

Danix Limited

(Appellant)

and

Collector of Stamp Revenue

(Respondent)

**District Court
(Stamp Appeal No. 3 of 2012)**

Sanforce Limited

(Appellant)

and

Collector of Stamp Revenue

(Respondent)

**District Court
(Stamp Appeal No. 4 of 2012)**

Hon MK Liu J

Date of Hearing: 31 January 2018

Date of Decision: 2 February 2018

Stamp Duty Ordinance (Cap.117) – each of the Appellants did not serve the Case Stated on the Secretary of Justice and set down the case for hearing within the required 7-day period – whether the Court has the jurisdiction to extend the 7-day period and whether the Court has the jurisdiction to strike out the appeals – section 14(2).

In each of these appeals, the Appellant lodged a notice of appeal on 17 February 2012 against the stamp duty assessment, and the Respondent sent the Case Stated to it on 18

February 2016. The Appellant did not serve the Case Stated on the Secretary of Justice (“SJ”) and set down the case for hearing within the 7-day period prescribed in section 14(2) of the Stamp Duty Ordinance (Cap.117) (“the Ordinance”). On 25 August 2017, the Respondent filed summons seeking an order to strike out the two appeals. The two striking-out summonses were heard together.

Under section 14(2) of the Ordinance, there was no time limit for the Respondent to prepare the Case Stated, while the duty-payer was subject to the 7-day period restriction to serve the Case Stated on SJ and set down the case for hearing. The Appellants contended that the treatment given to the Collector and the treatment given to the duty-payer under that section were unequal. This contravened Article 10 of the Hong Kong Bill of Rights (“HKBOR”) which stipulated that everyone should be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Appellants submitted that their right of access to the court would be impeded if the 7-day period was an absolute time limit and the court did not have jurisdiction to grant extension of time. Further, it would be a contravention to Article 35 of the Basic Law (“BL”) which stipulated that Hong Kong residents should have the right to access to the courts and to judicial remedies.

Held:

- (1) Tax matters fell outside the scope of Article 10 of HKBOR, and hence the Appellants’ challenge based upon Article 10 of HKBOR could not succeed. The comparison between the absence of time limit for the preparation of the Case Stated by the Respondent and the 7-day limit for serving the Case Stated on SJ and for setting down the case for hearing by the duty-payer is also not a like-for-like and fair comparison. There is no inequality in section 14(2) of the Ordinance.
- (2) Assessments of stamp duty made by the Respondent are subject to judicial review. If the delay in complying with section 14(2) of the Ordinance is excusable and the appeal is meritorious, the duty-payer may still seek reliefs from the court by judicial review. Since the route of judicial review is available, the time restriction in section 14(2) does not contravene Article 35 of BL.
- (3) The court does not have jurisdiction to extend the 7-day period in section 14(2) of the Ordinance. No extension of time would be granted to the Appellants even if the court has the jurisdiction to do so since no satisfactory explanation was given by the Appellants in respect of the long and substantial delay.

- (4) The court has jurisdiction to make striking-out order under section 48(1) of the District Court Ordinance and Order 1B rule 1(2)(1) of the Rules of the District Court. The two appeals ought to be struck out in these circumstances so that no more resources of the court would be consumed by the cases.

Appeals struck out.

Mr Joseph Lee of Joseph C T Lee & Co for the Appellants

Mr Paul H M Leung (instructed by the Department of Justice) for the Respondent

Cases referred to in the judgment:

Bangkok Capital Antique Co Ltd v The Collector of Stamp Revenue (1984) 2 HKTC 83

Harvest Sheen Ltd v The Collector of Stamp Revenue [1997] HKLRD 889

Karex (Hong Kong) Ltd v Fortune Talent Development [1999] 3 HKLRD 397

Kwan Kong Co Ltd v Town Planning Board [1995] 3 HKC 254

Lee Fu Wing v Yan Po Ting Paul [2009] 5 HKLRD 513

Lee Yee Shing Jacky v Inland Revenue Board of Review HCAL 40/2008 (22 February 2011);
[2012] 2 HKLRD 981

Metropolitan Finance Corporation Ltd v Lau Chi Shing (HCMP 7635/1999, 31 August 2001)

Smart Max Enterprise Ltd v Speedy Way Ltd [2011] 1 HKLRD 796; [2011] 3 HKLRD 675

Super Keen Investments Ltd v Global Time Investments Ltd [1996] 4 HKC 355

方漢標 v 陳德偉 (CACV 17/2009, 21 June 2011)