



## Summary of Judgment

### **OLIVER HUME PROPERTY FUNDS (BROAD GULLY RD) DIAMOND CREEK PTY LTD v COMMISSIONER OF STATE REVENUE**

[2024] VSCA 175

**8 August 2024**

Today, the Court of Appeal (Kennedy, Macaulay and Lyons JJA) dismissed an appeal by the applicant against a decision of a Vice President of the Victorian Civil and Administrative Tribunal (the ‘Tribunal’) to uphold the respondent’s assessment of the applicant for duty.

The applicant is a special purpose vehicle established for the purpose of a property development project at Diamond Creek known as the ‘Diamond Creek project’. In 2011, the applicant purchased the property at 272 Broad Gully Road, Diamond Creek, Victoria (‘the Property’). In 2014, the applicant circulated an ‘Information Memorandum’ which sought to raise \$1.8 million through an issue of 1.8 million shares in order to fund the development of the Property. It was a condition of the Information Memorandum that the target of 1.8 million shares be achieved by 26 June 2014. In the result, on 2 July 2014, the applicant issued 1.8 million shares to 18 investors.

The respondent assessed the applicant for duty on the basis that the investors acquired their interests in the applicant via an ‘associated transaction’, and therefore the acquisition of shares by the 18 investors constituted a ‘relevant acquisition’ for the purposes of s 78(1)(a)(ii)(C) of the applicable version of the *Duties Act 2000* (the ‘Act’). Relevantly, acquisitions are ‘associated transactions’ if they ‘form, evidence, give effect to or arise from substantially one arrangement, one transaction or one series of transactions’ (s 3(1) of the Act, definition of ‘associated transaction’ para (b)).

The applicant sought leave to appeal against the Vice President’s decision, which upheld the respondent’s assessment, on a question of law. This was principally on the basis that the Vice President erred in his construction of s 78(1) of the Act because he necessarily should have found that the acquisitions of shares were not ‘associated transactions’ in circumstances where the investors were not acquainted with each other.

The Court of Appeal granted leave to appeal but concluded that the Vice President made no error in upholding the assessment. The focus of the language in para (b) of the

definition of ‘associated transaction’ is not on the individuals concerned, but on the relationship between the acquisitions and the singular ‘arrangement’ or ‘transaction’ (or ‘series of transactions’). Further, para (b) focuses on the objective terms and circumstances surrounding the acquisitions. It was relevant to consider whether there was some connection or interdependence between the circumstances by which the persons acquired their interests, such that the acquisitions might be characterised as, essentially, ‘one’ arrangement.

The Court of Appeal considered that there were a number of objective interconnecting factors, which together, combined to support a finding that the acquisitions formed, evidenced, gave effect to, or arose from, substantially ‘one arrangement’, or alternatively ‘one series’ of transactions:

1. The acquisitions were interconnected in circumstances where no individual acquisition could go ahead at all unless a total of \$1.8 million was raised;
2. The content of the statutory contract (the applicant’s constitution) provided that the acquirers, together, had an interest in an entity which was to undertake a single land development project, via an entrenched management structure through an entity which was to be wound up at the end of the project; and
3. The effect of the acquisitions of the shares on the same day, and in the same way, was to substantively alter the shareholding in the landholder from being an Oliver Hume entity to an entity owned by a group of private investors (as to 99.99 per cent).

In such circumstances the Vice President made no error in finding that the acquisitions were ‘associated transactions’ even though the investors were not acquainted with one another.

---

**NOTE:** This summary is necessarily incomplete. It is not intended as a substitute for the Court’s reasons or to be used in any later consideration of the Court’s reasons. The only authoritative pronouncement of the Court’s reasons and conclusions is that contained in the published reasons for judgment.