

陳玉琮
文桂和

(1st Appellant)
(2nd Appellant)

and

印花稅署署長

(Respondent)

District Court
(Stamp Appeal No. 100 of 2016)

文桂和
文偉華

(1st Appellant)
(2nd Appellant)

and

印花稅署署長

(Respondent)

District Court
(Stamp Appeal No. 101 of 2016)

陳玉琮
文裕龍

(1st Appellant)
(2nd Appellant)

and

印花稅署署長

(Respondent)

District Court
(Stamp Appeal No. 102 of 2016)

Deputy District Judge K C Chan

Date of Hearing: 19 October 2018

Date of Decision: 19 October 2018

Date of Reasons for Decision: 26 October 2018

Stamp Duty Ordinance (Cap.117) – notices of appeal filed out of time – stamp duty not settled – no application to seek extension of time or leave for postponement of payment of stamp duty – whether the Court should strike out the appeals – section 14(1).

The Respondent issued 3 respective stamp duty assessments to the Appellants in the 3 appeals. They filed 3 notices of appeal on the same date, which were some 6 weeks outside the statutory period, as prescribed by section 14(1)(a) of the Stamp Duty Ordinance (Cap.117) (“the Ordinance”), of within one month from the date on which the assessments were made. The stamp duties demanded were also not paid as required under section 14(1)(b) of the Ordinance.

The Respondent issued letters to the Appellants explaining that they were required to and could apply for bringing the appeal out of time under section 14(5B) of the Ordinance and for bringing the appeal without the payment of stamp duties under section 14(1B) of the Ordinance.

No action had been taken by the Appellants. Later, the Respondent issued letters to the Appellants demanding them to withdraw the appeals. The Appellants refused to do so. The Respondent then took out 3 summonses to strike out the appeals on the ground that they disclose no reasonable cause of action and/or are abuses of the process. His Honour Judge Kent Yee gave directions for the Appellants on a last hearing to file evidence in opposition within 21 days and reminded them the importance of complying with such direction.

Up to the date of present hearing, the Appellants had not filed any evidence in opposition and there was no application by the Appellants under section 14(5B) or under section 14(1B) of the Ordinance.

Held:

- (1) It is well settled that the time limit in section 14(1) must be strictly adhered to. A purported appeal brought outside the time limit and without an order given under

section 14(5B) extending the time is one that is improperly constituted and therefore is an incompetent appeal.

- (2) It is clear that fulfillment of the payment obligation under section 14(1)(b) – by either full payment of the stamp duty, or obtaining an order under section 14(1B) to bring an appeal without payment or with part payment, or payment being postponed by the Collector of Stamp Revenue under section 14(1A) – is a pre-condition to the bringing of a competent appeal under section 14(1).
- (3) It is clear that the Appellants have no intention of taking any steps to make the appeals competent. It is an abuse of process to attempt to maintain an incompetent appeal without taking any steps to properly constitute it to make it competent.

Appeals struck out.

In the District Court

The 1st and 2nd Appellants appeared in persons (DCSA 100/2016)

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

Cases referred to in the decision:

Diamond Dragon Finance Co v Collector of Stamp Revenue [2004] HKCU 384

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

Cheng Yung Ching v Commissioner of Inland Revenue Department [2017] 4 HKC 489

King Crown Decoration & Construction Limited v The Collector of Stamp Revenue (DCSA 14/2009, 19 March 2010)

Hui Shu Leung v Wah Fung Forest Resources Limited (CACV 134/2013, 7 January 2014)