A Painful Case[1] in Mosman – when unexpected stamp duty is payable

James Joyce wrote a story in his book *Dubliners* which came to mind when I read the case of Bloore v Chief Commissioner of State Revenue [2020] NSWSC 502.This was indeed a painful case for the executors and the beneficiaries.

Dorothy Mary Mack died and appointed her three children Virginia, Philip and Susan as her executors and her residuary beneficiaries. Her estate was valued at around $9m and the executors transferred one property to Virginia in which she had been living for 27 years, 2 Ida Avenue. That property was valued at 34.8% of the estate per the table below so it was almost exactly her share of the estate.

2 Ida Avenue, Mosman	$3,108,000.00
1/1A Hampden Street, Mosman	$2,625,000.00
2/1A Hampden Street, Mosman	$1,650,000.00
3/1A Hampden Street, Mosman	$1,450,000.00
Cash at bank	$89,454.32
TOTAL	**$8,922,454.32**

The Will also provided:

"I wish it to be known that if at the date of my death I have any interest in the properties known as 8A & 8B [2/1A and 3/1A Hampden Road] Warringah Road, Mosman, New South Wales, then it is my desire that if possible that those properties and the property known as 1A Hampden Road, Mosman, New South Wales, are to be all included in a joint development to be carried out by my Executors for the benefit of the residuary beneficiaries of my Estate."

[1] A sadder story about a heartbroken woman who appears to have jumped in front of a train near where the write of this article went to school, Sydney Parade in Dublin.

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So far so good. You can see why the executors transferred Ida Avenue to Virginia but why they took 15 years to do it is less clear. The valuation of the properties over that period obviously varied but the judgement of Stevenson J did not state that any evidence of this was put to the Court.

There would be stamp duty payable on the transfer of Ida Avenue property but this was a dispute as to how much that should be. The duty would be $50 if it was found that the transfer was an appropriation of property “in or towards satisfaction” of Virginia’s interest in the estate.

Revenue argued that the concessional duty was not available as the property was in excess of her one third share. If the property was valued at even $1 more than her one third share, the full duty of $158,050 was payable. Close, but no cigar!

I will take real estate agents more seriously in future! Note how public these addresses now are! Would you rather fly under the radar of your neighbours and the taxman?

The Court decided to provide helpful guidance on what could have, in other circumstances, reduced the duty payable. It considered section 63(2) of the Duties Act 1997 (NSW) and whether the transfer was “made by a legal personal representative of a deceased person to a beneficiary under an agreement (whether or not in writing)”. If such an agreement was found to have existed, the duty would have been $99,450.

Like all good graphic novels, there was an origin story: in this case, Tay v Chief Commissioner of State Revenue [2017] NSWSC 338. In *Tay*, the commissioner lost because the Court found that a well drafted Deed of Family Arrangement brought some otherwise dutiable transfers within section 63. The commissioner must have been dirty about the lost duty so when the case of *Bloore* arrived, they sought revenge.

The *Bloore* case may seem harsh but the law on this has been clear in our opinion. If there was a piece of paper documenting an agreement, $58,600 could have been saved. If the parties had valued the properties at other times during the 15 year administration, the duty may have only been $50 and $158,000 may have been saved. And the legal fees.

The moral of the story here is that if you do not have the correct paperwork and consider the legislation carefully, your neighbours may know your business, tax may be payable and the commissioner will try to collect.

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