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HIGH COURT OF AUSTRALIA

STEINBERG v FEDERAL COMMISSIONER of TAXATION

Barwick CJ, Menzies, Gibbs and Stephen JJ

10 October 1975

[1975] HCA 63; (1975) 134 CLR 640; (1976) 50 ALJR 43; 7 ALR 491; 3 ATR 570; 75 ATC 4,221; Noted 50 ALJ 194; 5 AT Rev 34; 6 AT Rev 127

EVIDENCE – DISBELIEF OF WITNESS – MATTERS TO CONSIDER WHERE A COURT REJECTS A WITNESS'S EVIDENCE.

This case concerned an appeal against the assessment of income tax on the ground that profit on sale of land was not income as the land had not been acquired for the purpose of profit making by sale. The taxpayer's evidence as to the purpose of acquisition was rejected. On the effect of disbelief of a witness Gibbs J stated:-

The fact that a witness is disbelieved does not prove the opposite of what he asserted. It has sometimes been said that where the story of a witness is disbelieved, the result is simply that there is no evidence on the subject, but although this is no doubt true in many cases it is not correct as a universal proposition. There may be circumstances in which an inference can be drawn from the fact that the witness has told a false story, for example, that the truth would be harmful to him; and it is no doubt for this reason that false statements by an accused person may sometimes be regarded as corroboration of other evidence given in a criminal case. Moreover, if the truth must lie between two alternative states of fact, disbelief in evidence that one of the state of facts exists may support the existence of the alternative state of facts.

GIBBS J: ... 5. The question that then arises, however, is whether it was right to conclude, as his Honour did, that the shares in the company Engineering Union, Australian Section were bought to enable the purchasers to acquire the land for the main or dominant purpose of profit-making by sale. The fact that a witness is disbelieved does not prove the opposite of what he asserted: *Scott Fell v Lloyd* [1911] HCA 34; (1911) 13 CLR 230, at p241; 18 ALR 97; *Hobbs v Tinling (C.T.) & Co Ltd* (1929) 2 KB 1, at p21; 45 TLR 328. It has sometimes been said that where the story of a witness is disbelieved, the result is simply that there is no evidence on the subject (*Jack v Smail* [1905] HCA 25; (1906) 2 CLR 684, at p698; 11 ALR 372; *Malzy v Eichholz* (1916) 2 KB 308, at p321; *Ex parte Bear; Re Jones* (1945) 46 SR (NSW) 126, at p128; 63 WN (NSW) 26), but although this is no doubt true in many cases it is not correct as a universal proposition. There may be circumstances in which an inference can be drawn from the fact that the witness has told a false story, for example, that the truth would be harmful to him; and it is no doubt for this reason that false statements by an accused person may sometimes be regarded as corroboration of other evidence given in a criminal case: *Eade v The King* [1924] HCA 9; (1924) 34 CLR 154, at p158; 30 ALR 257; *Tripodi v The Queen* [1961] HCA 22; (1961) 104 CLR 1; [1961] ALR 780; 35 ALJR 72. Moreover, if the truth must lie between two alternative states of fact, disbelief in evidence that one of the state of facts exists may support the existence of the alternative state of facts: *Lee v Russell* (1961) WAR 103, at p109. In the present case, Morris Steinberg had, between 1956 and 1969, been a member of no less than thirteen syndicates which had been formed for the purpose of acquiring land and reselling it at a profit. The Wanneroo land, when purchased, was not put to any use; it is true that the owners were virtually compelled to sell some of it quite soon after it was acquired, but over 300 acres were, at the date of the trial, still retained, and no suggestion was made of any intention to use them for any purpose except letting as ten-acre lots. In these circumstances, the fact that Morris Steinberg told a false story as to the purpose for which the land was intended to be used assisted the conclusion, to which the other evidence pointed, that the true purpose of acquiring it – a purpose which Morris Steinberg did not wish to reveal because it would harm his case – was to resell it at a profit. The conclusion which Mason J reached on this issue was, in my opinion, correct. ...

[Stephen J held that the trial judge was correct in concluding that the land was acquired for profit making. After discussing the various reasons for rejecting the taxpayers evidence @ p55 states:[
"With these considerations in mind and having formed the view that Mr Steinberg was an astute and able businessman already experienced in land purchase and development it is perhaps not surprising that his Honour was not satisfied that Mr Steinberg in fact acquired the Golden West shares with a view to developing the Wanneroo land in the manner stated by him but rather concluded that the shares were purchased so as to enable the purchaser to acquire that land for the purpose of profit-making by sale."

[Barwick CJ @ p46 held that there was no evidence to support this conclusion, stating:—]
In the second place, there was, in my opinion, no evidence that the purpose of acquiring the land, if its receipt in distribution were a relevant acquisition, was its resale thereby to gain a profit. I accept my brother Mason's refusal to accept Mr Morris Steinberg's evidence of what was his purpose in relation to the land and of his denial that that purpose was resale at a profit. But disbelief does not afford evidence of the contrary of what is disbelieved, leaving on one side a doubtful case of a situation of two mutually exclusive possibilities, which the facts of this case certainly do not raise. See *Jack v Smail* [1905] HCA 25; (1905) 2 CLR 684 at p698; 11 ALR 372; *Scott Fell v Lloyd* [1911] HCA 34; (1911) 13 CLR 230 at p241; 18 ALR 97; *Lee v Russell* (1961) WAR 103, at p109.
