

Feng Hongyan

(Applicant)

and

Collector of Stamp Revenue

(Respondent)

Court of First Instance

(Constitutional and Administrative Law List No. 165 of 2017)

Hon Anthony Chan J

Date of Hearing : 4 May 2018

Date of Judgment : 30 May 2018

Administrative and constitutional law – judicial review – the Applicant entered into two agreements to purchase two residential properties on different dates – whether the Applicant is entitled to a partial refund of ad valorem stamp duty paid for the second agreement when the first agreement was cancelled – Stamp Duty Ordinance (Cap.117) sections 2 and 29DF

The Applicant entered into an agreement (“Agreement 1”) for the purchase of a residential property and subsequently signed another agreement (“Agreement 2”) to acquire another residential property in the same housing development when Agreement 1 was still subsisting. The Applicant paid ad valorem stamp duty (“AVD”) at the enhanced (Scale 1) rates for Agreement 2. Later, the Applicant cancelled Agreement 1 by signing a cancellation agreement (“the Cancellation Agreement”) with the vendor.

The Applicant applied for a partial refund of the AVD paid on Agreement 2 under section 29DF of the Stamp Duty Ordinance (“the Ordinance”). Her application was rejected by the Collector of Stamp Revenue (“the Collector”) as the conditions specified under section 29DF were not satisfied, in particular, the Cancellation Agreement did not constitute a “conveyance on sale” for the purpose of the Ordinance. The Applicant sought judicial review on the Collector’s refusal to allow the partial refund of AVD.

Held:

- (1) The Cancellation Agreement did not constitute a “conveyance on sale” within the meaning of the Ordinance. Firstly, the Cancellation Agreement was not a conveyance. The effect of the Cancellation Agreement was to annul or terminate Agreement 1 and to release the parties from their obligations thereunder. There was no transfer or vesting of any immovable property or interest therein by anyone. Secondly, there was no sale. The Cancellation Agreement was the antithesis of a sale. Thirdly, there was no sale to a purchaser as the vendor under the Cancellation Agreement did not fall into the definition of “purchaser” under section 29A(1) of the Ordinance.
- (2) The law of statutory interpretation does not permit the court to construe a statute in a manner which is contrary to the clear words used therein. There is no room for the court to look behind the clear words of a statute and try to construe them in such a way to achieve what it perceives to be a fair or fairer result. That is a matter within the exclusive province of the legislature.
- (3) In respect of the delay in making the leave application for judicial review, an attempt to generate a fresh decision to springboard a judicial review will not delay the running of time.

Application dismissed.

Mr Kenneth C L Chan and Mr Matthew Ngai (instructed by Simon C W Yung & Co.)
for the Applicant

Mr Jonathan Chang (instructed by Department of Justice) for the Respondent

Cases referred to in the judgment

AW v. Director of Immigration [2016] 2 HKC 393

Cape Brandy Syndicate v. IRC [1921] 1 KB 64

Central Trust and Safe Deposit Company v. Harvey Snider (1916) AC 266

E.T. Investment Ltd v. Director of Health [2016] 1 HKLRD 1389

Ho Kwok Tai v. Collector of Stamp Revenue [2016] 5 HKLRD 713

Lau Kwok Cheong and Anr v. Tse Ming Chiu [2001] 2 HKLRD 500

R v. Commissioner of Local Administration, ex p Field [2000] C.O.D. 58