

# COURT OF APPEAL FOR ONTARIO

CITATION: Omers Realty Corporation v. Ontario (Finance), 2012 ONCA 400

DATE: 20120612

DOCKET: C54775, C54776, C54777 and C54778

Rosenberg, MacPherson and Cronk JJ.A.

IN THE MATTER OF the *Land Transfer Tax Act*, R.S.O., c. L.6, as amended

BETWEEN

Omers Realty Corporation, Omers Administration Corporation and Price  
Waterhouse Coopers Inc.

Appellants/ Respondents in Appeal

and

The Minister of Finance

Respondent/Appellant in Appeal

Sara Blake, Lori Patyk, and Ananthan Sinnadurai, for the appellant

Joseph M. Steiner, for the respondents

Heard: June 7, 2012

On appeal from the judgment of Justice Thomas R. Lederer of the Superior Court of Justice, dated November 16, 2011.

## ENDORSEMENT

[1] The Ontario Minister of Finance appeals from the judgment of Lederer J. of the Superior Court of Justice dated November 16, 2011, holding that the Ontario Municipal Employees Retirement System (“OMERS”) Board and two of its

subsidiaries were Crown agencies and therefore did not have to pay taxes under the *Land Transfer Tax Act*, R.S.O. 1990, c. L.6 (“the “*LTТА*”).

[2] The appellant contends that the motion judge erred in two respects: (1) in finding that OMERS was a Crown agency within the meaning of the *Crown Agency Act*, R.S.O. 1990, c. C. 48 (the “*CAA*”); and (2) in finding that OMERS’ subsidiaries, Shoppers World Brampton Holdings Inc. and OMERS Realty Corporation, which invested in commercial real estate, were Crown agencies within the meaning of the *CAA*.

[3] We do not accept these submissions. On both issues, we explicitly endorse the analysis and conclusions of the motion judge, including his analysis of the relevant statutes, regulations, directives and case law.

[4] On the first issue, the motion judge correctly focussed on the Government’s *de jure* control of the OMERS Board and, in our view, correctly concluded that “at the material time, the OMERS Board was a Crown agency.”

[5] On the second issue, again after a careful review of the relevant statutes, directives and case law, the motion judge concluded:

[T]he statutory scheme exempts Crown agencies, in this case the OMERS Board, from having to pay land transfer tax. The scheme recognized that the OMERS Board could act through subsidiaries and allowed for subsidiaries that held real estate to be wholly-owned. It would be inconsistent with the scheme to find that these subsidiaries were not Crown agencies and, thus,

remove the benefit to which the OMERS Board would otherwise be entitled.

We agree with this analysis and conclusion.

[6] Finally, we note that the application judge's conclusion is consistent with the position the Minister took from at least 1984 to 1999. In a series of formal responses to requests from OMERS, the Minister confirmed, in 1984, 1988, 1991 and 1995, that the OMERS Board and its subsidiaries were Crown agencies for the purposes of the *LTTA*. Typical of these responses was the letter from the Ministry on March 9, 1995:

We have now completed our review of this file and wish to confirm that we are satisfied that the Ontario Municipal Employees Retirement System is indeed a Crown agency and any corporation, such as OMERS Realty Corporation, that is wholly owned by them would also be deemed to be a Crown agency for purposes of the Land Transfer Tax Act.

[7] In addition, when the Government decided to change its policy in this domain, it did so by enacting a law that expressly provided that OMERS was no longer a Crown agency: see *Ontario Municipal Employees Retirement System Act*, S.O. 2006, c. 2.

[8] The appeal is dismissed. The respondents are entitled to their costs of the appeal fixed at \$30,000, inclusive of disbursements and all applicable taxes.

“M. Rosenberg J.A.”

“J.C. MacPherson J.A.”

“E.A. Cronk J.A.”