

# QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Baum v Commissioner of State Revenue* [2024] QCAT 41

PARTIES: **LIAM BAUM**  
(applicant)

**v**

**COMMISSIONER OF STATE REVENUE**  
(respondent)

APPLICATION NO/S: GAR554-21

MATTER TYPE: General administrative review matters

DELIVERED ON: 16 January 2024

HEARING DATE: 17 March 2023

HEARD AT: Brisbane

DECISION OF: Member Holzberger

ORDERS:

- The decision of the Commissioner of State Revenue to dismiss Liam Baum’s objection to his decision to require him to repay the first homeowner grant is set aside and a decision allowing the objection is substituted for it.**
- The decision of the Commissioner of State Revenue to dismiss Liam Baum’s objection to his decision to reassess the transfer duty payable is affirmed.**

CATCHWORDS: TAXES AND DUTIES – ADMINISTRATIVE DIRECTION FIRST HOME OWNERS GRANT – CONCESSIONAL DUTY – where applicant waived first home owner’s grant and duty on transfer amended or concessional role – consideration of terms “occupy” and “principal place of residence” – whether appropriate to waive – whether waiver to reside requires reassessment of duty

*Duties Act 2001* (Qld), s 153(1)  
*First Home Owner Grant Bill 2000* (Qld)  
*First Home Owner Grant Amendment Bill 2003* (Qld)  
*First Home Owner Grant and Other Home Owner Grants Act 2000* (Qld), s 15(1), s 15(2)  
*Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 20(1), s 20(2)

*Bates v Chief Commissioner of State Revenue* [2004] NSWADT 13

APPEARANCES &

## REPRESENTATION:

Applicant: Self-represented  
Respondent: Mr S Walpole, counsel

## REASONS FOR DECISION

- [1] Liam Baum has applied to the Tribunal for a review of the decision of the Commissioner of State Revenue (*'the Commissioner'*) to disallow his objections to decisions by the Commissioner to reassess transfer duty payable and to require repayment of the first homeowner grant.
- [2] The Tribunal's jurisdiction to undertake the review is not in dispute. The review is by way of a fresh hearing on the merits.<sup>1</sup> The purpose of the review is to produce the correct and preferable decision.<sup>2</sup>
- [3] The facts are largely agreed between the parties. The Tribunal has been assisted by the provision of written submissions and oral submissions by both parties.

### Background

- [4] Mr Baum, a solicitor employed by DLA Piper, was seconded to and resided in Ireland from 24 February 2020 until 28 July 2020.
- [5] On 10 June 2020 he entered a contract to work as a solicitor in the Brisbane office of DLA Piper.
- [6] On 11 June 2020 he entered into a contract to purchase a unit in Bowen Hills (*'the unit'*). His purchase settled on 31 August 2020.
- [7] Shortly after entering into the contract he applied for payment of the first homeowner grant (*'the grant'*) and declared that he was eligible for the first home buyer transfer duty concession. He was successful in his application for the grant and stamp duty was assessed on the transfer at a concessional rate on the basis of his declaration.
- [8] Mr Baum flew into Sydney on 28 July 2020 where he was required to complete a two-week period of hotel quarantine. If he travelled to Brisbane from Sydney, as was his intention after that quarantine was completed, it would be required of him to complete a further two-week period of quarantine in Queensland.
- [9] Rather than serve the further quarantine period he remained in Sydney working remotely until the quarantine requirement was lifted. He returned to Brisbane on 5 December 2020 and physically occupied the unit from that date.
- [10] On 23 September 2020 Mr Baum notified the Australian Electoral Commission of his change of address to the unit. In September he arranged for a bed and bedside tables to be delivered to the property.
- [11] Gas and electricity were connected to the unit on 4 December 2020.

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<sup>1</sup> *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 20(2).

<sup>2</sup> *Ibid*, s 20(1).

[12] On 20 April 2021 he transferred to the Sydney office of DLA Piper and vacated the unit.

[13] He leased the property to a tenant on 23 April 2021.

### **First Homeowner Grant**

[14] Mr Baum's eligibility or otherwise for the grant is dependent on him satisfying a number of eligibility criteria set out in part 3 of the *First Home Owner Grant and Other Home Owner Grants Act 2000* (Qld) ('FHOG Act').

[15] The eligibility criteria which is the subject of these proceedings is contained in section 15(1) of the FHOG Act, which provides:

An applicant for a first homeowner grant must occupy the home to which the application relates as the applicant's principal place of residence for a continuous period of at least six months.

[16] Section 15(2) provides that the Commissioner may approve a shorter period or an exemption from the operation of the provision where satisfied that there are "good reasons" to do so.

[17] It is the Commissioner's position that Mr Baum does not satisfy section 51(1) because his occupation of the property as his principal place of residence commenced on the date he moved in, 5 December 2020, and ceased on 20 April 2021 when he moved to Sydney.

[18] It is Mr Baum's position that he occupied the property as his principal place of residence between 31 August 2020, the date of settlement, and 20 April 2021.

[19] Neither "occupy" nor the term "principal place of residence" are defined in the FHOG Act. The Commissioner has issued a public ruling, FHOG A-15.1.4, which may provide the Tribunal some assistance but is not binding on the Tribunal.

[20] I am not aware of any earlier Tribunal decisions in relation to the issue in question here, but Mr Walpole, counsel for the Commissioner, and Mr Baum have referred me to two New South Wales Administrative Decisions, which are of assistance.

[21] In *Bates v Chief Commissioner of State Revenue* [2004] NSWADT 13 ('Bates') Judicial Member Higgins said at paragraph 39:

The terms "occupy" and "principal place of residence" should be given their ordinary meaning having regard to the objects and purposes of the Act...

Whether an applicant has "occupied" the property as his "principal place of residence" as prescribed under the Act is a question of fact that is to be assessed objectively having regard to all the circumstances.

[22] I agree with both principles, as do the parties according to their written submissions.

[23] In *Bates* the Tribunal considered "occupy" and "principal place of residence" in the context of section 12 of the *First Home Owner Grant and Shared Equity Act 2000* (NSW) which required an applicant to occupy the house as the applicant's principal place of residence within 12 months of completion.

- [24] The Tribunal held “occupy” to mean “to reside in the property.”<sup>3</sup> Mr Walpole submits that on that basis, Mr Baum did not occupy the unit until 5 December 2020.
- [25] Mr Baum submits that such a narrow construction does not give sufficient weight to the legislative context, the effects of the COVID-19 pandemic, and its resulting restrictions on travel and hotel quarantine. “Physical inhabitation” he says, is not solely determinative of the issue.<sup>4</sup>
- [26] He also submits that from the time of his purchase of the unit until his departure for Sydney in April 2021, it was his intention to occupy the unit as his principal place of residence. Relying on Bates, he asserts that that intention, although not determinative, is relevant.
- [27] It is not controversial that the purpose of the FHOG Act is “to encourage and help home ownership”<sup>5</sup> for people just like Mr Baum. The availability of the grant was an important factor in his decision to buy the unit and his ability to fund it.
- [28] I accept that Mr Baum’s traumatic hotel quarantine in Sydney caused him genuine and reasonable concerns for his mental health should he have to quarantine a second time. That, together with widespread speculation at the time that those restrictions would soon end, make his decision to stay in Sydney until he could return to Queensland without quarantine reasonable.
- [29] I do not believe that it helps him in respect of section 15(1). It is, however, relevant to the question of exemption under section 15(2).
- [30] I accept that at all times until his departure for Sydney in April 2021 Mr Baum intended to occupy the unit as his principal place of residence and regarded it as such.
- [31] I also accept that he took significant steps towards moving into the property after settlement and before doing so in December 2020, including moving in some of his possessions and changing his electoral role address. I accept that his accommodation in Sydney was temporary in nature.
- [32] In his written submission Mr Baum attacks the Commissioner’s interpretation as requiring “continuous physical inhabitation.” I do not understand that to be the Commissioner’s position. Section 15(1) requires occupation for a continuous period, it does not necessarily require continuous occupation. If “occupy” is given its ordinary meaning, it would permit an occupier to be away from the premises during that continuous period of occupation. It does not preclude a person from occupying two premises at the same time, so long as the property which is the subject of the application remains the principal place of residence.
- [33] If Mr Baum had moved into the property and later travelled away for work reasons or on a holiday that would not in my view affect his compliance with section 15(1).
- [34] I agree with the finding in Bates however that, to occupy a property a person must reside in it. While I accept that it was his intention to occupy the unit and that he took steps to do so he did not, in my view, occupy it until he moved into the property on 5 December 2020.

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<sup>3</sup> Bates [39].

<sup>4</sup> Liam Baum’s submissions in reply, paragraph 2.6.

<sup>5</sup> *First Home Owner Grant Bill 2000* (Qld).

- [35] It is common ground that he moved out of the unit on 20 April 2021. He did not in those circumstances occupy the unit as his principal place of residence for a continuous period of six months and accordingly, has not satisfied Section 15(1).

**Exercise of discretion-15(2) FHOG Act**

- [36] In his objection and in these proceedings, Mr Baum asserts that there are good reasons for approval of a shorter period or an exemption from the requirement contained in section 15(1).

- [37] Section 15(2) FHOG Act provides:

However if the Commission was satisfied there are good reasons to do so, the Commissioner may –

- (a) approve a shorter period; or
- (b) exempt the applicant from the requirement to comply with subsection (1).

- [38] Mr Walpole submitted that the phrase “good reasons to do so” ought to be construed as requiring circumstances outside the applicants control that prevent compliance.

- [39] To not do so, he says, would not promote the policy and purpose of the FHOG Act to “encourage and help home ownership.”

- [40] He referred to extrinsic material to support this proposition. The Explanatory Notes to the *First Home Owner Grant Bill 2000* (Qld) (*‘the 2000 bill’*), in relation to the requirement that the home the subject of the application be occupied as a principal place of residence within one year of completion, includes the following:

The Commissioner is empowered to extend the period for compliance with this requirement. This is to assist applicants who have been unable to comply with the residence requirements for good reasons outside their control such as illness... This provision is also designed to assist applicants where they have been unable to comply with the residence requirements for good reasons that are outside their control.

- [41] The Explanatory Notes to the *First Home Owner Grant Amendment Bill 2003* (Qld) (*‘the 2003 bill’*) which introduced section 15(2) provide:

As is currently the case with the existing residency requirement, a discretion will be conferred on the Commissioner to reduce or waive the residency requirement. However, there must be a good reason preventing the applicant from complying with the six-month residency requirement.

- [42] I do not agree that the underlying policy and purpose of the FHOG Act requires the words “good reasons” to be construed as “good reasons outside the control of the applicant.”

- [43] The qualification of “outside of their control” appears only in the explanatory notes to the 2000 bill which did not contain a provision equivalent to section 15(2).

- [44] It does not appear in the explanatory notes to the 2003 bill which introduced section 15(2).

- [45] More significantly, it does not appear in section 15(2). If there was an intention on the part of the framers to introduce such a qualification it would have been very easy to do so by including those words in the legislation.

- [46] The discretion given to the Commissioner is a broad discretion. It is not in my view confined to ill health or destruction of the home, the two examples listed in the explanatory notes to the 2003 bill. It does not require the circumstances to be exceptional. The term “good reasons” must be given its ordinary meaning. It is for the Commissioner in each case to assess objectively whether an applicant has good reasons for noncompliance, having regard to all of the circumstances.
- [47] In exercising that discretion, the Commissioner must have regard to the policy and purpose of the FHOG Act “to encourage and help home ownership.”
- [48] Mr Baum concedes that his decision to move to Sydney in April 2021 ended his occupation of the unit. In his written submissions he said that he could have delayed the move by six weeks had he known that the date of commencement of his occupation was the date he physically resided in the unit, rather than the date of settlement.
- [49] Mr Baum’s mistaken belief that he had complied with the residence requirement does not in my view, provide him with a good reason for noncompliance. Nor do I understand him to rely upon it.
- [50] Rather, Mr Baum relies on the difficult and unusual circumstances which he said caused a delay in him moving into the property.
- [51] To recap Mr Baum’s circumstances, it is not in dispute that Mr Baum, as part of his graduate programme, travelled to Ireland in February 2020 before the full impact of the pandemic and the responses of various governments to it were felt. He returned to Australia on 28 July 2020. He could not get a flight direct to Brisbane. He flew into Sydney.
- [52] He was required to hotel quarantine in Sydney for two weeks. I accept that the conditions at the Travel Lodge Surrey Hills, where he was quarantined, were unsanitary and generally so unsatisfactory that ultimately the hotel was removed from the quarantine programme and its guests evacuated from it.
- [53] Had Mr Baum returned to Queensland he would have been required to serve a further two weeks period of hotel quarantine. Although employed in Brisbane, he was able to work remotely from Sydney.
- [54] Mr Baum was somewhat traumatised by his first period of quarantine, and I accept that he was concerned for his mental health if forced to serve a second period. While this is unsupported by medical evidence, Mr Baum is entitled to make that assessment and act in his best interest.
- [55] I also accept his concern, contained in his submissions, that hotel quarantine may increase his chances of contracting the virus. During his time in Sydney Mr Baum lived in temporary accommodation in less-than-ideal circumstances.
- [56] Clearly Mr Baum made choices to take the course that he did. To a certain extent those choices were forced on him and were reasonable having regard to his assessment of the health risks involved in returning to Queensland.
- [57] In any event the discretion of the Commissioner, and the Tribunal in the Commissioner’s place, is not in my view constrained by the concept of the outcome being completely beyond the control of the applicant.

- [58] It has not been asserted, nor could it be in my view, that Mr Baum is attempting to abuse the first homeowner's scheme. I have found that he intended to occupy the unit as his principal place of residence until his relocation for work purposes to Sydney. He notified the Commissioner, as he is required, of his change of circumstances.
- [59] He is an example of the purpose of the FHOG Act. The availability of the grant was material to his decision to buy the unit and his ability to fund it.
- [60] The set of circumstances in which he was placed as a result of the pandemic were unprecedented and extraordinary and, in my view, substantially caused his occupation of the unit as his principal place of residence to be some six weeks shorter than the required period of six months.
- [61] In all those circumstances I am of the view that there is good reason to shorten the residence requirements to a period of four months in this case.

### **Section 153, Duties Act 2001**

- [62] Section 153(1) of the *Duties Act 2001* (Qld) (*'Duties Act'*) permits reassessment of duty where duty is being paid on the basis of a concession if within 12 months of a person's occupation date other than because of an "intervening event" the person transfers or leases it to another person.
- [63] It is not in dispute that Mr Baum's lease of the unit on 23 April 2021 activates the operation of Section 153(1).
- [64] Mr Baum's brief written submissions are not helpful.
  - 4.1 for the reasons as set out above in respect of section 15(1) of the FHOG Act, the respondent's submission should be rejected.
- [65] I have found for the purposes of section 15 of the FHOG Act that the occupation date was 5 December 2020, and I am of the view that it is also the occupation date for the purposes of section 153(1) of the Duties Act. If I am wrong in that regard and accept Mr Baum's occupation date of 31 August 2020, he still leased the unit within a year of that occupation date.
- [66] The term "intervening event" in the Duties Act differs from the term "good reason" in the FHOG Act.
- [67] The intervening event specifically relates to the disposal of the property. Clearly Mr Baum made a decision to relocate for personal and professional reasons. It is not in my view an intervening event. The Commissioner has no discretionary power to waive compliance or shorten the period of residence. Mr Baum's objection so far as it relates to the reassessment of duty is disallowed.