

SUPREME COURT OF QUEENSLAND

CITATION: *Commissioner of State Revenue v Amos* [2014] QSC 128

PARTIES: **COMMISSIONER OF STATE REVENUE**
(plaintiff)
v
EDWARD AMOS
(defendant)

FILE NO: 4457 of 2013

DIVISION: Trial Division

PROCEEDING: Application for summary judgment

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 12 June 2014

DELIVERED AT: Brisbane

HEARING DATE: 13 February 2014

JUDGE: Douglas J

ORDER: **Judgment will be given for the plaintiff in the sum of \$486,509.00, together with interest. I shall hear the parties as to the form of the order and costs.**

CATCHWORDS: TAXES AND DUTIES – LAND TAX – LIABILITY FOR LAND TAX – GENERALLY – where the plaintiff and defendant entered into a written payment agreement – where the defendant alleged a further oral agreement – where the plaintiff purported to terminate the agreement by written notice pursuant to s 34(1) of the *Taxation Administration Act 2001* (Qld) – whether s 34(1) applies to a pre-commencement act – whether the plaintiff is entitled to summary judgment for a sum of money said to be payable as land tax

Land Tax Act 1915 (Qld), s 27, s 32A, s 67, s 69, s 72
Revenue and Other Legislation Amendment Act 2009 (Qld), s 2, s 75
Taxation Administration Act 2001 (Qld), s 6, s 34, s 132(1), Pt 6

Coldham-Fussell v Commissioner of Taxation [\[2011\] QCA 45](#), cited
Commissioner of Taxation v Futuris Corporation Ltd (2008) 237 CLR 146, cited
DCT v Broadbeach Properties Pty Ltd (2008) 237 CLR 473, cited

Lis-Con Concrete Constructions Pty Ltd v Commissioner of State Revenue (2011) 85 ATR 769; [\[2011\] QSC 363](#), cited

COUNSEL: D W Marks for the plaintiff
M Steele for the defendant

SOLICITORS: Crown Solicitor for the plaintiff
Keller Nall and Brown for the defendant

- [1] This is an application for summary judgment for payment of \$486,509.00 and interest said to be payable as land tax. The defendant, Mr Amos, was certified to be liable to pay the plaintiff, the Commissioner of State Revenue, that sum as at 11 February 2014. The certificate was based on assessments that, by s 132(1) of the *Taxation Administration Act* 2001 (Qld), provided conclusive evidence of the proper making of the assessments.¹
- [2] The main defence argued was whether a payment arrangement allegedly made between the plaintiff and the defendant continued to be in force unaffected by s 34(1) of the *Taxation Administration Act* which permits the Commissioner of State Revenue to terminate an arrangement at any time by written notice. That section took effect for land tax from 30 June 2009.² By s 34(1) of that Act a written application by a taxpayer was needed for an extension of time for payment.
- [3] There was also a submission that the relevant property valuation for the aggregate of the defendant's properties in 2003 was wrong, affecting the land tax assessments thereafter, and that a parcel of land should have been treated as part of the defendant's principal place of residence, but those challenges would fail in the face of the conclusive evidence provisions in s 132 of the *Taxation Administration Act*.³ As was submitted for the plaintiff, the proper forum to contest an assessment is a revenue appeal under Part 6 of the *Taxation Administration Act*. Formerly the right to appeal was pursuant to s 27 of the *Land Tax Act* 1915 (Qld).
- [4] Another argument, that two of the assessments had not been served, was incorrect on the evidence and not pursued in the submissions made for the defendant.

Background facts

- [5] The evidence about the arrangement for payment of the defendant's land tax obligations by instalments starts with a pleaded agreement made on 6 May 2009 with a Ms Laura Bird of the plaintiff's office that Mr Amos could pay his land tax obligations by instalments of \$100 per week. His affidavit filed 6 December 2013 provides evidence of that arrangement which is referred to as a "short term payment plan" in a letter from Ms Bird dated 7 May 2009. That letter includes a sentence stating that if a sale eventuated of any land holding on which Mr Amos' land tax assessment was based the whole of the outstanding tax would be requested. The

¹ The assessments are ex AB-1 to the affidavit of A R Bishop filed 22 November 2013.

² By s 2 of the *Revenue and Other Legislation Amendment Act* 2009 (Qld) through the amendments in part 6 of that Act.

³ See *Lis-Con Concrete Constructions Pty Ltd v Commissioner of State Revenue* (2011) 85 ATR 769; [2011] QSC 363 at [11]; *DCT v Broadbeach Properties Pty Ltd* (2008) 237 CLR 473, 491-493 at [40]-[45] and *Commissioner of Taxation v Futuris Corporation Ltd* (2008) 237 CLR 146, 156-157 at [23]-[25].

letter also anticipated that the balance of the land tax would be received by Wednesday, 7 July 2009, but Mr Amos says that on 24 July 2009 he entered into a further oral agreement with an unnamed officer of the Office of State Revenue to continue to make payments of \$100 per week until he had sold the property when the tax applicable to the sold property would be paid from the sale proceeds and the account then reviewed.

- [6] A retired senior revenue officer of the Office of State Revenue has sworn also to his recollection of such an existing arrangement when he retired in 2011. Mr Amos says that he has made all of the required weekly payments. The plaintiff, however, demanded full payment of the sum in dispute by 7 April 2011 in its letter dated 31 March 2011. Later, by letter of 21 December 2011, the plaintiff again wrote to Mr Amos to revoke an agreement between him and the Office of State Revenue in May 2011 to hold off on any recovery action pending the sale of one of his properties.

The power to terminate an arrangement

- [7] Section 34(4) of the *Taxation Administration Act* allows the Commissioner to terminate an arrangement at any time by written notice given to the taxpayer. The main argument was whether that section applied to the arrangement pleaded. An extension of time for payment was possible at the time of the arrangement said to have been made in May 2009 pursuant to s 32A of the *Land Tax Act 1915* which provided, until it was repealed as of 30 June 2009:

“32A Extension of time for payment

The commissioner may in any case grant such extension of time for payment or permit payment to be made by such instalments and within such time as the commissioner considers the circumstances warrant; and in such case the tax shall be due and payable accordingly.”

- [8] The defendant’s submission was that his agreement with the plaintiff was made pursuant to s 32A and that it continued in force because s 75 of the *Revenue and Other Legislation Amendment Act 2009* (Qld) provided for the amendment of s 6 of the *Taxation Administration Act* to insert the following:

- “ (6) *The Land Tax Act 1915* is a revenue law.
 (7) Subsection (6) is subject to the *Land Tax Act 1915*, part 9, division 5.”

- [9] That part and division of the *Land Tax Act 1915* included s 69 which provided that, subject to s 72, despite their amendment or repeal by the *Revenue and Other Legislation Amendment Act*, the previous provisions of the *Land Tax Act 1915* continued to apply in relation to a “pre-commencement act.” That term was defined in s 67 to mean “an act ... done or omitted to be done for this Act before the commencement.”⁴ The defence argument was that the agreement on which Mr Amos relied was a pre-commencement act.

⁴ The commencement was 30 June 2009.

- [10] To follow the submission one then has to go to s 72 of the *Land Tax Act 1915* which was in a part dealing with transitional provisions generally. Section 72 provides (emphasis added):

“72 This Act as a revenue law for the Administration Act

- (1) This section provides for how the Administration Act applies to this Act, in relation to particular liabilities, acts and omissions, as a revenue law under the Administration Act.

Note—

The Administration Act applies to this Act, as a revenue law, except to the extent its application is limited or modified under this division.

- (2) The following provisions of the Administration Act ***do not apply in relation to a pre-commencement liability—***
- (a) part 3;
 - (b) ***sections 30 to 33, 35, 41 and 42;***
 - (c) part 5;
 - (d) sections 124 and 125.
- (3) To remove doubt, it is declared that the Administration Act applies ***in relation to an act or omission done or omitted to be done on or after the commencement, even if the act or omission relates to a pre-commencement liability.***
- (4) However, the Administration Act, sections 124 and 125 do not apply in relation to an act or omission mentioned in subsection (3) if the act or omission relates to a pre-commencement liability.
- (5) For applying the Administration Act, section 37, in relation to a pre-commencement liability, the reference in that section to a reassessment is taken to be an alteration of an assessment under previous section 20.
- (6) ***If, under this section, a provision of the Administration Act relating to a particular matter applies to this Act and this Act contains provision about the same matter, this Act does not apply to the matter.***
- (7) Despite subsection (6), the commissioner may exercise the commissioner’s power under either previous section 43A, or the Administration Act, section 50, in relation to a pre-commencement liability until 30 September 2009.”

- [11] The defendant’s submission was, then, that the arrangement that had been entered into by Mr Amos was one pursuant to s 32A of the 1915 Act, but that it was not an arrangement within the meaning of s 34 of the *Taxation Administration Act* which came into effect in respect of land tax after 30 June 2009 and could not be terminated pursuant to that section.
- [12] The plaintiff’s submission, however was that, when one interprets s 72 of the *Land Tax Act 1915* properly, it is clear that s 34 of the *Taxation Administration Act* does apply to this arrangement. Section 34 is not one of the provisions specified in s 72(2)(b) which do not apply in relation to a pre-commencement liability. Section 72(3) declares that the *Taxation Administration Act* does apply to an act done after

the commencement,⁵ namely the termination of the arrangement, even if the act related to a pre-commencement liability. My attention was also drawn to s 72(6), a provision which, in effect, gives priority to the *Taxation Administration Act*.

- [13] It seems clear to me that s 34(4) of the *Taxation Administration Act* may, against that statutory history, apply to an arrangement entered into before that provision came into existence. That is the consequence of s 72(3) of the *Land Tax Act 1915*. The act of terminating the arrangement does relate to a pre-commencement liability to pay land tax. The termination of the arrangement is one justified then by the combination of s 72(3) of the *Land Tax Act 1915* and s 34(4) of the *Taxation Administration Act*.
- [14] If the arrangement with Ms Bird actually terminated on 7 July 2009 by the terms of her letter, however, only to be revived as Mr Amos claimed by a further oral agreement made later that month with an unnamed officer of the Office of State Revenue, it would be open to conclude that it was an informal agreement not meeting the s 34(1) requirement that there be a written application by the taxpayer. There is no evidence that such a written application was made. On that view of the facts the relevant arrangement may have been made irregularly after 30 June 2009. There would be little reason to conclude that s 34(4) could not apply to terminate such an irregular unwritten arrangement. But the argument made for the defendant was that the arrangement predated 30 June 2009 and should be treated as continuing in existence because of the transitional provisions to which I have referred. For the reasons I have expressed, however, it is my view that it may be terminated by the combination of s 72(3) of the *Land Tax Act 1915* and s 34(4) of the *Taxation Administration Act*.
- [15] There were other claims that the matter should go to trial to allow the cross-examination, for example, of witnesses related to the making of the arrangement. There is no doubt, however, about its termination. Nor, in my view, is there a sufficient issue raised in respect of the effect of the statute to require the matter to go to trial.
- [16] In other words, the defence has no real prospect of succeeding.⁶

Conclusion and order

- [17] Judgment will be given for the plaintiff in the sum of \$486,509.00, together with interest. I shall hear the parties as to the form of the order and costs.

⁵ 30 June 2009.

⁶ See *Coldham-Fussell v Commissioner of Taxation* [2011] QCA 45.