

McDonald's Australia Ltd v Commissioner of Taxes [2000] NTSC 72

PARTIES: McDONALD'S AUSTRALIA LIMITED
(ACN 000 697 763)

v

THE COMMISSIONER OF TAXES

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE
NORTHERN TERRITORY
EXERCISING TERRITORY
JURISDICTION

FILE NO: LA13 of 1999

DELIVERED: 6 September 2000

HEARING DATES: 24 August 2000

JUDGMENT OF: RILEY J

REPRESENTATION:

Counsel:

Appellant: M.B.Manetta

Respondent: R. Webb

Solicitors:

Appellant: Ward Keller

Respondent: Morgan Buckley

Judgment category classification: B

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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

McDonald's Australia Ltd v Commissioner of Taxes [2000] NTSC 72
No. LA13 of 1999

BETWEEN:

McDONALD'S AUSTRALIA LIMITED
(ACN 000 697 763)
Appellant

AND:

THE COMMISSIONER OF TAXES
Respondent

CORAM: RILEY J

REASONS FOR JUDGMENT

(Delivered 6 September 2000)

- [1] McDonald's Properties (Australia) Limited entered into lease agreements with Top End Enterprises Pty Ltd, Jomik Investments Pty Ltd and Galaxie Pty Ltd on 13 April 1994, 7 October 1994 and 17 November 1995 respectively. In each case the lease related to specified land and the building and improvements on that land together with business facilities, and enabled the lessee to operate "a McDonald's system restaurant on the land using the business facilities." The term of each lease was for a period of 3 years with an extension option for 20 years from the commencement date.

[2] At the same time McDonald's Australia Limited entered into a licence agreement with the same parties for the same periods in which there was granted to the licensee "the right, licence and privilege to adopt and use the McDonald's system in the restaurant subject to the terms, covenants and conditions contained herein".

[3] On or about 14 August 1997 the respondent issued assessments for stamp duty payable in respect of each of the licence agreements in the amounts of:

Top End Enterprises Pty Ltd	\$26,750
Jomek Investments Pty Ltd	\$26,750
Galaxie Pty Ltd	\$18,800

[4] Each of the assessments was addressed to McDonald's Australia Limited. I am told, and accept, that McDonald's Australia Limited paid each of the amounts assessed as being due. The capacity in which it made payment (ie as an authorised agent or in its own right or in some other capacity) was not made clear.

[5] However the evidence available to me suggests that McDonald's Australia Limited was acting on behalf of the licensees in dealing with the Commissioner of Taxes. For example McDonald's Australia Limited wrote to the Commissioner of Taxes, in a letter dated 21 May 1997, seeking "the valuation methodology" used to value each restaurant and observing that in the absence of this information "it is simply impossible for our franchisees to take advice or to comment on your valuations". The letter went on to say:

“Finally, so that we might be in a position to fully set out for our franchisees the options they now face (because it is they as small local business people who will be paying any stamp duty levied or costs of the objection process), we would be grateful if you could set out for us, based on your valuer’s valuations, the exact total stamp duty liability for each licensee for the McDonald’s franchise leases and licences already submitted for stamping.”

- [6] That letter was responded to by the Commissioner of Taxes setting out options for the future of the matter including that, “the Commissioner’s valuations be accepted by you on behalf of your franchisees ...”. It would seem clear that in the period leading up to the assessments being issued the parties regarded McDonald’s Australia Limited as acting on behalf of the licensees.
- [7] On or about 17 September 1997 objections to the assessments were lodged with the respondent by McDonald’s Australia Limited who claimed to be “a person who is aggrieved by such assessment”. By letter dated 29 September 1999 the respondent disallowed the objections. When the Commissioner dealt with the objections he observed that McDonald’s Australia Limited was not the person aggrieved and that the objections did not comply with s 100 of the Act. He noted that there had been an application by the legal representatives of McDonald’s Australia Limited to add Top End Enterprises Pty Ltd, Jomek Investments Pty Ltd and Galaxie Pty Ltd as objectors for the purposes of the objections, but stated that there was no statutory basis upon which that could occur. No point is taken regarding that matter in the proceedings before me. The respondent went on to consider the grounds upon which the objection was made and rejected each objection.

[8] McDonald’s Australia Limited then appealed to this Court. In so doing it relied upon the same grounds as had been the subject of the objection to the respondent. Those grounds are as follows:

- (1) The licence agreements are bare licences and not conveyances.
- (2) If the licence agreements are leases, then they are not leases of land in the Northern Territory of Australia and are not dutiable at all either pursuant to item 12 of Schedule 1 of the *Stamp Duty Act* or otherwise pursuant to Schedule 1 of the Act.
- (3) Alternatively, if the licence agreements are conveyances, then the assessed value of the dutiable property the subject of the licence agreements is too high and does not reflect the true value of the rights licensed by the appellant to each of the licensees.

The Standing of the Appellant

[9] The respondent submitted that the appeal in this matter is incompetent because the appellant lacked standing. In particular it submitted that the right of appeal created by the *Taxation (Administration) Act* is to be found in s 101 of the Act and is limited to “an objector who is dissatisfied with a decision of the Commissioner”. The reference to “an objector” refers back to s 100(1) of the Act which permits “a person who is aggrieved by an assessment made in relation to him” to lodge with the Commissioner an objection in writing to the assessment. It was submitted that the appellant was not such a person.

[10] The right of objection and the right of appeal are conferred by the statute. Any consideration of the nature of those rights and the standing of a person

to exercise the rights must be considered in the context provided by the legislation. This involves a consideration of the scope and the purpose of the legislation: *CTC Resources NL v Commissioner of Taxation* (1994) 48 FCR 397 at 405. In order to consider the question of standing it is therefore necessary to look at the scheme of the *Taxation (Administration) Act*.

- [11] The Act provides that a person who is liable with respect to an instrument chargeable with duty shall cause it to be duly stamped or lodge the instrument with the Commissioner for assessment. In relation to a conveyance the duty imposed is payable by the conveyee (s 50).
- [12] When the instrument has been lodged the Commissioner either adjudges that duty is not payable or, if he adjudges that duty is payable, he assesses the amount of the duty. He is then obliged to “inform the person lodging the instrument” of the assessment. It is upon that assessment that the appeals provisions of the Act take effect.
- [13] By virtue of s 100 of the Act a person who is aggrieved by an assessment made in relation to him under the Act may lodge with the Commissioner an objection in writing to the assessment. The objection is required to include full details of the grounds upon which the objector relies. The Commissioner is then required to consider the objection and may either disallow it or allow it in whole or in part. Thereafter an objector who is dissatisfied with the decision of the Commissioner is by operation of s 101, entitled to appeal to the Supreme Court on grounds limited to the grounds

stated in the objection. The lodging of the appeal does not immediately affect liability for the assessment.

[14] It will be noted that s 100 of the *Taxation (Administration) Act* allows a “person who is aggrieved” to lodge an objection. An appeal to the Supreme Court is then allowed to an objector who is “dissatisfied” with the decision of the Commissioner. In *CTC Resources NL v Commissioner of Taxation* (1994) 48 FCR 397 the Full Court of the Federal Court dealt with a similar provision in the *Taxation (Administration) Act (Cwth)*. In that case s 14ZZ of the Act provided for an appeal to the Court where “the person is dissatisfied with the Commissioner’s objection decision”. In considering who may be “dissatisfied” for the purposes of that provision Gummow J observed (p408):

“In my view, if regard is had to the context in which s 14ZZ appears, in its operation upon the jurisdiction of this Court, then the “dissatisfaction” of the person initiating the proceeding is of the following nature. It is a dissatisfaction with the absence of a favourable decision upon the objection which would, if now rectified by the Court, place the party in the position for the administration of the taxation laws which should have applied if the ruling had been made by the Commissioner in the terms sought. A mere curiosity or interest in having a formal ruling by the Commissioner for some collateral commercial purpose of the applicant is not sufficient to amount to “dissatisfaction” in the relevant sense.”

[15] It was the submission of the respondent that McDonald’s Australia Limited did not satisfy the requirement that it be an objector or that it was dissatisfied with the decision of the Commissioner. Rectification of the decision of the Commissioner would not alter the position of the appellant at

all. Its only interest would be in relation to a collateral commercial purpose. It was not “dissatisfied” with the decision in any relevant sense.

[16] As to whether McDonald’s Australia Limited could be “an objector”, the submission of the respondent was that the scheme of the Act gave rise to two prerequisites for an objection under s 100(1) of the Act namely:

- (a) there must be an assessment made in relation to the person; and
- (b) that person must be aggrieved by the assessment.

So much must follow from the wording of the section. It was submitted that the appellant in these proceedings did not fulfil either prerequisite.

[17] Firstly it was submitted that the assessment was not made in relation to the appellant but rather was made in relation to the persons chargeable with the duty on the relevant instruments being Top End Enterprises Pty Ltd, Jomek Investments Pty Ltd and Galaxie Pty Ltd. This was so even though the notices of assessment were sent to and paid by the appellant.

[18] Further it was said that the appellant was not a “person aggrieved” by the assessments because it was not liable to make payments pursuant to the assessments. Liability for such payment rested with Top End Enterprises Pty Ltd, Jomek Investments Pty Ltd and Galaxie Pty Ltd respectively. It was submitted that, for a person to be aggrieved, his grievance must relate to “an assessment made in relation to him”.

[19] The expression “a person who is aggrieved” is a familiar expression found in many statutes. As Lockhart J observed in *Ogle v Strickland* (1987) 13 FCR 306 at 310, the words are “flexible words which derive their meaning and take their colour from the context in which they appear and the nature of the particular statute concerned”.

[20] It has been said that the expression is to be interpreted liberally although that must depend upon the statutory context. In *Ogle v Strickland* (supra at 311) Lockhart J said:

“It is important not to shackle the interpretation of these expressions by importing concepts from other statutes in which they appear involving different subject matter and objects, especially when the expressions have received judicial interpretation not intended to have general application or, indeed, application beyond the particular words in the particular context of the particular statute concerned.”

[21] A requirement of the *Taxation (Administration) Act* for there to be an appeal to this Court is that there be an objector who is dissatisfied with a decision of the Commissioner on his objection. In order to become “an objector” the person must have been “a person who is aggrieved by an assessment made in relation to him”. It follows that the expression “person who is aggrieved” in the context of this legislation is qualified by the additional requirement that such a person must also have had an assessment made “in relation to him”. The existence of such a person is a jurisdictional fact determining the application initially of s 100(1) and then of s 101 of the Act.

- [22] In the present matters the Commissioner submits that there was no assessment made “in relation to” McDonald’s Australia Limited upon which to ground an objection or any subsequent appeal.
- [23] Section 50 of the Act makes it clear that duty imposed upon a conveyance is payable by the conveyee. In the circumstances of these matters if there is a conveyance (as the Commissioner held) the conveyees are Top End Enterprises Pty Ltd, Jomek Investments Pty Ltd and Galaxie Pty Ltd respectively. The fact that any obligation to pay the duty assessed fell upon those licensees is reinforced by the contractual arrangements entered into between the parties. Paragraph 18.12 of each licence agreement made it clear that the licensee shall bear “all legal and other costs and expenses of preparing, stamping and registering this agreement and the lease ...”.
- [24] Once an assessment is made under the Act s 9(1)(b) provides that the duty is due and payable “by the person liable to pay it” at a time determined in accordance with that section. In this case the person liable to pay the duty is, in each case, the relevant licensee. Once the duty becomes due and payable it is a debt due to the Territory and recoverable in a court of competent jurisdiction by operation of s 106 of the Act.
- [25] The obligation to lodge instruments for assessment of duty rests upon the person liable to pay that duty by virtue of s 85 of the Act. As I have observed above that is each licensee. The appellant pointed out that the assessments in these cases were in fact addressed to McDonald’s Australia

Limited. The form of the document is to be seen in tabs 2A, 2B and 2C of Exhibit A1. Those documents contain the heading McDonald's Australia Limited and a lodgment number and thereafter appear the details of the assessment referring to the licensee as the first party and McDonald's Australia Limited as the second party. The fact that the document is addressed to McDonald's Australia Limited probably results from the requirement contained in s 92 of the Act that the Commissioner shall inform the person "lodging the instrument" of the assessment. In these cases the documents were lodged by McDonald's Australia Limited on behalf of the licensees.

[26] The mere fact that the assessment documents were sent to McDonald's Australia Limited does not provide a basis for concluding that the assessments were made "in relation to" McDonald's Australia Limited.

[27] Thereafter the Commissioner corresponded with the legal representatives of the appellant. In the course of that correspondence the legal representatives referred to clause 18.12 of the licence agreement and noted that the individual licensees were responsible for "all legal and other costs and expenses". Further, in the earlier correspondence referred to above, McDonald's Australia Limited made observations to the same effect. I am informed, and I accept, that McDonald's Australia Limited paid the sum of \$72,310 (being the total of the three assessments) on or about 15 September 1997. The circumstances in which that payment came to be made by McDonald's Australia Limited were not explained. The mere fact of

payment by McDonald's Australia Limited does not alter the position that the assessment was not made in relation to it.

[28] Mr Manetta, who appeared on behalf of McDonald's Australia Limited, submitted that the notices of assessment that issued in relation to the licence agreements were assessments made in relation to McDonald's. He submitted that:

“But it is certainly, at the very least, an assessment made in relation to McDonald's. It is an assessment of the instrument which, having been issued to McDonald's and addressed to McDonald's with a demand for payment, is an assessment made in relation to McDonald's. And McDonald's is aggrieved because McDonald's has paid the money. It's neither here nor there whether McDonald's has paid the money as agent for somebody else, or from its own funds, with a contractual right to an indemnity down the track. That's not the Commissioner's concern. The fact that we have paid the funds is a sufficient grievance. We want them back. We want the money back.”

[29] This submission ignores the fact that McDonald's Australia Limited had no interest in the matter and no obligation was imposed upon it. Both as a matter of statute and of contract the obligations in relation to duty fell upon the individual licensees. The fact that McDonald's Australia Limited has assumed for itself a role in lodging the instrument and paying duty assessed cannot create in it the statutory rights which are reserved to the individual licensees. If McDonald's Australia Limited has paid monies under some form of mistake on its part then its remedies lie elsewhere than by way of objection and appeal under the Act.

[30] In these cases the assessments were made in relation to the licensees. They were not made in relation to McDonald's Australia Limited. No statutory or other liability or obligation rested upon McDonald's Australia Limited at all.

[31] The only interest that McDonald's Australia Limited has in this matter arises indirectly from it being a party to each licence agreement. Any other interest would be for some collateral commercial purpose of McDonald's Australia Limited and, as Gummow J observed, that is not sufficient to amount to "dissatisfaction" in the relevant sense.

[32] In all of the circumstances I find that McDonald's Australia Limited is not "a person who is aggrieved by an assessment made in relation to him" for the purposes of s 100 of the Act. Further it is not "an objector who is dissatisfied with a decision of the Commissioner" for the purposes of s 101(1) of the Act. McDonald's Australia Limited is without standing and the appeal must be dismissed.

[33] I will hear the parties as to the appropriate orders and costs.
