



HIGH COURT OF AUSTRALIA

Public Information Officer

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CPT CUSTODIAN PTY LTD v COMMISSIONER OF STATE REVENUE (two matters)
COMMISSIONER OF STATE REVENUE v KARINGAL 2 HOLDINGS PTY LTD (four matters)

The holders of either some or all units in unit trusts are not the owners of land held by a trust for the purposes of land tax in Victoria, the High Court of Australia held today.

In 1999, the Commissioner issued amended assessments claiming additional land tax in relation to parcels of land occupied by four shopping centres in Melbourne and one in Mildura. The land holders – CPT, Karingal and corporations related to Karingal – are trustees of various unit trusts, with related trusts holding units in other trusts. Under Victoria’s *Land Tax Act*, each year’s tax is based on the total unimproved value of all land of which the taxpayer is “the owner” at midnight on 31 December of the preceding year. Under section 3 of the Act, the definition of owner includes every person entitled to any land for any estate of freehold in possession. The Commissioner disallowed objections by CPT and Karingal to the tax assessments.

In the Victorian Supreme Court, Justice Geoffrey Nettle upheld their objections. In the CPT matters, he found that the terms of the trusts did not provide that the unit holders were entitled to receive rents and profits generated by the land so were not owners under the Act. In the Karingal matters, Justice Nettle held that the trust deeds conferred on each unit holder an equitable interest or estate in each of the lands owned by the trustee, but that they were not entitled to an estate of freehold in possession, so were also not “owners”.

The Commissioner successfully appealed to the Court of Appeal on the CPT matters but lost an appeal on the Karingal matters. The Court held that a holder of all the units in a unit trust was entitled to freehold estate in possession in land which is a trust asset, so was an “owner”, and that this applied both to the sole unit holder in a land-holding trust and to the sole unit holder in a trust which is itself the sole unit holder in a land-holding trust. The Court of Appeal upheld Justice Nettle’s holding that a unit holder with less than 100 per cent of issued units was not the owner of an estate of freehold in possession and had no more than their entitlements under the trust deed, but that the holder of all issued units was an owner. CPT appealed to the High Court, arguing that holding 100 per cent of units did not make them an owner under the Act. The Commissioner appealed in relation to the Karingal matters, arguing that the Court of Appeal erred in finding that the holder of only some units in a unit trust was not an owner of land under the Act. Karingal cross-appealed on two matters and on the other two filed notices of contention stating that the Court of Appeal decision should be affirmed but for different reasons.

The High Court upheld the Court of Appeal’s decision that the holder of only some units is not an owner, but overturned its decision that the holder of 100 per cent of issued units is an owner. The Court allowed the CPT appeals, dismissed the Karingal appeals and allowed the two cross-appeals. The tax assessments were set aside and the issue of tax to be paid on the land occupied by the shopping centres was remitted to the Commissioner for reconsideration and determination according to law.

- *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.*