



on behalf of a number of franchisees. As it turned out, the Commissioner's own step, in addressing assessments to the appellant, was apt to mislead, though the Commissioner could not have intended this.

However, it is perhaps best simply to examine the technical question of whether the decision was correct. In my respectful view, it was not. It took no account of the special role of stamp duty as a tax on documents.

Parties who are not directly liable to stamp duty can nevertheless have a real and, I would say, sufficient interest in an assessment: refer Marks "Rights of Objection and Appeal: Stamp Duty" (1999) 19 *The Queensland Lawyer* 150 at 152-154.

The appellant in *McDonald's* argued that it was a person aggrieved. The assessment was addressed to it. The assessment came with a demand for money, addressed to the appellant. It was an assessment made in relation to the appellant. The appellant paid the money demanded (albeit subject to contractual refund from the franchisee). The appellant said it was irrelevant that it acted as agent. It was irrelevant that it had a contractual indemnity for the stamp duty.

The NT Supreme Court said that these submissions ignored "the fact that [the appellant] had no interest in the matter and no obligation was imposed upon it. Both as a matter of statute and of contract the obligations in relation to duty fell upon the individual licensees."

Riley J continued:

"In these cases the assessments were made in relation to the licensees. They were not made in relation to [the appellant]. No statutory or other liability or obligation rested upon [the appellant] at all."

"The only interest that [the appellant] has in this matter arises indirectly from it

being a party to each licence agreement. Any other interest would be for some collateral commercial purpose of [the appellant] and, as Gummow J observed, that is not sufficient to amount to 'dissatisfaction' in the relevant sense."

Riley J was referring to the judgment of Gummow J in *CTC Resources Ltd v FCT* (1994) 48 FCR 397 at 408; 27 ATR 403 at 414 where Gummow J said:

"It is a dissatisfaction with the absence of a favourable decision upon the objection which would, if now rectified by the Court, place the party in the position for the administration of the taxation laws which should have applied if the ruling had been made by the Commissioner in the terms sought. A mere curiosity or interest in having a formal ruling by the Commissioner for some collateral commercial purpose of the applicant is not sufficient to amount to 'dissatisfaction' in the relevant sense."

In the Northern Territory, the licensee was the party liable to pay stamp duty: s 50 TAA. It was liable to lodge the document for stamping: s 85 TAA.

As in other places, in the Northern Territory, an unstamped document is unregistrable and unenforceable: s 9A and ss 119-121 TAA. A person holding an unstamped document, on which the person needs to rely, is always permitted to lodge the document and pay the stamp duty, so that person can register or enforce the document.

Such a person is clearly interested in a pecuniary way in the assessment. In the present case, in the (albeit, here, unlikely) event that a franchisee failed financially, or simply neglected to put the franchisor in funds to pay duty, the franchisor has an immediate interest in enforcing the franchise agreement.

The franchisor's very contractual right to an indemnity of stamp duty is subject to the document being unenforceable pending stamp duty being assessed and

paid. This analysis shows that the franchisor, and indeed any other party to the document, has an interest in the stamp duty payable.

franchisor would be a person aggrieved. The franchisor must therefore have the right to object and subsequently to appeal.

If the assessment were for more than the franchisor thought correct, the

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