



Summary of Judgment

ACN 005 057 349 Pty Ltd v Commissioner of State Revenue [2015] VSCA 332

In March 2012 the Commissioner of State Revenue ('the Commissioner') informed ACN 005 057 349 Pty Ltd ('ACN') that he had raised a liability for land tax twice on the same landholding ('the duplication error') for the 2008-2011 land tax years. He refunded the overpayments for those years. He also issued amended assessments for the 2006 and 2007 land tax years and made refunds. Ex gratia payments were paid by the State Treasurer for the 2003-2005 land tax years.

ACN asked the Commissioner to exercise his power under s 19 of the *Land Tax Act 1958* ('the Act') to issue amended assessments for the 1990-2002 land tax years to correct the duplication error which it alleged also occurred throughout those years. It also sought a refund of alleged overpayments for those years. The Commissioner refused.

Section 19 of the Act provides that 'the Commissioner may from time to time amend an assessment by making such alterations or additions to it as he thinks necessary to ensure its completeness and accuracy'.

ACN brought a proceeding for mandamus to compel the Commissioner to exercise his power under s 19 for the 1990-2002 land tax years. It also brought a proceeding at common law for restitution.

The trial judge dismissed both proceedings on the basis that the recovery of tax was available only through the objection and refund regimes under the Act. These had not been utilized. Her Honour also found that the claim in restitution would fail because there was no relevant or operative mistake. ACN had incurred a legal obligation to make the land tax payments it did between 1990-2002 and the payments had therefore discharged a statutory debt. In any event, the proceedings were brought out of time and ACN had failed to establish that it could not, with reasonable diligence, have discovered the Commissioner's duplication error.

Today, the Court of Appeal unanimously granted ACN leave to appeal and allowed the appeals. It held that the Commissioner could be compelled by mandamus to exercise his power under s 19 to amend the 1990-2002 assessments and to refund the excess amount paid. It held that the power to amend is only enlivened when the Commissioner becomes aware of an error he has made. As a power to ensure the accuracy of assessments, s 19 is an integrity mechanism for the tax system that falls outside of the objection and refund regimes.

The Court held that the evidence showed that the duplication error had occurred throughout, relevantly, the 1990-2002 land tax years. The Commissioner must be taken to have known that and, indeed, made an implied admission to that effect. In those circumstances to refuse to amend the assessments involved conscious maladministration.

The Court left open the question whether it was necessary for ACN to establish its claim for restitution. If it was necessary, ACN had established that it had paid an excess amount under the mistaken belief that there was a legal liability to make the payments on the basis that the assessments for those years accurately identified ACN's landholdings, which they did not.

As ACN could not have discovered the duplication error before March 2012, it was entitled to a postponement of the limitation period under s 27 of the *Limitation of Actions Act 1958*.

NOTE: This summary is necessarily incomplete. The only authoritative pronouncement of the Court's reasons and conclusions is that contained in the published reasons for judgment.