

Chen An

(Appellant)

and

Collector of Stamp Revenue

(Respondent)

District Court
(Stamp Appeal No. 17 of 2015)

Hon Andrew Li J

Date of Hearing: 14 August & 6 September 2018

Date of Decision: 21 January 2019

Stamp Duty Ordinance (Cap.117) – whether the Appellant is entitled to a partial refund of ad valorem stamp duty paid for the acquisition of a residential property – meaning of Hong Kong permanent resident – sections 29A and 29DF

On 10 September 2014, the Immigration Department issued a Notice of Application Result for Verification of Eligibility for Permanent Identity Card to the Appellant. On the same date, the Appellant entered into a preliminary agreement for the purchase of a residential property (“the Subject Property”). On 18 September 2014, the Applicant collected her permanent identity card.

The Appellant paid ad valorem stamp duty (“AVD”) at the enhanced (Scale 1) rates for the purchase of the Subject Property. After disposal of her original residential property, she applied under section 29DF of the Stamp Duty Ordinance (“the Ordinance”) for a partial refund of the AVD paid for the acquisition of the Subject Property. Her application was rejected by the Collector of Stamp Revenue (“the Collector”) on the ground that she was not a “Hong Kong Permanent Resident” (“HKPR”) within the meaning of section 29A(1) of the Ordinance on the date of

acquisition of the Subject Property.

The Appellant contended that she was a HKPR on the date of acquisition of the Subject Property and the Collector wrongly interpreted the definition of HKPR. She should be entitled to a partial refund of AVD paid under section 29DF of the Ordinance.

Held:

- (1) A HKPR as defined in section 29A is one “who holds a permanent identity card”. Words should be given their natural and ordinary meaning and that the simple word of “hold” cannot be construed or extended to bear meaning that is not logical or possible. To singularly focus on the word “hold” and attach the strained interpretation, irrespective of the wording that follow, would be isolating the word “hold” itself and taking it out of context. It would be unnecessarily extending the meaning of the word in a way that it was not supposed to and certainly not intended by the legislature.
- (2) The provision of section 29A is clear, plain and simple. The plain reading of the provision does not permit the Appellant to simply obtain the HKPR status or verify as a HKPR on the date of the purchase of the Subject Property. She needs to be in physical possession of such an identity card on the relevant date. As the Appellant did not physically hold her HKPR identity card on the date of the purchase, she cannot satisfy the requirement under section 29A.
- (3) It is not for the court to speculate on the reason of using holding the identity card as the defining criteria by the legislature. The court’s task is to simply interpret the provision according to the established principles.

Appeal dismissed.

Mr Forest Fong (instructed by Hau, Lau, Li & Yeung) for the appellant

Ms Katherine Chan (government counsel of Department of Justice) for the respondent

Cases referred to in the judgment

Feng Hongyan v The Collector of Stamp Revenue of the Government of Hong Kong
SAR [2018] HKCFI 1079

Ho Kwok Tai v Collector of Stamp Revenue [2016] 5 HKLRD 713
Hong Kong Special Administrative Region v Cheung Kwun Yin (張冠賢) (2009) 12
HKCFAR 568
Moulin Global Eyecare Trading Limited v The Commissioner of Inland Revenue [2012]
2 HKLRD 911
T v Commissioner of Police (2014) 17 HKCFAR 593
The Medical Council of Hong Kong v David Chow Siu Shek (2000) 3 HKCFAR 144
Town Planning Board v Society for the Protection of the Harbour Ltd (2004) 7
HKCFAR 1