

## Commissioner of State Revenue v Rojoda Pty Ltd [2020] HCA 7

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### Facts

- The Scolaro family conducted a property business 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 - Rosana, John and David. John died in 2012.
- The freehold titles to land, part of the partnership property, were held by the Scolaros as joint tenants.
- Mr Scolaro died in 2011. The partnerships dissolved but were not wound up. Mrs Scolaro, as the surviving joint tenant, became registered 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, the legacies 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 2008* (WA) ("**the Act**") provides that a declaration of trust over dutiable property, which includes land in Western Australia, is a "*dutiable transaction*".
- The Commissioner imposed stamp duty upon the declarations of trust in each of the 2013 Deeds.
- The WA State Administrative Tribunal dismissed an application for review by Rojoda.
- The WA 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 Commissioner appealed to the High Court

### Issues

- Were the declarations of trust dutiable transactions?

### Held

- The High Court majority (Bell, Keane, Nettle and Edelman JJ), held that the declarations of trust were "*dutiable transactions*" within the meaning of the Act.
- Mr and Mrs Scolaro had held the freehold titles on trust for the other 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 Act.

## Quotes

*"...a declaration of trust does not transfer rights. Whether or not there is any looseness in the use of "distribution" in s 139(2)(b) of the Duties Act, s 78 refers to a "transfer" rather than to a "distribution". "Transfer" is not used in a sense that could capture the creation of new equitable rights. The definition of "transfer" in s 9 includes an "assignment" or "exchange". It does not include a "declaration of trust", which is separately defined in the same section. Further, s 11(1) recognises the distinction between a transfer and the creation of new rights by providing separately for, on the one hand, a "transfer of dutiable property" and an "agreement for the transfer of dutiable property" (ss 11(1)(a) and 11(1)(b)), and, on the other hand, "a declaration of trust over dutiable property" (s 11(1)(c)). Like ss 11(1)(a) and 11(1)(b), s 78 is concerned with true transfers of rights or agreements for such transfers."*

(Keane, Nettle, Bell and Edelman JJ at paragraph [65])

## Full Text

The full text is available here: <http://eresources.hcourt.gov.au/showCase/2020/HCA/7>

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