

[The Uniting Church in Australia Property Trust v. The Commissioner of Stamp Duties]

BETWEEN:

THE UNITING CHURCH IN AUSTRALIA PROPERTY TRUST (Q) Appellant

AND:

THE COMMISSIONER OF STAMP DUTIES	Respondent
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REASONS FOR JUDGMENT – THE COURT

Judgment delivered 09/09/94

The sole issue on this case stated is whether the appellant's shopping centre at Beaudesert, the "Beaudesert Fair Shopping Centre", "has been acquired for and is to be used solely or almost solely for" one of the purposes specified in paragraphs (f) to (l) of subsection 59E(1) of the *Stamp Act 1894*, as amended. Those purposes are:

- "(f) educational purposes;
- (g) a public benevolent purpose;
- (h) the purpose of conducting a kindergarten or pre-school;
- (i) the purpose of the relief of poverty;
- (j) the purpose of care of sick, aged, infirm, afflicted or incorrigible persons or of children;
- (k) the purpose of activities of a religious nature;
- (l) more than one of the purposes specified in paragraphs (f) to (k) (both inclusive)."

Although it is not made clear by the stated case, the respondent Commissioner of Stamp Duties accepts that the income obtained by the appellant from letting shops in the shopping centre was, and is, "acquired ... and ... used solely ... for

..." a number of the purposes specified in paragraphs (f) to (l) of subsection 59E(1), but contends that, nonetheless, those are not the purposes for which the shopping centre "has been acquired .. and is ... used ...".

The appellant could point to no authority which afforded it support except, perhaps, *University of Western Australia v. Commissioner of State Taxation (W.A.)* (1987) 88 ATC 4020. There, the question was whether agreements by the University to purchase commercial properties, to be leased to persons unconnected with the University so as to ensure a reliable source of income to meet the University's requirements for funds for the control and management of the affairs and concerns of the University, had "been made for the purpose of a university", so as to entitle the University to an exemption from stamp duty in accordance with section 75AA of the *Stamp Act 1921 (W.A.)*. Smith J. held for the University, holding that the section "focuses only upon the purpose for which the property has been acquired" (p.4024). However, other considerations aside, it is important to note his Honour's reference to the section's "only" focus, and that he distinguished other decisions, including a decision of the High Court, on the basis that, in each of those cases, "the respective legislative provision under consideration looked to the actual use of the land."

Subsection 59E(1) of the *Queensland Act*, looks to the purpose of the taxpayer at a point between acquisition and use. It requires that the material property "has been acquired for" one or more of the specified purposes, and "is to be used solely or almost solely" for the same, or perhaps another, specified purpose or purposes. Neither the appellant nor the Commissioner suggested that the purpose for which the shopping centre was acquired nor the use to which it was to be put differs in any respect from the use to which it is in fact put. That use defines the purpose for which, at the relevant time for assessment, it had been acquired and was to be used.

Although there are differences in the various legislative

schemes, the weight of authority is against the appellant. It is necessary to refer only to *Ryde Municipal Council v. Macquarie University* (1978) 139 CLR 633.

There, the question was whether certain land vested in the University was exempt from municipal rates under the *Local Government Act, 1919 (NSW)* because "... used or occupied by the University ... solely for the purposes thereof". A building on the grounds of the University was devoted to commercial and shopping facilities. A number of shops, a travel centre and a bank were leased by the University, with a view to profit but also to providing for the convenience of the staff and students of the University. It was held by Gibbs ACJ, Stephen and Murphy JJ, Jacobs and Aickin JJ. dissenting, that the land devoted to commercial and shopping facilities was "... used ... by the University ... solely for the purposes thereof". The decision turned on the conclusion of the majority that the provision of the facility was an authorised function of the University under the *Macquarie University Act, 1964 (NSW)*.

At p.637-638, Gibbs ACJ said:

"No-one can doubt that 'used' is a word of wide import, and that its meaning in any particular case depends to a great extent on the context in which it is employed. ... One thing that the context provided by s.132(1) of the [Local Government] Act does make clear is that 'used' is not meant to be synonymous with 'occupied'. It is quite apparent that where the expression 'used or occupied' appears, 'used' refers to some form of use other than actual occupancy,

A person who owns land may be said to use it for his own purposes notwithstanding that he permits someone else to occupy it, even under a lease. That is almost beyond argument when the owner's purpose is to acquire income. In the ordinarily accepted meaning of the word a building is 'used' for the purpose of acquiring income if rents are derived from it and an owner of premises who leases them is making use of those premises by employing or applying them for the purpose of letting:"

At pp.640-641, his Honour said:

"I need not review the multitudinous authorities in which the courts have explained the meaning of 'used' and/or

'occupied' in particular context. There are however, some decisions upon which particular reliance was placed and to which I should refer. In *Commissioners of Taxation v. Trustees of St. Mark's Glebe* (1902) AC 416 the question for decision was whether glebe lands, vested in trustees for church purposes, but let on building leases, were exempt from land taxes being lands 'occupied or used exclusively for or in connection with' public charitable purposes or a church. The statutory provision there considered did not make it necessary to decide by whom the use was made; the question was for what purpose the lands were used ... The decision is authority that church lands, let for the purpose of creating income for the church, are not used for the purposes of the church within a taxing or rating statute."

At pp.643-644, his Honour continued:

"The next question is whether the land in question was used for the purposes of the University. According to the Macquarie University Act, 1964 (NSW), s.6, the functions of the University (as one might expect) include the provision of educational facilities, the dissemination of knowledge and the promotion of scholarship. The purpose of the University was to perform those functions. Ordinarily speaking, one would not say that the purpose of the University was to provide shops or other commercial establishments for the use of staff or students. However it is now well settled that when an exemption from rates or taxes is given in respect of land used for the purposes of a charity, the exemption is not confined to land used for those purposes the pursuit of which make the body a charity, i.e., which give it its character as such. If the land is used for purposes which are 'merely a means to the fulfilment' of the charitable purposes and 'incidental thereto' it is within the exemption In other words, if the use which the charity makes of the land is 'wholly ancillary to', or 'directly facilitates', the carrying out of its charitable objects, that is sufficient to satisfy the requirements that the premises are used for charitable purposes If on the other hand, the use is only 'collateral' or 'additional' to the purposes which give the charity its character as such, the land will not be used for the purposes of the charity

If the land in question had been let simply to raise money for the purposes of the University, the decision in *Commissioners of Taxation v. Trustees of St. Mark's Glebe* ... would have been directly applicable, and it would not have been possible to say that the land was 'used for the purposes of the University ... '. However, it is proper to conclude from the evidence that the University arranged

for the building to be erected ... because the commercial enterprises which it was to contain were regarded as necessary or desirable for the functioning of the University under modern conditions. The use of the land was wholly ancillary to, and directly facilitated, the carrying out of the principal objects of the University; it was not collateral or additional to those purposes. The land in question was rightly held to be used for the purposes of the University."

Stephen J., with whom Murphy J. agreed, said at pp.649-650;

".... That the market and its site is in fact made available by the University for the purpose of providing commercial and shopping facilities for staff and students cannot be doubted; that represents the mode in which the land is 'used' This use of the land by the University is the sole use which it makes of it. The fact that it receives rent from the tenants of the market does not detract from the exclusiveness of this use; it is, in my view, and in the light of the above findings of fact, no more than an incident of this exclusive use."

Then, at pp.650-652, his Honour said:

"It remains to see whether any authority stands in the way there is, in my view, no element of collateral or independent purpose present in this case; the only use made of the market site by the University is in the provision of facilities to staff and students.

Then, as to the words 'used by the University' for its purposes, it is a truism that 'use' is not a word having any single, precise meaning. It is 'a word of wide import and its meaning in any particular case will depend to a great extent upon the context in which it is employed' Here the advantage which the University intends to derive from the market is the furtherance of its purposes by the provision to staff and students of those facilities which the market now affords them. ...

There are a number of cases in which the letting of premises has been held to disqualify them from being regarded as 'used' by their owner for particular purposes which would earn exemption from rates or land taxes. They are, however, cases in which the only connection between the letting and the purposes of the owner has been the application to those purposes of the rent received from tenants. Had the learned primary judge concluded that in the present case the University had erected the market and granted leases of it so as to earn income from it, in effect using its site as a rent producing investment, it would have been of no avail that the rent

received was applied to University purposes. Long established authorities such as *Commissioner of Taxation v. Trustees of St. Mark's Glebe* ... would stand in the way. However, the judge's findings of fact are quite to the contrary and disclose a situation in which the receipt of rental income is no more than incidental to the pursuit of a purpose of the University."

In his dissenting judgment, Aickin J., with whom Jacobs J. agreed, said of *Commissioners of Taxation v. Trustees of St. Mark's Glebe* that what it decided about "use" is contrary to the argument of the University and, if it did not require a decision against the application of the exemption, it pointed strongly against it (p.663).

It was argued for the appellant that at least the statements by Gibbs CJ and Stephen J. with respect to *Commissioners of Taxation v. St. Mark's Glebe* were not necessary for the purposes of that decision. Even if that were correct, those statements are plainly entitled to the greatest respect, and are consonant with both the context and purpose of subsection 59E(1). While the appellant's activities are no doubt highly laudable and beneficial to the community, the legislative intention to which subsection 59E gives effect requires not only that the property be acquired by one of the identified bodies or institutions but that it be acquired for use for one of the specified purposes. This directs attention to the appellant's use of the land, in this instance leasing for commercial purposes, not to the use of the income derived from the use of the land.

Accordingly, the questions in the case stated should be answered as follows:

- (a) Is the Appellant exempt from payment of Stamp Duty pursuant to sub-section 59E(1) of the Stamp Act 1894 ? No.
- (b) If "yes" to (a) under which paragraph/s of subsection 59E(1) is the Appellant exempt ? Unnecessary to answer.

- (c) How should the costs of and incidental to the stating of the case and of the appeal be borne and paid ? By the Appellant.

IN THE COURT OF APPEAL

SUPREME COURT OF QUEENSLAND

Appeal No. 32 of 1994

Brisbane

[The Uniting Church in Australia Property Trust v. The Commissioner of Stamp Duties]

BETWEEN:

THE UNITING CHURCH IN AUSTRALIA PROPERTY TRUST (Q) Appellant

AND:

THE COMMISSIONER OF STAMP DUTIES Respondent

Fitzgerald P.
Pincus JA.
Ambrose J.

Judgment delivered 09/09/94

Judgment of the Court

Answers to the case stated as follows:

(a) Is the Appellant exempt from payment of Stamp Duty pursuant to subsection 59E(1) of the Stamp Act 1894?

Answer: No.

(b) If "yes" to (a) under which paragraph/s of subsection 59E(1) is the Appellant exempt?

Answer: Unnecessary to answer.

(c) How should the costs of and incidental to the stating of the case and of the appeal be borne and paid?

Answer: By the Appellant.

CATCHWORDS: STATUTES - Interpretation - s. 59E(1) Stamp Act 1894 (Qld) - a church property trust acquired a shopping centre for the purpose of raising revenue for use in charitable purposes - whether the church is exempt from Stamp Duty under one of the specified exemptions in s. 59E(1) Stamp Act 1894 (Queensland), s 59E(1) Ryde Municipal Council v Macquarie University (1978) 139 CLR 633

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Hearing Date: 10/08/94

