



HIGH COURT OF AUSTRALIA

8 March 2012

ALH GROUP PROPERTY HOLDINGS PTY LIMITED v CHIEF COMMISSIONER OF STATE REVENUE

[2012] HCA 6

Today the High Court allowed an appeal from the Court of Appeal of the Supreme Court of New South Wales, which had held that ALH Group Property Holdings Pty Limited ("ALH") was not entitled to a refund of stamp duty under s 50(2) of the *Duties Act* 1997 (NSW) ("the Act"). ALH sought the refund in respect of a cancelled agreement for the purchase of a property at Frenchs Forest, New South Wales.

Oakland Glen Pty Limited ("Oakland") was the registered owner of the property at Frenchs Forest. In 2003, a company, later known as Trust Company Fiduciary Services Limited ("Trust"), contracted to purchase the property from Oakland ("the 2003 contract"). In June 2008, Oakland, Trust and ALH executed a deed ("the Deed of Consent") under which, in essence: Trust assigned its rights as purchaser under the 2003 contract to ALH; Oakland consented to the assignment; ALH promised Oakland that it would perform Trust's obligations under the 2003 contract; and Oakland released and discharged Trust from liability under the 2003 contract. In October 2008, the parties entered into a further deed ("the Deed of Termination") which, as rectified, cancelled the Deed of Consent. Oakland and ALH executed a new contract for the sale of the property. The primary issue arising from these transactions was whether the Deed of Termination cancelled an "agreement for the sale or transfer of dutiable property", within the meaning of s 50(1) of the Act.

Under s 50(1) of the Act, agreements for the sale or transfer of dutiable property that are cancelled are not liable to duty, provided that the Chief Commissioner is satisfied of certain matters. Under s 50(2), if an application for refund is made within certain time limits, the Chief Commissioner must reassess and refund duty that has been paid on an agreement which is not liable to duty. Upon application by ALH for a refund, the Chief Commissioner assessed the Deed of Consent as being liable to duty.

ALH objected to the Chief Commissioner's decision, and when its objection was disallowed, appealed to the Supreme Court of New South Wales. A judge of the Supreme Court ordered the Chief Commissioner to refund the duty paid on the Deed of Consent. The Deed of Consent was held to have extinguished the 2003 contract and to have constituted a new agreement, in identical terms to the 2003 contract, between ALH and Oakland. The Court of Appeal allowed the Chief Commissioner's subsequent appeal. It held that no new agreement arose between Oakland and ALH under the Deed of Consent, as the 2003 contract was not expressly rescinded, Oakland did not undertake any new or express obligation to transfer the property to ALH on payment of the balance of the purchase price, and the 2003 contract remained the only source of Oakland's obligation to transfer the property to ALH. By special leave, ALH appealed to the High Court of Australia.

The High Court allowed the appeal, with the result that the Chief Commissioner must refund the duty paid by ALH on the Deed of Consent. The High Court held that, properly construed, the Deed of Consent discharged the 2003 contract and substituted a new contract between Oakland and ALH. The High Court rejected a submission that Oakland's obligations as vendor continued to have their source in the 2003 contract, holding that it was necessarily to be implied from the Deed of Consent that Oakland would transfer the property to ALH on payment of the balance of the purchase price. By cancelling the Deed of Consent, the Deed of Termination therefore cancelled an "agreement for the sale or transfer of dutiable property" within the meaning of s 50(1) of the Act.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*