



HIGH COURT OF AUSTRALIA

18 March 2020

COMMISSIONER OF STATE REVENUE v ROJODA PTY LTD [2020] HCA 7

Today the High Court, by majority, allowed an appeal from the Court of Appeal of the Supreme Court of Western Australia. The majority held that, in relation to two partnerships, a partner held titles to partnership property on trust for their fellow partners, each of whom had a non-specific interest in relation to all of the partnership property. The majority also held that after the partnerships had dissolved, declarations that title to particular partnership property was held on trust in the relevant proportions for each former partner were dutiable transactions within the meaning of s 11(1) of the *Duties Act 2008* (WA).

The Scolaro family conducted a business of property ownership in Western Australia through two partnerships. One partnership consisted of Mr and Mrs Scolaro and the other consisted of Mr and Mrs Scolaro and their three children. Freehold titles to land, which were part of the partnership property, were held by Mr and Mrs Scolaro as joint tenants. Upon Mr Scolaro's death in 2011, the partnerships dissolved but were not wound up and Mrs Scolaro, as the surviving joint tenant, became registered as proprietor of the freehold titles. In 2013, Mrs Scolaro, her two surviving children, and the successors in title to her deceased son entered into two deeds concerning the freehold titles ("the 2013 Deeds"). The 2013 Deeds declared that Mr and Mrs Scolaro had held the freehold titles on trust for the partnerships, and "confirm[ed]" that Mrs Scolaro, as the sole surviving trustee, continued to hold the freehold titles on trust for the surviving partners, and the legatees of Mr Scolaro and her deceased son, in their respective partnership shares. The 2013 Deeds appointed the respondent, Rojoda Pty Ltd ("Rojoda"), to replace Mrs Scolaro as trustee of the freehold titles.

Section 11(1)(c) of the *Duties Act* provides that a declaration of trust over dutiable property, which includes land in Western Australia, is a "dutiable transaction". The Commissioner imposed duty upon the declarations of trust in each of the 2013 Deeds. The State Administrative Tribunal dismissed an application for review by Rojoda on the basis that the 2013 Deeds declared bare trusts over the freehold titles and thus altered the nature of the partners' interests with respect to the partnership property. The Court of Appeal allowed Rojoda's appeal and held that upon dissolution of the partnerships, since liabilities could be discharged from current assets, equity would treat the nature of the partners' equitable rights as fixed interests in the partnership freehold titles, with the consequence that no duty was payable .

The High Court, by majority, held that the declarations of trust were dutiable transactions. Mr and Mrs Scolaro held the freehold titles on trust for their fellow partners during the life of the partnerships and, in relation to Mrs Scolaro, upon their dissolution; prior to the 2013 Deeds, each of the surviving partners and the successors in title to the deceased partners held a non-specific interest in relation to all of the partnership property that was not an interest in, or in relation to, any specific asset, but a right to a share of the net proceeds from the sale of each asset at the completion of the winding up. As the declarations of trust under the 2013 Deeds created new fixed interests in the freehold titles that were different from the prior non-specific interests of the partners, the declarations were dutiable transactions within the meaning of the *Duties Act*. The majority also rejected the respondent's arguments that the 2013 Deeds were agreements to

convert the partnership interests into specific equitable interests or that they involved agreements to transfer partnership property to former partners or their successors within s 78 of the *Duties Act*. The majority held that the 2013 Deeds extinguished the existing rights held by the former partners and created new equitable rights annexed to the freehold titles.

- *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.*