

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

B E T W E E N :

- 1. CHIN CHOY @ CHIN CHONG KIM
 - 2. HOE CHOOI PENG
 - 3. LOO KAM FATT
 - 10 4. CHIN AH KOW @ CHIN SIEW SENG
 - 5. PONG KIM HO @ POONG KIM HUA
and
 - 6. NG AH YAM @ NG LEE CHENG (F)
 - 7. KOH CHEE LIN (F)
 - 8. YOW SEE KOW
 - 9. AU YONG HOW KAI
 - 10. ANTHONYSAMY S/O JOSEPH
 - 11. AY NGAN CHAN (F)
and
 - 20 12. SEE THO MENG
 - 13. LOW KUM SENG
 - 14. YONG KWAI @ YONG MOKE YING (F)
 - 15. SOO HENG CHOONG
and
 - 16. ONG CHEOW PHINE @ ONG CHAU PHIN
 - 17. CHOONG SWAN SEE (F)
 - 18. WHA YOKE KEE
 - 19. WONG KOK KUANG @ WONG KOK KION
 - 20. LOH YUAT KENG (F)
 - 30 21. WONG KOK THYE @ WONG KOK NGAN
 - 22. WONG YAT SOO
and
 - 23. LOH YOKE LIN Appellants
- AND -
- THE COLLECTOR OF STAMP DUTIES Respondent

CASE FOR THE APPELLANT

40 1. This is an appeal by leave of the Federal Court of Malaysia (Appellate Jurisdiction) granted on the 6th November 1978 from an Order of the said Federal Court (Chief Justice Borneo Lee Hun Hoe, Mr. Justice Wan Suleiman and Mr. Justice Chang Min Tat) dated the 22nd

Record

pp 80 & 81

Record
pp 73 & 74
pp 65 & 66

day of March, 1978 dismissing an appeal by the Appellants from the Order of Mr. Justice Abdul Hamid dated 3rd June, 1977.

FACTS & HISTORY OF PROCEEDINGS

- p. 22 line 40 2. The facts pertaining to each of the Appellants being similar it was agreed that the facts in respect of one of the Appellants would form the basis of the case stated, and the decision of the Court would be binding upon the rest of the Appellants herein and other Appellants in Originating Motion Nos. 55, 62 and 69 of 1973. Accordingly the principal facts pertaining to the 4th Appellant are as follows:- 10
- p.22 (line 43 to 45)
- pp 31 - 50 (1) On the 30th October, 1971 the 4th Appellant executed a Sale and Purchase Agreement (hereinafter referred to as "the said Agreement") with Bolton Properties Sendirian Berhad a developer to purchase land held under title H.S.(D) 27140 P.T. No. 18791 Mukim and District of Kuala Lumpur together with a two storey shophouse to be constructed thereon by the developer (hereinafter referred to as "the said Property") for the purchase price of \$49,000 payable progressively by stages and the said Agreement was duly stamped for \$1/- in accordance with item 4 of the First Schedule to the Stamp Duty (Special Provision) Malaysia Act 1967. 20 30
- pp 26 - 28 (2) On the 26th day of June, 1973 Bolton Properties Sendirian Berhad executed a Memorandum of Transfer of the said Property in favour of the 4th Appellant and the Memorandum of Transfer was then submitted to the Respondent together with a copy of the stamped Agreement and the Stamp Duty Section 5 questionnaire and advalorem stamp duty of \$490.00 being 1% of \$49,000 the value stated in the Memorandum of Transfer was paid to the Respondent together with the adjudication fee of \$1/- . 40
- pp 51 & 52
- p.53 (3) The Respondent assessed the market value of the paid property as on the 26th June, 1973 as being \$65,000.00 and adjudicated the advalorem stamp duty to be \$650.00 and the 4th Appellant paid the deficient stamp duty of \$160.00. 50
- pp 1 & 2 (4) On the 9th October, 1973 the 4th Appellant along with the other Appellants filed a Notice of Appeal against the assessment of

stamp duty by the Respondent in respect of the Memorandum of Transfer of the said Property and requested the Respondent to state a case for the opinion of the Court pursuant to Section 39(2) of the Stamp Ordinance No. 59 of 1949.

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- 10 (5) On the 11th March, 1971 the Respondent filed a Case Stated and sought the opinion of the Court as to the amount of advalorem stamp duty chargeable on the Memorandum of Transfer in accordance with Section 12A of the Stamp Ordinance 1949 as amended by the Stamp (Amendment) Act No. 60 of 1967:- pp 22 - 26

"Assessment of the Value of Property under transfer or settlement

12A For the purposes of assessing the value of any property which is the subject of a transfer or settlement such value shall be taken to be -

p.24 (line 25-50)

(a) the money value, if any, mentioned in the instrument of transfer as the consideration of the transfer or settlement; or

(b) the market value, as on the date of execution, of the property transferred or settled,

whichever be the greater: Provided that the Officer before whom the instrument of transfer is tendered for registration may accept the consideration mentioned therein as being the market value unless he shall have reason to believe otherwise".

- 40 (6) The Appellants contended that the ad valorem stamp duty payable on the Memorandum of Transfer should be based on either - p.25 (lines 1-7)

(a) the consideration mentioned in the Memorandum of Transfer as being the consideration of the transfer; or

(b) the market value of the property on the date of execution of the said Agreement; or

RECORD

(c) The cost of the land only pursuant to Section 17 of the Stamp Ordinance, 1949.

p.64(lines 41 to 47)

3. At the hearing before Mr. Justice Abdul Hamid on the 3rd June, 1977 it was held that as paragraph (a) of Section 12A which speaks of money value mentioned in the instrument of transfer paragraph (b) speaks specifically of the date of execution of the property transferred which must evidently relate to the date of execution of the instrument of transfer hence there was no ambiguity in the wording of Section 12A and therefore it was not open to construction that the market value of the property at the date of an agreement to sell and transfer, and for that reason held that the Respondent had made proper assessment in compliance with Section 12A of the Ordinance and ordered that the costs of the Application be paid by the Appellant.

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p.65(lines 1 - 7)

4. From this decision the Appellants appealed to the Federal Court and the decision of the Federal Court was given on the 22nd March, 1978 when it was ordered that the appeal be dismissed with costs. In its written judgment, given on the 25th September, 1978, the Federal Court based its decision on conclusions:-

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pp 73 & 74

pp 75 - 79

p.78 Line 35
p.78 Line 36
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That there is no ambiguity whatsoever in the words and meaning of Section 12A. Strictly construed and on a proper interpretation the section imposes on him the duty to consider whether the consideration in the instrument of transfer, the money value, reflects the proper market value of the object of the transfer at the date of execution of the transfer.

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ISSUES

p.24(line 25 - 50)

5. The points which arise in this appeal are as to the interpretation of Section 12A of the Stamp Ordinance 59 of 1949 and whether in fact there is an ambiguity in the said Section 12A and the Federal Court following the decision of the High Court were right in concluding that the date of execution in paragraph (b) of Section 12A refers only to the date of execution of the instrument of transfer and not the date of the agreement of sale and purchase.

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p.64(lines 44 -47)

SUBMISSIONS

p.24(lines 25 - 50)

6. As the Appellants' case depends entirely on the interpretation given to Section 12A of the Stamp Ordinance No. 59 of 1949, the Appellants do not dispute that ad valorem stamp duty is payable on the instrument of transfer which charge to duty is levied as a result of Section

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4 of the Ordinance as the instrument of transfer is one of the instruments specified in the First Schedule to the Ordinance and not as a result of Section 12A thereof which is as stated in the marginal note thereto solely for the manner of assessing the value of the property stated in the instrument of transfer.

10 Accordingly the preamble to Section 12A sets out clearly that in assessing the value of any property such value shall be either of the values (whichever be the greater) as determined in accordance with paragraphs (a) or (b) thereof. Pursuant to paragraph (a) it would be the money value, if any, mentioned in the instrument of transfer as the consideration of the transfer or settlement, and the money value or the consideration mentioned in the instrument of transfer is deemed to be the market value for the transaction between the Vendor and the Purchaser if accepted by officer before whom it is tendered for registration.

p.24 (lines 30
- 33)

p.24 (lines
34 - 37)

p.24 (lines
44 to 49)

20 However in paragraph (b) it is the market value as assessed of the property passing from the Vendor to the Purchaser, which would be the consideration for purposes of assessing the stamp duty payable and the date on which the market value is to be determined is on the date of execution.

30 It is the ascertainment of this 'date of execution' which has given rise to this Appeal. Is it proper to ignore the transaction between the Vendor and Purchaser in determining the date of execution which gave rise to the conveyance? The Appellants submit that it is not proper to ignore the transaction for the following reasons:-

40 (a) For purposes of adjudication of the value of the property all evidence and circumstances pertaining to the transaction between the Vendor and the Purchaser was provided to the Respondent under Section 5 thereof and together with a duly stamped copy of the Agreement, which ought not to have been ignored in arriving at the market value for the whole purpose of supplying proof and evidence of transaction would be unnecessary if the same is ignored and the market value is determined at a date 2 years after the agreement date.

p.23 (lines
40 - 43)

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(b) Paragraph (b) of Section 12A refers to the date of execution of the property

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p.24(lines
39 & 40)

transferred or settled. The tense used for the words transferred or settled is the past tense and as the Torren's System of land registration is practised in Malaysia, the property cannot be said to be transferred and the legal title thereto vested in the transferee until the instrument of transfer has been duly registered at the Land Office and returned see Section 215 of the National Land Code 1965. Hence the only possible meaning capable of being attributed to the words transferred or settled would be the vesting of the equitable title to the property in the transferee or Purchaser, as the instrument of transfer is required to be first stamped with ad valorem stamp duty before presentation for registration under Section 294 of the National Land Code 1965.

p.55(line 48)
p.56(lines
1 - 8)

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p.56(lines
10 - 13)

"the grammatical and ordinary sense of words is to be adhered to unless the same would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical or ordinary sense of the words may be modified so as to avoid that absurdity and inconsistency but no further".

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per Jessel M.R. in Re Levy, ex.p. Watton (1881) 17 Ch.D. 746 at Pg. 751.

"In the Construction of deeds, ordinary words should be given their plain and ordinary meaning".

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per Swinfen Eady L.J. in Beard v Moira Colliery Co. (1915) 1.Ch.D.257 at p.268.

p.78(line
40)

Therefore in the interpretation of paragraph (b) there is no room for 'any intendment' that 'the date of execution' is intended to be the date of the instrument of transfer, for if that was the case (b) would simply have read as follows "the market value on the date of execution of the instrument of transfer", and the Federal Court erred in reading in the same, notwithstanding that the Federal Court had directed themselves correctly on the duty of the Courts to interpret and apply the law in referring to the quote.

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p.78(lines
5 - 18)

"In a Taxing Act, one has to look merely at what is clearly said. There is no room for intendment. There is no equity in tax. There is no presumption as to tax. Nothing is to be read in nothing is to be implied. One can only look fairly at the language used".

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As the only meaning capable of being
attributed to the word 'transferred' in
paragraph (b) of Section 12A is the vesting
of the equitable title it is now left to
determine the date on which this takes place,
and the Appellants contend that this takes
place on the date that the parties reached
an agreement which is confirmed in;

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"It appears to me that the effect of a
contract of sale has been settled for more
than two centuries - it is that the moment
you have a valid contract for sale the Vendor
becomes in equity a trustee for the Purchaser
of the estate sold, and the beneficial
ownership passes to the Purchaser the Vendor
having the right to the purchase money, a
charge or lien on the estate for the security
of that purchase price and a right to retain
possession of the estate until the purchase
money is paid in the absence of express
contract as to the time of delivering
possession".

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per Jessel M.R. in Lysaght v Edwards (1876)
2 Ch.D. 499 at Pg. 506.

Where however there is no contract or
agreement between the Vendor and Purchaser
the date on which the equitable title passes
to the Purchaser would be the date on which
the instrument of transfer was executed.

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(c) It will be further noted that neither
in the preamble nor in paragraph (b) to
Section 12A is the term 'instrument of
transfer' mentioned, reference in both is
to the 'property' which is the subject of
transfer as opposed to paragraph (a)
thereof which specifically refers to the
instrument of transfer. As such the
consideration or market value can only be
determined by looking at the whole
transaction commencing from the Agreement and
not the instrument of transfer only. The
interpretation is further fortified and
confirmed in the explanatory note to the Bill
tabling the Stamp Duty (Amendment) Act 60 of
1967 which reads "New Section 12A: To
provide for the valuation of property, which
is the subject of an instrument of transfer,
by reference to the market value of the
property as a discretionary alternative to
the amount or value of the consideration.

p.24

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This provision is designed to prevent evasion by the common practise of undervaluing the property by showing a false consideration less than the true consideration in the instrument of transfer".

p.73 & 74

As a result of the decision of the Federal Court on the 22nd March, 1978 the Stamp Duty (Remission) Order 1979 was made on the 19th April, 1979 which provides as follows:-

- "2. All instruments of transfer on sale of any land under item 32(a) of the First Schedule to the Ordinance are remitted from Stamp Duty to the extent of the difference between the amount of the stamp duty chargeable in accordance with Section 12A of the Ordinance and the amount that would be payable if the stamp duty is calculated on the money value mentioned in the instrument of transfer as the consideration for the transfer or the market value of the land which is the subject matter of the transfer as on the date of execution of a duly stamped agreement for sale leading to the execution of that instrument of transfer, whichever be the greater".

which remission order reaffirms the Appellants submissions.

p.64(line 47)

- (d) As there is no room for intendment the addition of the words 'the instrument of transfer' cannot be implied for if it was so intended then it would have been specifically set out as in Section 13(1) of the Stamp Ordinance 59 of 1949 which reads as follows:-

- "Currencies 13(1) Where an instrument is chargeable with ad valorem duty in respect of (a) any money expressed in any currency other than that of the Federation or (b) any stock or marketable or other security.

the duty shall be calculated on the value on the day of the date of the instrument or on the day it is stamped if executed out of the Federation, of the money in currency of the Federation according to the current rate of exchange, or of the stock or security according to the average price thereof or if there is no price according to the value

thereof".

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more particularly underlined above.

The criteria in Section 12A being the determination of the value of the property as being the consideration for the sale this can only be determined on the date of contract or agreement, and not on the value of the property at the date of actual conveyance.

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see The Crown v Bullfinch Proprietary (W.A.) Ltd. 15 C.L.R. Pg. 443.

7. WHEREFORE THE APPELLANTS SUBMIT that this appeal should be allowed with costs throughout for the reasons set out herein and BECAUSE the decision of the Federal Court was otherwise wrong.

PARAMJIT SINGH GILL

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KIM and 22 OTHERS Appellants

- and -

THE COLLECTOR OF STAMP
DUTIES Respondent

CASE FOR THE APPELLANT

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