



HIGH COURT OF AUSTRALIA

5 December 2018

COMMISSIONER OF STATE REVENUE v PLACER DOME INC (NOW AN AMALGAMATED
ENTITY NAMED BARRICK GOLD CORPORATION)

[2018] HCA 59

Today the High Court unanimously allowed an appeal from the Court of Appeal of the Supreme Court of Western Australia. The High Court upheld an assessment by the Commissioner of State Revenue that Placer Dome Inc ("Placer") was a "listed land-holder corporation" within the meaning of Div 3b of Pt IIIBA of the *Stamp Act* 1921 (WA), and that Barrick Gold Corporation ("Barrick") was liable to pay ad valorem duty in respect of its acquisition of Placer.

Part IIIBA of the *Stamp Act* ensures that the buyer of an entity will be subject to ad valorem duty if the entity's underlying value is principally derived from land. Where an acquired entity is a "listed land-holder corporation" – relevantly, an entity entitled, at the time of acquisition, to land in Western Australia with an unencumbered value of not less than A\$1 million and where 60 per cent or more of the value of all of its property is land – duty will be payable on the acquisition. The duty is calculated by reference to the value of the land and chattels in Western Australia to which the entity was entitled.

Placer was a substantial gold mining enterprise with land and mining tenements around the world, including in Western Australia. Barrick's acquisition of Placer was the largest transaction of its kind in the gold industry. The Commissioner issued an assessment to Barrick under the *Stamp Act* which relevantly stated that Placer was a "listed land-holder corporation" and that ad valorem duty was payable in respect of Barrick's acquisition of Placer. Barrick objected and the Commissioner disallowed the objection. Barrick applied for review by the State Administrative Tribunal. A key issue was whether the property of Placer, prior to its acquisition by Barrick, included legal goodwill with a value of US\$6.506 billion, which was the amount allocated to goodwill in Barrick's financial statements. If that amount reflected the value of Placer's legal goodwill, then the value of Placer's land was less than the 60 per cent threshold.

The Tribunal dismissed Barrick's review application. The Tribunal relevantly concluded that Placer's assets did not include any material legal goodwill. Barrick appealed to the Court of Appeal. The Court of Appeal allowed Barrick's appeal on the bases that, among other things, the Tribunal had failed to distinguish between the value of Placer's land and the value of its business as a going concern; and Placer had substantial legal goodwill. By grant of special leave, the Commissioner appealed to the High Court.

The High Court held that Barrick failed to establish that the value of all of Placer's land, as a percentage of the value of all of Placer's property, did not meet or exceed the 60 per cent threshold. Placer was a land rich company which had no material property comprising legal goodwill. Goodwill for legal purposes, as distinct from accounting purposes, was held to comprise those sources which generated or added value (or earnings) to a business by attracting custom. Custom remained central to the concept of legal goodwill. Barrick's contention that goodwill for legal purposes was or should be treated as synonymous with what it described as the "added value" concept of goodwill, or "going concern" value, was rejected.

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.