

IN THE SUPREME COURT OF FIJI

Appellate Jurisdiction

Civil Appeal No. 18 of 1983

Between:

THE COMMISSIONER OF INLAND REVENUE

Appellant

and

MORRIS HEDSTROM LIMITED

Respondent

Messrs M. J. Scott & S.M. Shah for the Appellant

Mr. F.S. Lateef for the Respondent

JUDGEMENT

In December 1963 the respondent purchased the land on C.T. 7489 from the Colonial Sugar Refining Company Limited. Subsequently the number of the Certificate of Title was changed to 11364. On the land comprised in the Certificate of Title was a substantial dwelling house used as a residence by the respondent's manager.

In 1980 the respondent decided to subdivide the land into 4 separate plots. The plots were laid out, the land cleared of trees and shrubs and a reinforced concrete road 120 metres in length constructed from the existing road frontage to give access to the new plots, numbered 1, 2 and 3. The remaining plot number 4 comprised the land on which the manager's house was situated.

Plots 1, 2 and 3 were levelled and a retaining wall constructed on the curve of plot 4 to prevent erosion. Drains were dug on the eastern boundary of lots 1, 2 and 3 and a lamp post was re-located. The total cost of the subdivision and its attendant works was \$11,756.60.

The respondent retained plot 4 and sold the remaining plots for \$15,000 each. The appellant applied section 3 of the Land Sales Act, Cap. 137 and charged it against the respondent's profit on the sale of the 3 plots, having first allowed \$3,075.10 as a deduction in respect of the developments carried out on each plot.

This information has been derived from the agreed facts submitted to the Court a quo.

The relevant portion of section 5 of the Act which provides for exemptions from the sales tax imposed by section 3 reads:

“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)
- (b) on land on which there has been substantial development by the seller or any predecessor in title;”

The definition of “development” in section 2 of the Act includes:

“(c) Subdivisions of any land by dividing the same and the laying out of plots, roads, yards, drains, sewers, parks, gardens, lawns, orchards or the like.”

Mr Scott for the appellant cited a dictum of Cohen L.J. in Littman v. Barron (1951) Ch. at 993. This reads:

“I agree that the principle that in case of ambiguity a taxing statute should be construed in favour of the taxpayer should not apply to a provision giving a taxpayer relief in certain cases from a section clearly imposing liability.”

I do not dissent from that view which only has application where an ambiguity exists. Mr Scott argued that as the road and retaining wall were over the land which the seller retained, it cannot be said that the development arose on the land which was sold by the respondent.

The definition of “development” quoted above includes subdivision and the laying out of plots etc. A mere subdivision of itself would not constitute development. But, in this case the subdivision was accompanied by other works which I have mentioned and which included a road and drains. The total cost amounted to \$11,756.60 which compared to the total price of \$45,000 received for the plots sold must be regarded as substantial in money terms. I find it a curious inconsistency that on the one hand the appellant should have allowed this sum to be deducted from the profit realised by the respondent and on the other maintained that the expenditure must be disregarded entirely as the development which it represented did not arise on the land sold.

I find no ambiguity present which ought to be construed against the taxpayer. The land sold was subdivided and roads etc. were laid out to provide access to the plots created. This in my view constituted a substantial development within the meaning of section 5. A subdivision of land is an abstraction. It does not have any material effect on the land concerned. It is only when the subdivision is accompanied by the laying of plots etc. that exemption from tax arises. That work can be carried out anywhere on the subdivided land as part of the development. The fact that the access road in this case was

built over plot 4 to give access to plots 1, 2 and 3 is part and parcel of the subdivision scheme. No land sales tax may be charged on the profits realised by the transactions.

I dismiss the appeal with costs to the respondent.

(F.X. Rooney)
JUDGE

Suva,

12th April, 1985