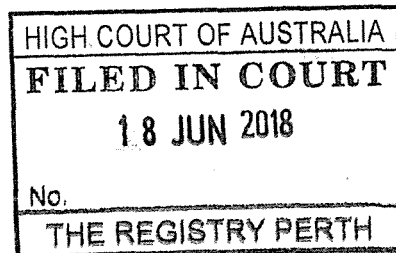


BETWEEN:



and

Commissioner of State Revenue
Appellant

Respondent

**Placer Dome Inc (now an amalgamated entity
named Barrick Gold Corporation)**

APPELLANT'S OUTLINE OF ORAL ARGUMENT

Part I: Publication

1. The Appellant certifies this outline is in a form suitable for publication on the internet.

Part II: Outline of Oral Argument

2. Placer was a substantial Canadian gold mining company with land holdings, or more accurately mining and exploration tenements, around the world. It produced gold, an undifferentiated commodity in respect of which customers were indifferent as to its source (AFM 45 line 23; AFM 55 line 40). There was nothing unique about Placer's workforce, its gold mines could be operated by any large mining company (RFM 105-106; AFM 67.10-68.2). The assembled workforce at the operating mines were valued at \$35 million (AFM 111 line 2, the individual amounts are at AFM 93-97). There was no evidence that Placer achieved above average industry custom or returns.
3. A central rationale for Barrick's takeover was its pipeline of mining projects, and the proximity of its mines to Barrick's (ASFM 53; AFM 20). Placer's executive management was held in lower regard than Barrick's by institutional investors and Barrick considered it could better manage Placer's assets (AFM 139-140; AFM 115). Following, the takeover, Barrick closed Placer's offices and retrenched most of its corporate staff (ASFM 33). Many of Placer's mining technologies were discontinued by Barrick and of those that were continued had no significant value (ASFM 47-49).
4. Where a business has no goodwill of material value, the top down approach to valuing land is appropriate: *EIE Ocean BV v Commissioner of Stamp Duties* (1998) 1 Qd R 36. The statutory text and context of Part IIIIBA of the *Stamp Act 1921* (WA) requires that

the land be valued as part of a going concern, not as if sold separately from the business: *FCT v Resource Capital Fund III LP* (2014) 225 FCR 290.

5. The attraction of custom is central to the conception of goodwill as property: *FCT v Murry* (1998) 193 CLR 605. Legal goodwill has 3 aspects: existence as property; sources and value: *Murry* at [30]. Where the source of goodwill is an identifiable asset its value may be small and if the business produces an undifferentiated product it will only have value if the business has above average industry custom or earnings: *Murry* at [51], [61].
6. The Tribunal concluded, we submit correctly, that there was no evidence that Placer had goodwill of any material value (CAB 96 [377], [379]). It follows we submit that the Tribunal was also correct in accepting the top-down approach was appropriate (CAB 74 [265]).
7. The Court of Appeal held that the Tribunal had erred in failing to distinguish between the value of Placer's land and the value of its business as a going concern and endorsed the restoration methodology as achieving this distinction (CAB 146 [65], [66], [68]). It held there was ample evidence to support Placer having a substantial amount of goodwill (CAB 155 [95]). As a consequence, the Court concluded that the top down approach was inappropriate (CAB 153 [91]).
8. The Court of Appeal erred in concluding that: (1) there was ample that Placer had goodwill of material value and (2) that Placer's land should be valued separately from its business as a going concern.¹ In so doing it misapplied *Murry*, in particular by failing to appreciate the distinction between the 3 aspects of goodwill: its existence as property, its sources and its value.²
9. For a gold producer such as Placer, the only attractive force that brought in custom, that is the source of its goodwill, was the gold produced from its land. If the land is sold, then the value of Placer's goodwill is *pro tanto* reduced as it will correspondingly suffer a reduction in its ability to attract any custom.
10. In a business such as Placer's that sells goods that are indistinguishable from the goods of others – the value of goodwill, as opposed to its existence, will be governed by the extent to which the earnings of a business exceed the norm and there was no

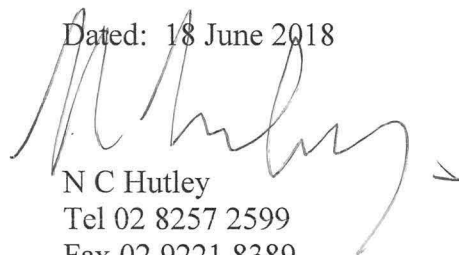
¹ Appellant's Submission (AS) [33-44]

² AS [19]

evidence nor was it contended that Placer was able to achieve above average industry custom or earnings.³ The evidence such as it was, was to the contrary.

11. The matters relied upon by the Court of Appeal at CAB 138 [42]-[45] as supporting the conclusion Placer had material goodwill do not withstand scrutiny: most of its office personnel were retrenched and the assembled workforce at the operating mines were valued at only \$35 million; the value innovative mining techniques was *de minimis* and is in any event excluded under s.76ATI(4)(f); there was no evidence that Placer's management structures and systems had any material value, indeed the evidence suggests otherwise as much of its management staff were retrenched and its offices closed; the synergies were merely annual cost savings that could only be achieved after takeover and thus were not something that attracted custom or added value to Placer's business.⁴ As to the second error: valuing the land as if it was sold separately from the business is contrary to the statutory text and context.
12. The Respondent's reliance on the DCF calculations of its experts as supporting a goodwill value of \$6.5 billion is misplaced. A DCF values a business according to all cashflows it is expected to produce, it therefore necessarily includes any goodwill the business may have.⁵ Moreover, unlike the proposition outlined in *Murry* at [49], here the \$6.5 billion is not the difference between the DCF value and the value of identifiable assets it's the difference between the DCF and the total property.
13. The Respondents submission that the going concern value relates to possible future acquisition of valuable properties is without substance; it is contradicted by the expert evidence and neither the Tribunal nor the Court of Appeal referred to the possibility of identifying future properties as having any relevance to the question of goodwill.

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³ AS [20]

⁴ AS [35]; Appellant's Reply (AR) [8]

⁵ AR [5]-[6]