

So Kam Shing and So Kam Wai

(Appellant)

and

Collector of Stamp Revenue

(Respondent)

District Court
Stamp Appeal No. 45 of 2016

Hon MK Liu J

Date of Hearing: 7 May 2018

Date of Judgment: 10 May 2018

Stamp Duty Ordinance (Cap.117) – whether a distribution of interests in a property of an estate in excess of the beneficiaries' entitlement under the law of intestacy is chargeable with ad valorem stamp duty – whether the distribution constitutes two distinct matters – sections 27 and 10(2).

The deceased died intestate, leaving the two Appellants and their sister as the only persons entitled to have shares in the deceased's estate. By entering into a Deed of Family Arrangement (“DFA”) and a Deed of Assent (“the Assent”) (collectively “the Deeds”), the property (“the Property”) of the deceased was vested in the two Appellants as tenants-in-common in equal shares.

The Respondent opined that ad valorem stamp duty (“AVD”) was chargeable on the distribution of interests in the Property in excess of the entitlement of the beneficiaries under intestacy law (“the Excess Entitlement”).

The two Appellants appealed against the Respondent's assessment. They contended that their sister transferred half of her interest in the Property to each of them, which should be regarded as two transfers and each transfer should be a distinct matter. Pursuant to section 10(2) of Stamp Duty Ordinance (Cap.117) (“the Ordinance”), the two transfers should be separately and distinctly charged.

Held:

- (1) The Deeds are deemed to be a conveyance or transfer operating as a voluntary disposition *inter vivos* under section 27(4) of the Ordinance and are therefore chargeable with AVD.
- (2) The sister has never had any proprietary interest in the Property as beneficiaries of the estate of a deceased do not have any proprietary interest in any particular asset in the estate before the execution of an assent by the executor or administrator. It is the administrator with the sister's consent indicated in the DFA transferring the 1/3 proprietary interest in the property to the two Appellants by executing the Assent.
- (3) "Distinct matters" in section 10(2) of the Ordinance are different classes of property being transferred in one instrument. The Excess Entitlement vested in the two Appellants by the Deeds is the same kind of proprietary interest.

Appeal dismissed.

In the District Court

Appellants appeared in person

Mr Suen Sze Yick (Government Counsel, of the Department of Justice) for the respondent

Cases referred to in the judgment:

Baker & anor v Inland Revenue Commissioners [1924] AC 270

Tan Kay Thye & ors v Commissioners for Stamp Duties [1991] 3 MLJ 150

Commissioner of Stamp Duties (Queensland) v Livingston [1965] AC 694

Ansell v Commissioners of Inland Revenue [1929] 1 KB 608