





[1925] Still aggrieved - NT stamp duty objections and appeals

by David W Marks, Barrister, Brisbane

In *Grice Holdings Pty Ltd v Comr of Taxes* (reported at para [1924] of this *Bulletin*), a vital question was: who is a "person who is aggrieved by an assessment" of stamp duty in the Northern Territory? It was the second time in a fortnight that the NT Supreme Court had been asked that question.

Avid readers will have noted my views about the previous decision on the point, *McDonald's* case, at 2000 WTB 39 [1627]. *Grice* approves *McDonald's*. It is therefore time to evaluate where this leaves taxpayers in the NT and elsewhere.

My critique of McDonald's

At 2000 WTB 39 [1627], I criticised *McDonald's Australia Ltd v Comr of Taxes* (2000) 45 ATR 124 (reported at 2000 WTB 38 [1624]). The decision did not make allowance for the unique place of stamp duty as a tax on documents.

There, a transferor lodged franchise agreements, and had all communications with the revenue authority. The assessments were addressed to the transferor. The transferor purported to object, but was told it was not "aggrieved". It had therefore not competently objected. (The transferee, not the transferor, was solely liable to duty under the statute.)

My view was that a party to a document will have standing to object against a NT stamp duty assessment, even if the

party is not primarily or otherwise legally liable to the duty. This follows from the nature of stamp duty as a tax on documents. A party needing to sue on a document must first ensure it is stamped. If a party who is legally liable to pay duty is delinquent, for example, the other party has an interest in the assessment. That other party will have to pay the duty to sue on the document. If the assessment is wrong, that other party is interested in having it corrected.

Even a non-party, needing to register a document or prove it in evidence, may have first to lodge the document and pay duty. Such a lodging party has an interest in the assessment. A common law right of contribution from a delinquent party would be cold comfort in either of these examples. A lessee, who has covenanted to pay land tax, would have been competent to object against a South Australian land valuation (*Mobil Oil Australia Ltd v Valuer-General* (1993) 60 S.A.S.R. 149 at 156). The lessee would have been relevantly "dissatisfied".

It therefore seems anomalous that a person desirous of relying on a document cannot be "aggrieved" in relation to a Northern Territory stamp duty assessment. It is not clear whether *Mobil Oil* was put to Riley J in *McDonald's*. In any event, his Honour did see things I as do.

Grice Holdings

Bailey J in *Grice Holdings Pty Ltd v Comr of Taxes* has now followed *McDonald's*. Again, it is not clear whether *Mobil Oil* was cited to Bailey J. In any event, *Grice* goes further than *McDonald's*, because Bailey J shows in greater detail why the conclusion reached in *McDonald's* follows from the particular legislative scheme in the Northern Territory.

Bailey J (para 22) points out that the right of objection is only given to "a person aggrieved by an assessment made in relation to him" (sic). Further, such person may object "within 30 days after the date on which he is informed of the assessment". Bailey J states that the "legislation is unambiguous: the only person who is entitled to object to an assessment is the person who is liable to pay the duty assessed and who has been informed of the assessment in accordance with the Taxation (Administration) Act".

This leads to the conclusion that only a person who:

- is legally liable to pay stamp duty; and
- has been informed of the assessment under the Act,

is competent to object, and then appeal in the Northern Territory. If this is the effect of the legislative scheme in the Northern Territory, then the NT *Taxation (Administration) Act* (TAA) appears ripe for reform.

It is only necessary to apply this double-barrelled test to the situation in *McDonald's* to see why. Recall that the transferor in *McDonald's* had lodged the documents, not the transferee. Riley J notes that the assessments were addressed to the transferor as lodging party as required by s 92 TAA. Bailey J in *Grice* gives substantive operation to the requirement that time for objection runs from the date the lodging party is informed. Riley J in *McDonald's* seems to consider that the assessment was only made in relation to the transferee (a non-lodger, who was therefore not informed in accordance with the TAA, though no doubt

the transferees in *McDonald's* became aware of the assessments).

Therefore, in *McDonald's*, there was no one entitled to object to an assessment. That does not seem a desirable result. However, I appear to have lost the war here. My enquiries have not revealed whether *McDonald's* will be appealed. *Grice* seems to me to be less suitable for appeal purposes.

For what it is worth, I consider that the NT Supreme Court has placed too much emphasis on facultative provisions about notice of assessment, and too little emphasis on reading a statutory scheme so as to preserve fundamental rights.

The way forward

First, practitioners should take care to ensure that the party liable to duty is formally the lodging party. That is a vital step in avoiding the combined effect of *McDonald's* and *Grice*.

Secondly, an objection and subsequent appeal must be by the party specified by statute as liable to duty.

Thirdly, where another person has lodged a document and/or wishes to contest an assessment, *Grice* (para 41) and *McDonald's* (para 29 at 45 ATR 129) point in the direction of other remedies, such as an action for money had and received, or an application for reassessment backed up by administrative law remedies.

In terms of law reform, there might be some value in the NT examining the definition of "taxpayer" - which feeds into objection and appeal rights - in the ACT, SA, Victorian & NSW TAAs. The definition includes a person who paid the duty.

That goes some way to giving a right to a third party who needs to register or rely on an unstamped document. This is not a complete answer, as the objection provisions in the "southern" TAAs refer to notice being given to the hopeful objector. Complete law reform would require this to be addressed in the NT, and possibly elsewhere.