising the Council to sell the properties.

[4] In terms of the order, the Council complied with the directions as to advertising pursuant to s 78(b) of the Act and caused the properties to be offered for sale by public tender.

[5] Ms Castle purchased the properties at a price not less than the reserve price pursuant to s 79(4) of the Act. She paid \$600 for each of the properties. Ms Castle then became the registered proprietor of the properties following settlement of the sale and purchase agreements entered into by her as purchaser on 27 July 2012.

[6] The Council subsequently sent rates assessment notices to Ms Castle giving notice of her liability for rates owed in relation to the properties. The rates assessed related only to the period after Ms Castle purchased the properties. From March 2014 to July 2015, Ms Castle made only nominal payments towards the rates owed in relation to the properties.

[7] On or about 22 September 2014 the Council issued rate recovery proceedings against Ms Castle, which resulted in judgment being entered against her by a judge in

the Tauranga District Court on 12 September 2016 in the sum of \$1,506.32. Ms Castle failed and/or neglected to satisfy the judgment. The Council took steps to enforce its judgment against Ms Castle. As at 7 February 2018, Ms Castle had paid the Council \$570 towards the judgment sum.

[8] As at the same date, Ms Castle owed the Council the sum of \$12,185.53 for outstanding land rates and water rates (including penalties) in relation to the properties. She has failed and/or neglected to pay the outstanding rates to the Council.

Ms Castle's application for a declaration

[9] Ms Castle has applied to the High Court for a declaration that the rates assessed by the Council in relation to the properties are invalid. She also applies for a stay of enforcement.

[10] In an affirmation dated 21 November 2017, Ms Castle says that she has offered to pay the rates upon condition that the Council could provide evidence that she in fact owed rates as she believes the Council is not empowered to assess rates on, what she calls, her two "memorial free" pieces of land. She explains it as follows:

7. I have not received any attempt from Whakatane district council to meet the simple and reasonable condition, I believe the Whakatane district council is not empowered to assess the rate on either of my two pieces of land.

8. This is because, such historical knowledge is known to me, that it was to Queen Victoria, who enacted an Act to set forth the empowerment to charge rates upon the land in New Zealand.

9. With her sovereign status, she empowered the local authority to assess the rates and sell the land for non-payment of rates. This was declared under No 35. 'An Act for regulating the sale of Land for non-payment of rates' enacted 8th September 1862, or its short title, The sale for non-payment of rates Act, 1862.

The authority could now legally take proceedings, in a recognized system.

10. The gracious queen also saw fit to allow a king's promise to be kept, that being the well-known historical story of the signing of magna carta and promise of William and Mary, that all common men and women, be able to own their own inheritable property, without the reach of the crown, lest their descendants give the throne.

11. Thus, it is 'The sale of land for non-payment of rates Act 1862', Schedule 'B' that the promise of 'real property ownership' is made available for the common man, beyond the reach of the crown...

12. As described in Schedule 'B' of that Act, it is absolutely clear, that once a piece of land has completed the process of going through a ratings sale, where there is no more financial 'memorial' on the property, until such time, whether it be a mortgage, loan or other memorial is placed on it, it cannot be levied or assessed to a rate. Thus, keeping the promise, and the throne.

13. Section 60 of the Local Government ratings Act, continues to uphold this schedule.

14. Both my lands, are within this 'memorial free' space. They have completed the ratings sale, from whence I brought them as 'fee simple', as is, free and clear of any previous memorial, and since then, they have not nor will ever have any financial 'memorial' placed upon them.

15. Therefore, it is not within the empowerment of the local authority agent nor its principle, or any other third party, to assess the rates on my land without my express consent. Which they shall never enjoy whilst I or my descendants hold the bundle of rights.

16. Accordingly, to the law, under section 60 of the Local Government Ratings Act 2002 my lands are beyond the empowerment of the local authority, and I require this truly declared by the High Court.

Discussion

[11] The difficulty for Ms Castle is that the 1862 Act does not provide that rates cannot be assessed on land which has been sold because of unpaid rates. In any event, it has been repealed and is no longer in force. Section 3 of the 1862 Act provided that arrears of rates may be registered by way of equitable charge (memorial) against the property. Schedule A set out the form of such a memorial. Section 4 provided that if the arrears remained unpaid the land could be sold under direction of the High Court. Section 7 provided that once the arrears were paid a memorial of satisfaction was to be registered against the property discharging and releasing the property from the arrears. Schedule B set out the form of such a memorial:

Be it remembered that the Land described in the Schedule hereto is discharged from certain arrears of Rate Assessment or Liability charged thereon by virtue of a Memorial dated the day of registered under the "Sale for Non-payment of Rates Act 1862." Dated &c.

There are certainly no memorials on Ms Castle's properties, but that matters not.

[12] The legislation now in force is the Local Government (Rating) Act 2002. It provides that all land is rateable except if the Act or another Act states that the land is

non-rateable.¹ Neither this Act nor any other Act states that the properties are non-rateable. Ms Castle comes within the definition of a ratepayer as she is the person who is named as the ratepayer in the rating information database and the district valuation roll.² She is, therefore, liable to pay the rates that are due on the properties.³ The Council has also delivered rates assessments to Ms Castle to give notice of her liability for rates on the properties.⁴

[13] In summary, the Council has the power to assess and levy rates. A ‘rating sale’ does not stop rates from being assessed or levied against a property. Rates are a charge against the property and run with the property. The Council has the power to enforce any judgment for outstanding rates and water rates (including penalties) by selling or leasing the property.

Result

[14] The rates assessed by the Council in relation to the properties at 6 Karamea Street, Murupara, and 10 Hinau Place, Murupara, are not invalid. There will be no stay of enforcement in relation to proceedings taken by the Council to enforce the judgment against Ms Castle.

[15] Costs are payable by Ms Castle to the Council on a 2B basis.

Woolford J

¹ Section 7.
² Section 10.
³ Section 12.
⁴ Section 44.