

Wong Wing Wah

(Intended Appellant)

and

Collector of Stamp Revenue

(Intended Respondent)

District Court
(Miscellaneous Proceedings No. 3454 of 2017)

Hon MK Liu J

Date of Hearing: 16 March 2018

Date of Judgment: 16 March 2018

Stamp Duty Ordinance (Cap.117) – leave to appeal out of time – whether prevented by illness from lodging an appeal in time – leave to allow appeal be brought on security of bank guarantees – whether payment of stamp duty would cause hardship – sections 14(5B) and 14(1B).

The Intended Appellant entered into two sale and purchase agreements (“SPA A” and “SPA B”) for two residential properties and executed two trust deeds declaring she was holding the two properties on trust for a beneficiary. Assignments for two properties were executed in favour of the Intended Appellant.

The Intended Respondent was of the view that SPA A and SPA B were chargeable with Buyer’s Stamp Duty. Two notices of assessment (“Notice A” and “Notice B”) were issued to the Intended Appellant on 4 August 2017 and 17 August 2017 respectively, with copies sent to the solicitors of the Intended Appellant (“the Solicitors”).

In August 2017, suffering from pain and taking medicines, the Intended Appellant was considering whether she should undergo a surgery as advised by her doctor. She eventually decided to have the surgery and was admitted to hospital on 4 September 2017. On 5 September 2017, she underwent the surgery. She was discharged from the hospital on 9 September 2017

and was given sick leave until 17 November 2017.

On 1 September 2017, the Solicitors wrote to the Intended Respondent applying for postponing payment of stamp duty pending appeal for SPA A (“the Letter”). The application was not accepted as it was received by the Intended Respondent more than 14 days after the date of the assessment. On 14 December 2017, the Intended Appellant commenced proceedings in the District Court by an originating summons seeking (a) an extension of time under section 14(5B) of the Stamp Duty Ordinance (Cap.117) (“the Ordinance”) for filing and serving her notice of appeal and (b) leave under section 14(1B) of the Ordinance to allow the appeal be brought on the security of bank guarantees.

Held:

(1) In relation to section 14(5B):

- (a) The court adopted a three-stage test in determining whether extension of time for appeal should be granted:
 - (i) The court had to be satisfied that the Intended Appellant suffered from illness, had been absent from Hong Kong or had any other reasonable cause.
 - (ii) The Intended Appellant had to show that one or more than one of the aforesaid three factors prevented him from bringing an appeal within the statutory time limit.
 - (iii) Even if the above two criteria were satisfied, the court had a residual discretion on whether to grant an extension of time.
- (b) The true meaning of “prevented” in section 14(5B) was “unable to”, which was less stringent than the literal meaning of being prevented from doing so, but imposed a higher threshold than a mere excuse. An applicant seeking a time extension under section 14(5B) had to show that he was unable to lodge an appeal within the statutory time limit due to illness, absence from Hong Kong or other reasonable cause.
- (c) In respect of Notice A, although the Intended Appellant was suffering from illness in August 2017, she had retained solicitors to handle the matter and had given instructions to solicitors to issue the Letter. The court was not satisfied that she was unable to lodge an appeal against Notice A due to her illness. In respect of Notice B, as she was able to give instructions on matters concerning Notice A, she would also be able to give instructions

on matters concerning Notice B. The court was not satisfied that she was unable to lodge an appeal against Notice B due to her illness.

(2) In relation to section 14(1B):

- (a) The Intended Appellant had to satisfy the court that payment of stamp duty assessed would impose hardship on her, that the non-payment of the stamp duty assessed was reasonable in all the circumstances of the case and that security to the court's satisfaction was given for the duty to be postponed. The court would recognize and take into account a party's subjective stance in forming an objective view in all the circumstances of the case as to whether hardship was made out. The onus was on the party asserting hardship to establish the same.
- (b) "Hardship" referred to the Intended Appellant's financial situation. No evidence was provided by the Intended Appellant on the "hardship" she would suffer if she had to pay the stamp duty. Besides, there was no evidence showing that the beneficiary to the two properties would not be able to pay the stamp duty.

Originating summons dismissed.

Obiter:

The Court ruled that it was incorrect for those representing the Intended Appellant to commence these proceedings by an originating summons in expedited form. The requirements laid down in Order 7 rule 2 of the Rules of the District Court (Cap. 336H) regarding the correct form when issuing an originating summons must be observed and complied with. There is no written law authorizing the use of the expedited form of the originating summons in making an application under sections 14(5B) and 14(1B). Incorrectly using the expedited form was in fact jumping the queue, getting a hearing date at an earlier time at the expense of the parties in other cases waiting in the queue for hearing dates. This was not conducive to the interest of administration of justice.

In the District Court

Mr Bruce K W Law (instructed by Fu & Cheng) for the Intended Appellant

Ms Edith Tam (government counsel of the Department of Justice) for the Intended Respondent

Cases referred to in the judgment:

Wan Wah Shing v Collector of Stamp Revenue [2005] 4 HKLRD 674

Chow Kwong Fai v Commissioner of Inland Revenue [2005] 4 HKLRD 687

Cheng Yung Ching v Commissioner of Inland Revenue (DCSA 31/2015, 11 November 2016)

