



HIGH COURT OF AUSTRALIA

10 December 2014

COMMISSIONER OF STATE REVENUE v LEND LEASE DEVELOPMENT PTY LTD
COMMISSIONER OF STATE REVENUE v LEND LEASE IMT 2 (HP) PTY LTD
COMMISSIONER OF STATE REVENUE v LEND LEASE REAL ESTATE INVESTMENTS
LIMITED

[2014] HCA 51

Today the High Court unanimously allowed appeals from a decision of the Court of Appeal of the Supreme Court of Victoria and held that the Commissioner of State Revenue was entitled to assess duty to be charged on transfers of land in the Docklands area of Melbourne by reference not only to payments made under specified land sale contracts but also to payments made under a "development agreement" which, together with the land sale contracts, formed a single, integrated and indivisible transaction for the sale and development of the Docklands area.

In 2001, the Victorian Urban Development Authority ("VicUrban") and one of the Lend Lease respondents (together "Lend Lease") made an agreement for the development of the Docklands area. It was agreed that Lend Lease would buy parcels of land in Docklands from VicUrban and that Lend Lease would design, construct and then sell large residential and commercial buildings on that land. It was also agreed that each of VicUrban and Lend Lease would build various forms of infrastructure on and around the land, including a road extension, bridge and park. Each transfer of land was to be made pursuant to a land sale contract. But the development agreement also required Lend Lease to pay to VicUrban not only the amounts payable under each land sale contract but also certain additional amounts, including payments for infrastructure and for remediation of areas on and around the land and a share of gross proceeds received by Lend Lease on sale.

Under the *Duties Act* 2000 (Vic), the transfers of land were subject to duty payable by Lend Lease. The Commissioner assessed duty according to the consideration for each transfer of land, which it determined to be the total of the sums payable by Lend Lease to VicUrban under the development agreement. Lend Lease objected to the assessments, claiming that the consideration for each transfer was the payment of the amount specified only in the land sale contract. After the Commissioner disallowed the objections, Lend Lease requested that each be treated as an appeal to the Supreme Court of Victoria. Those appeals were dismissed by a single judge of the Supreme Court but were allowed on further appeals to the Court of Appeal. By special leave, the Commissioner appealed to the High Court.

The High Court unanimously allowed the appeals. The Court held that the transaction recorded in the development agreement made between VicUrban and Lend Lease was a single, integrated and indivisible transaction. The Court held that the consideration for the transfer of land was the performance by Lend Lease of the several promises of payments under the development agreement, and that the Commissioner was right to include those amounts in the assessments.

- *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.*