

LAND COURT OF QUEENSLAND

CITATION: *Marlborough Nickel Pty Ltd v Commissioner for Land Tax* [2006] QLC 3

PARTIES: **Marlborough Nickel Pty Ltd**
(Appellant)
v.
Commissioner for Land Tax
(Respondent)

FILE NO: A2005/0356

PROCEEDING: Appeal against disallowance of objection

DELIVERED ON: 27 January 2006

DELIVERED AT: Brisbane

HEARING DATE: 24 January 2006

MEMBER: Mr G.J. Koppenol

ORDER: **Appeal dismissed with costs. (at [16])**

CATCHWORDS: LAND TAX – ASSESSMENT – APPEAL AGAINST
DISALLOWANCE OF OBJECTION – whether
appellant a “relevant proprietary company” – whether
“interest” of beneficiary of discretionary trust exists

Land Tax Act 1915, ss 3, 3F, 11(5), 26B, 27

*Archibald Howie Pty Ltd v Commissioner of Stamp
Duties (NSW)* (1948) 77 CLR 143, applied
*Federal Commissioner of Taxation v St Helen’s Farm
(ACT) Pty Ltd* (1981) 146 CLR 336, applied
Official Receiver in Bankruptcy v Schultz (1990) 170
CLR 306, referred to
Dwyer v Ross (1992) 34 FCR 463, followed
Stephens v Ell (2002) QConvR 54-568, followed

COUNSEL: Mr. R.N. Alldridge for Appellant
Mr D.W. Marks for Respondent

SOLICITORS: Rogers Matheson Clark for Appellant
Crown Solicitor for Respondent

Background

- [1] This is an appeal under section 27 of the *Land Tax Act 1915* (the Act) against the disallowance of an objection to an assessment of land tax. The appellant says that it is exempt from taxation under the Act. That is disputed by the respondent.
- [2] The appellant's claim for exemption is based upon section 11(5) of the Act. Under that provision (the terms of which need not be recited), the exemption would have applied if the appellant were a "relevant proprietary company".
- [3] The term "relevant proprietary company" is defined in section 3 as follows:
- "“**relevant proprietary company**” means a proprietary company (other than an exempt foreign company) no share or interest in which is held by a body corporate (other than another proprietary company that is not an exempt foreign company), whether directly or through interposed companies or trusts.”
- [4] The appellant is a proprietary company. Relevantly, at the material time:¹
- all of the shares in the appellant were held by another proprietary company (company 2);
 - all of the shares in company 2 were held by 4 other proprietary companies (companies 3, 4, 5 and 6);
 - companies 3 and 5 (as well as 4 and 6, with which this appeal is not concerned) were trustees of separate discretionary trusts;
 - the trust entitlements of the beneficiaries to the income or capital of the trusts were dependent upon the exercise of a power of selection which was vested in the trustees;
 - one of the beneficiaries of each discretionary trust was a body corporate (other than another proprietary company that is not an exempt foreign company); and
 - neither of those beneficiaries had a vested right to any of the trust assets (income or capital).

Question

- [5] The question for determination is relevantly whether, in terms of the statutory definition, the body corporate beneficiaries (the beneficiaries) held a share or interest in the appellant through interposed companies or trusts.

Arguments

- [6] The appellant submitted that the Act focuses upon *ownership* of land. Accordingly, a taxation liability would not arise unless the beneficiaries' share or interest constituted one of ownership or control of the interposed companies or trusts. That did not occur here because their share or interest was not held beneficially and had not vested at the end of the financial year concerned.

¹ For convenience and ease of understanding, I have used numbers to refer to the following companies and trusts: company 2: Pearce Matheson Group Pty Ltd; company 3: Robash Pty Ltd as trustee for The Robash Trust; company 4: Dalenier Enterprises Pty Ltd as trustee for The Bamfield Trust; company 5: Belgrave Square Pty Ltd as trustee for the Matheson Family Trust; company 6: Mustang Asset Pty Ltd as trustee for the Robert Pearce Superannuation Fund.

- [7] The respondent argued that that was not the test. Concentrating upon the broader term “interest” rather than “share”, it submitted (based upon dictionary meanings) that all that was needed for there to be an interest was a mere matter of concern, potential advantage or potential detriment. A discretionary beneficiary therefore held such an interest.

Analysis

- [8] Whilst there is no doubt that the Act focuses upon ownership of land, the issue for present consideration is whether that owner (the appellant) is exempt from the taxation liability which flows from ownership. For the exemption to apply in the present case, the beneficiaries must not hold,² indirectly (through companies 2, 3 or 5 or the trusts), an interest in the appellant.
- [9] In my opinion, the appellant’s argument cannot be accepted, for the following reasons.
- [10] First, the term “interest” is not defined in the Act. It is capable of a very wide meaning. Contextually, I am unable to see why it should not be given its ordinary dictionary meaning—as submitted by the respondent. There was no Ministerial suggestion when that provision (the present definition of relevant proprietary company) was inserted in the Act in 1996 that some special meaning was intended.³ Indeed the focus then was said to be upon limiting the range of companies eligible for the deduction (exemption). That range would be expanded (rather than limited) if the appellant’s argument were accepted.
- [11] Secondly, the appellant contended that the relevant share or interest had to be held beneficially and to have vested. Although a shareholder has no *proprietary* right or interest in the assets of a company, the shareholder *does* have a proportionate “interest” in the assets—an interest consisting of a congeries of rights in personam.⁴ A distinction would then have to be drawn between a “share” (which confers an interest but not a proprietary interest) and an “interest” (which, on the appellant’s argument, must constitute a *beneficial* interest). In that event, different attributes would have to apply to “share” and “interest”—yet those terms are not expressly qualified in any respect and appear together (“share or interest”) as part of the provision which has the effect of defining the exemption. No basis for any such difference is established. The appellant’s reliance upon section 3F (Who are the beneficiaries of a trust) of the Act is also misplaced because that section is directed to the identification of beneficiaries so that they can be separately assessed under section 26B. That is quite a different issue from that in the present case.

² In this context, I apprehend that “hold” simply means “have”. It does not connote ownership. See *The Macquarie Dictionary* 3rd Ed (1999), page 1019; *Federal Commissioner of Taxation v St Helen’s Farm (ACT) Pty Ltd* (1981) 146 CLR 336, 361.

³ *Hansard*, 13 November 1996, page 3990 (Second Reading speech by the then Deputy Premier, Treasurer and Minister for The Arts); *Revenue Laws Amendment Bill (No. 2) 1996 Explanatory Notes*, page 4.

⁴ *Archibald Howie Pty Ltd v Commissioner of Stamp Duties (NSW)* (1948) 77 CLR 143, 152, 154; *Federal Commissioner of Taxation v St Helen’s Farm (ACT) Pty Ltd* (1981) 146 CLR 336, 361.

[12] Thirdly, it has recently been argued, convincingly in my opinion, that each beneficiary of a discretionary trust *does* have an equitable interest in the assets of the trust.⁵ That conclusion would dispose of this appeal

[13] Fourthly, even if no such beneficial interest were regarded as existing, the beneficiaries here still have a right to due administration of the trusts by the trustees, as the respondent submitted. The authorities regard that right as an “interest” in the trust⁶—a view with which I respectfully agree. Such an interest also fits comfortably within the dictionary meaning of “interest”.

[14] Thus the connection between the appellant and the beneficiaries is such that it may properly be said that the latter held an interest in the former, in terms of the subject definition.

Disposition

[15] It follows that I do not accept the appellant’s arguments and am satisfied that the respondent acted correctly in assessing the appellant and disallowing its objection.

[16] The appeal is dismissed, with costs.

⁵ D. Barnett, *The nature of a beneficiary’s interest in the assets of an express trust*, (2004) 10 Australian Property Law Journal 1; see also *Official Receiver in Bankruptcy v Schultz* (1990) 170 CLR 306, 313.

⁶ Eg, *Dwyer v Ross* (1992) 34 FCR 463, 465-6; *Stephens v Ell* (2002) QConvR 54-568, [21].