

IN THE COURT OF REVIEW

Review No. 6 of 1983

BETWEEN:

MORRIS HEDSTROM LIMITED

APPELLANT

AND

THE COMMISSIONER OF INLAND REVENUE RESPONDENT

Mr F. Lateef for Appellant  
Messrs. M.J. Scott & S.M. Shah for Respondent.

JUDGMENT

This is an appeal against the decision of the Commissioner of Inland Revenue in disallowing objections made by the appellant under the Land Sales Act, Cap. 137. There were three appeals, all arising out of the sale of lots in a subdivision of the appellant's land at Lautoka, and they were consolidated by consent of the parties and heard as one. The ground of appeal in each case was the same, namely that the Commissioner erred in assessing land sales tax as the transactions were exempt under section 5(b) of the Act. The scheme of the Land Sales Act is that section 3 imposes land sales tax on 'any profits arising from all dealings (unless exempted by the provisions of section 5).' Section 5 says 'Notwithstanding the provisions of section 3 no land sales tax shall be charged on any profits arising in any of the following transactions or cases:

- (a) any dealing involving land that has been in continuous ownership of a resident seller...for a period of not less than twelve years before the date of such dealing;
- (b) on land on which there has been substantial development by the seller or any predecessor in title;
- (c) land acquired by the Government ...;
- (d) any dealing involving agricultural land which has been in the seller's ownership for not less than twelve years immediately preceding the sale;
- (e) on the sale of land which was acquired by an individual in his capacity as a beneficiary under the estate of a deceased person;
- (f) any dealing where the Minister considers that undue hardship will arise;

(g) any dealing for a charitable purpose...

(h) any other dealing which may be prescribed by the Minister by order.

These appeals arise out of the subdivision by Morris Hedstrom Limited of the section upon which its manager's house has stood for many years. The section which contains 1ac. 1rd. 38p. was originally leased by the appellant from the Colonial Sugar Refining Company Limited, but in 1963 the appellant acquired the freehold of the land and a Certificate of Title was issued. The land was then described as having an area of 1ac.1rd.37.6 perches and for some reason which I am unable to understand, the title was issued subject to the existing lease. One would normally have expected the lease to have merged in the freehold. At all events in 1980 the appellant decided to subdivide the land into four sections, retained the section upon which the manager's house was erected, and sold the other three. It obtained \$15,000 for each of the three sections. The method of subdivision resulted in one section fronting the existing road, with three at the back, and a road was built giving access to the three sections at the back, and a retaining wall also had to be built to protect the manager's house section. The total cost of this subdivision was \$13,750.

When the appellant applied for consent to the sale of three of its sections it gave in each of the three applications the price it received as being \$15,000, and set the expenses at \$13,750. It claimed exemption on the ground that there had been substantial development on the land by it. The Commissioner calculated the historic cost of each section sold, allowed \$3075.10 for other expenses, and calculated the appellant's profit on two sections at \$11,232.49 in each, and \$11,245.56 on the third. He proceeded to tax at 30% as provided in section 3 (b) of the Act.

Morris Hedstrom Limited appealed. Mr. Lateef for the appellant argued that there had been substantial development on the land, a portion of which had been sold, while the Commissioner maintained that there had been no development on the sections sold, and that the development which had occurred immediately preceding the sale of the three sections had been on land outside those sections. The question really turns upon the meaning to be attached to the word 'land' in sub-paragraph (b) of section 5. Mr. Lateef points to the fact that the purpose of the Act is 'to provide for the regulation of certain speculative and other dealings in land and the taxation of profits thereon, and argues that the word 'other' should be construed as being sui generis with 'speculative'. He agrees that section 3 makes clear that the tax is a tax on profits arising from dealings and that the dealings which are exempt are those mentioned in sub-paragraphs (a), (d), (f) (g) and (h). He argues that sub-paragraphs (b) (c) and (e) exempt not dealings but land. Of course, it would have been perfectly easy for the legislature, if it had meant what Mr. Lateef now says it intended, to have exempted 'dealings involving land on which there has been substantial development by the seller'. The position in which Morris Hedstrom Limited now finds itself, if the Commissioner is correct, is that the lot on which the manager's house is situated, will escape tax while the other three lots, concerning which there has been substantial development on land contiguous to them, attract tax. It is to be noted, too, that the development, or at least some of it has been for the benefit of those three

lots, in that without that development two, at least, of them would have no access. Mr. Lateef further submits that if the Commissioner is right, development of land would to a large extent be inhibited, and he suggests that any development of land would be followed by tax being levied upon each of the undeveloped plots as they were sold. I must confess that I should be surprised if all developers of land in and around Suva since 1974, the year in which the Act was passed, had paid land sales tax on each lot as it was sold.

Again, the meaning of 'speculation' and 'speculative' is 'engaging in a commercial operation that involves risk of loss' (see the Concise Oxford Dictionary), although a far more common everyday meaning of a speculative dealing, particularly as it involves land, is the purchase of a piece of land, held undeveloped, in the hope that a profit and the sale of that same land when the profit eventuates. There is certainly an element of risk, for values may go down or the buyer might have to sell before he is ready. I think it can scarcely be said that Morris Hedstrom Limited engaged in this type of speculation, since it held the land for almost 30 years and perhaps more. Nevertheless there is an element of speculation in its subdivision, because for some reason it might have had to sell on a falling market.

The statute gives a definition of 'development' which means inter alia 'subdivision of any land by dividing the same and the laying out of plots, roads, yards, drains, sewers, parks, gardens, lawns, orchards or the like'. It will be noted that the word 'land' is used, and although the same word where used in different parts of a statute does not necessarily bear the same meaning, the use of the word 'land' in subparagraph (b) does invite comparison with the use of the same word in the definition of 'subdivision'. So subparagraph (b) may be redefined as land on which there has been substantial development by subdivision. That clearly is not the land comprised in each section: it is the whole block.

Mr. Lateef finally looks at the decision of this Court in Pacific Lumber Co. Ltd. No. 2 of 1980, and he submits that this case was wrongly decided. Mr. Scott defended it stoutly. When there is a subdivision into only two lots, it seems possible to look at the matter as I looked at it in the Pacific Lumber case. When, however, there is a subdivision into more than two lots, the fallacy of the meaning attached to the word 'land' in that case becomes apparent, and I am constrained to hold that the Pacific Lumber case was wrongly decided. This finding absolves me from considering what is meant by 'substantial development' although I do not think that a comparatively large building although old, plus a subdivision costing \$13,750 can be anything but 'substantial'. The appeal will be allowed and the Commissioner will pay the appellant's costs.

Court of Review

8th December, 1983.

Solicitors: Mr F. Lateef for Appellant  
Messrs. M.J. Scott & S.M. Shah for Respondent.