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1930.

W. & A.
MCARTHUR
LTD.

v.

FEDERAL
COMMISSIONER OF
TAXATION.

sum of £47,435 10s.; (2) The sum of £47,435 10s. should be ratably or proportionately deducted from the excess profits duty assessed in respect of the accounting periods which ended on 31st January 1916, 31st January 1917, 31st January 1918 and 31st January 1919 respectively; (3) Yes: all of them. Cases remitted to a Justice of this Court with the answers aforesaid. Costs of cases reserved for the Justice who disposes of appeal.

Solicitors for the appellant, *Blake & Riggall*, for *Allen, Allen & Hemsley*.

Solicitor for the respondent, *W. H. Sharwood*, Crown Solicitor for the Commonwealth.

H. D. W.

APP at p 26. (1975) 1. 222. 491

[HIGH COURT OF AUSTRALIA.]

LESKE APPELLANT;
PLAINTIFF,

AND

S.A. REAL ESTATE INVESTMENT COMPANY }
LIMITED } RESPONDENT.
DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF
SOUTH AUSTRALIA.

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ADELAIDE,

Sept. 23.

MELBOURNE,

Oct. 27.

Rich, Starke
and Dixon JJ.

Vendor and Purchaser—Contract of sale—Construction of statute—"Person"—Corporation—Name of person authorized to receive purchase-money—Authority to pay at the office of a limited company—Land Agents Acts 1925 and 1927 (S.A.) (Nos. 1723 and 1807), sec. 25B (1.)—Acts Interpretation Act 1915 (S.A.) (No. 1215), sec. 4.

By contracts in writing the appellant agreed to purchase subdivided land from the respondent company, a body corporate. The contracts provided that all payments falling due thereunder should be paid "at the office of S A. Real Estate Investment Co. Ltd., agents, King William Street, Adelaide."

Sec. 25B (1.) (d) of the *Land Agents Acts* 1925 and 1927 (S.A.) provides that any contract for sale of subdivided land shall be voidable at the option of the purchaser at any time within six months from the making thereof unless the contract is in writing and contains the name, address, and description of some person to whom all moneys falling due under the contract may be paid.

Held, that the contracts complied with this requirement and were not voidable under the section.

Decision of the Supreme Court of South Australia (Full Court): *S.A. Real Estate Investment Co. Ltd. v. Leske*, (1929) S.A.S.R. 288, affirmed.

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APPEAL from the Supreme Court of South Australia.

By contracts in writing dated respectively 8th and 14th March 1928, Reinhold Hermann Leske agreed to purchase certain subdivided land from the S.A. Real Estate Investment Co. Ltd. The conditions of sale in each case provided (*inter alia*) that “all payments falling due under the . . . contract . . . shall be paid at the office of S.A. Real Estate Investment Co. Ltd., agents, King William Street, Adelaide.” In an action brought by him in the Local Court at Adelaide the purchaser sought to avoid the contracts, the plaintiff alleging that they did not comply with sec. 25B (1.) (d) of the *Land Agents Acts* 1925 and 1927 (S.A.) as they did not contain “the name, address, and description of some person to whom all moneys falling due under the contract” were to be paid, and within six months from the making thereof the plaintiff had exercised his option and avoided the said contracts.

In the Local Court of Adelaide it was held that the plaintiff had successfully avoided the contracts. The Full Court of South Australia reversed this decision and held that the contracts were binding: *S.A. Real Estate Investment Co. Ltd. v. Leske* (1).

From the decision of the Full Court the plaintiff now appealed to the High Court.

Cleland K.C. (with him *T. E. Cleland*), for the appellant. “Person” in sec. 25B (1.) (d) of the *Land Agents Acts* means a natural person. A company can receive payment only by an agent, and it may be necessary to consult the articles to ascertain to whom payments may be made. The section provides that there must be an authority to pay to some definite individual. There is a sufficient “contrary intention” to take the case out of the definition of “person” in

(1) (192 9) S.A.S.R. 288.

H. C. OF A. 1930. sec. 4 of the *Acts Interpretation Act* 1915 (S.A.) (*Pharmaceutical Society v. London and Provincial Supply Association* (1)). Even if this argument is not sound, these contracts do not show to whom payment is to be made.

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Thomson K.C. (with him *L. T. Gun*), for the respondent. Under the *Land Agents Acts* "person" includes body corporate. There is nothing within the Acts to point to a "contrary intention." On the contrary, the Acts indicate that corporations can act as land agents, and obviously as registered proprietors. These contracts do contain sufficient particulars of a person to whom payments may be made. The particulars need not be in any special context or in any special form. It is sufficient to find the name, address, and description in the contract (*Hirsch v. Zinc Corporation Ltd.* (2); *Barrett v. Deere* (3)).

Cleland K.C., in reply.

Cur. adv. vult.

Oct. 27.

The following written judgments were delivered :—

RICH AND DIXON JJ. The appellant is a purchaser of land in subdivision who seeks to invalidate the contracts under which he bought. His appeal to this Court is confined to one ground. Sec. 25B (1.) (d) of the *Land Agents Acts* 1925 and 1927 provides that any contract for any subdivided land shall be voidable at the option of the purchaser at any time within six months unless the contract is in writing and contains "the name, address, and description of some person to whom all moneys falling due under the contract may be paid." The respondent upon this appeal was vendor in the sales which the appellant impeaches, and the contracts of sale, which were in writing, provided for the payment of purchase-money to the appellant by a condition expressed in this language: "all payments falling due under the subjoined contract and more particularly referred to in the preceding paragraph shall be paid at the office of S.A. Real Estate Investment Co. Ltd., agents, King

(1) (1880) 5 App. Cas. 857, at pp. 868-869.

(2) (1917) 24 C.L.R. 34.

(3) (1828) Mood. & M. 200; 173 E.R. 1131.

William Street, Adelaide." This gave the name, address, and description of a company, but it is said that it does not satisfy the requirements of the statute because (1) a company is not a person within its meaning and (2) it does not explicitly state that the money may be paid to the Company but merely that it may be paid at its office. The first point appears to us almost to answer itself. The time has passed for supposing that the Legislature would use the word "person" only to signify a natural person in dealing with a class of business in which the utility of the proprietary company has long been made manifest. Indeed, it may be said that in modern business, as elsewhere, few persons remain natural. The presumption established by the provision standing in sec. 4 of the *Acts Interpretation Act* 1915 that in a statute "person" includes a body corporate conforms with general usage. The appellant's second contention rests upon the exact terms used in the condition. He insists simply upon the strict necessity of verbal accuracy. The contract says that the payment shall be at the office of the Company, and not to the Company. Doubtless a precisian may refine upon the distinction which exists between the literal meanings of the two expressions. It is upon this distinction that the appeal really depends. When the purchaser attends cash in hand at the office of the vendor obedient to the literal meaning of the clause, it is contended that in the absence of further or more explicit instruction he might not know or at least might doubt to whom he was to make the payment. At the office of the vendor, so the appellant seems to apprehend, he might encounter other persons natural or artificial and begin to feel doubts as to the identity of his creditor, doubts from which the Legislature must have intended to relieve or protect him. The question, however, is not how far a careful purchaser, wilfully intent upon fulfilling his contract *au pied de la lettre* and not otherwise, may be able to misunderstand the true meaning of the provision. Meanings often spring to the mind of an impartial reader, however casual, when literal words allow an escape to the intentionally obtuse. The question is whether, fairly read, the clause conveys without ambiguity that the purchase-money may be paid to the S.A. Real Estate Investment Co. and paid at its office. If it does, the clause "contains" the name

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Starke J.

of the person to whom the moneys may be paid. Surely there can be no doubt that this is the meaning of the clause, and that this meaning is evident to the ordinary man. We see no reason for doubting the correctness of the judgment of the Supreme Court.

The appeal will be dismissed with costs.

STARKE J. I agree that the appeal should be dismissed.

The *Acts Interpretation Act* 1915 of South Australia, sec. 4, gives statutory effect to the general rule of construction that in a public statute the word "person" or "party" includes a body corporate unless the contrary intention appears. The contrary intention does not appear in sec. 10 of the *Land Agents Acts* 1925 and 1927, and, indeed, in many sections of the Acts it is clear that the word person does include a body corporate (see secs. 2, 3 (1), 3 (3), 5, 11 (3), 25B (I.) (b), 30, 30A). Consequently, the name, address, and description of a body corporate may be specified, pursuant to sec. 25B, as "the name, address, and description of some person to whom all moneys falling due under a contract" within the terms of the Act "may be paid." Is it sufficient, then, for the contract to provide, as in this case, that "all payments falling due under the . . . contract . . . shall be paid at the office of S.A. Real Estate Investment Co. Ltd., agents, King William Street, Adelaide"? The Company is described as "agents," but the contract shows that it was the owner of the land and the vendor. A fair and reasonable construction must be given to the clause. It would be the extremity of literalism to construe it as describing the place of payment only, and not the person to whom payment might be made. The true and reasonable construction is that payment is to be made to the Company at its office. The name, address, and description of some person to whom all moneys falling due under the contract may be paid therefore sufficiently appear, and the provision of the *Land Agents Acts* is satisfied.

Appeal dismissed with costs.

Solicitors for the appellant, *Cleland & Teesdale Smith*, for *Heuzenroeder & Heuzenroeder*.

Solicitor for the respondent, *L. T. Gun*.

C. C. B.