

IN THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL

O N A P P E A L
FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N

CHIN CHOY alias CHIN CHONG KIM
and 22 Others Appellants

- and -

10 THE COLLECTOR OF STAMP DUTIES Respondent

CASE FOR THE RESPONDENT

Record

1. This is an Appeal from a decision of the Federal Court of Malaysia given on 25th September 1978 dismissing an appeal from a decision of the High Court of Malaysia given on 3rd June 1977 which had confirmed the adjudication of the Collector of Stamp Duties on the amounts of stamp duties to be paid on the transfers of certain land.

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20 2. The question in this Appeal concerns the proper construction of Section 12A of the Stamp Ordinance 1949 as inserted by Act 60 of 1967. The said Section 12A reads as follows :

"12A. For the purpose of assessing the value of any property which is the subject of a transfer or settlement, such value shall be taken to be

- (a) the money value, if any, mentioned in the instrument of transfer as the consideration for the transfer or settlement: or
- (b) the market value, as on the date of execution, of the property transferred or settled.

30 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".

The Appellants contend that Section 12A(b) requires the market value of the property the subject of a sale to be

Record

determined as at the date of the agreement for sale. The Respondent contends that Section 12A(b) requires that market value to be determined as at the date of the transfer of the property.

3. The facts of the case of one of the Appellants, namely Chia Ah Kow will illustrate the point of law which is common to the cases of all the Appellants. The facts of the cases of the other Appellants are not identical but do not differ materially from those of Chia Ah Kow.

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4. By an agreement dated 30th October 1971 Chia Ah Kow agreed to purchase from Bolton Properties Sendirian Berhad a plot of land measuring 1600 square feet plus a new two storey shop house to be erected thereon by the vendor. The aggregate price for the land plus the shop house thereon was expressed by Clauses 1 and 2 of the Agreement to be 49,000 dollars. Pursuant to the Agreement the vendor erected the shop house and a transfer of the land together with the shop house was executed on 26th June 1973. Also on 26th

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June 1973 the transfer of the property was presented at the Land Office for registration. Between the date of the Agreement (30th October 1971) and the date of the transfer (26th June 1973) property prices in Malaysia had in general risen substantially. The consideration stated on the transfer was the agreed price of 49,000 dollars but on adjudication the Respondent estimated the market value of the property as at the date of transfer at 65,000 dollars. The rate of ad valorem duty is 1 per cent. By a Notice of Assessment dated 25th September 1973 the Respondent required Chia Ah Kow to pay an additional sum of 160 dollars in stamp duty. This was the additional duty chargeable on a value of 65,000 dollars instead of a value of 49,000 dollars.

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5. The Respondent contends that the words used in Section 12A are unambiguous and ought to be given their plain meaning. The liability to ad valorem duty arises on the transfer and not on the contract. Section 12A is concerned with ascertaining the value of the property in order to assess ad valorem duty on the transfer. The value is to be either the consideration stated in the instrument of transfer (Section 12A(a)) or the market value on the date of the execution of the transfer (12A(b)). Section 12A(b) means that the value of the property at the date of transfer is the value to be determined. That, in the Respondent's submission, is the plain meaning of the words used, and this is the proper test; see for example Mr. Justice Rowlatt's observations in Cape Brandy Syndicate v. Inland Revenue Commissioners [1921] 1 K. B. 64 at page 71 :

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"It is urged by [Counsel for the taxpayers] that in a taxing Act clear words are necessary in order

to tax the subject. Too wide and fanciful a construction is often sought to be given to that maxim which does not mean that words are to be unduly restricted against the Crown, or that there is to be any discrimination against the Crown in those Acts. It simply means that in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a 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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6. The opening words of Section 12A refer to assessing the value of property the subject of a transfer. Section 12A(b) refers to the value mentioned in the instrument of transfer. In the Respondent's contention it would be illogical if Section 12A(b) were to require a valuation at a different date. If (contrary to the Respondent's contention) there is any ambiguity in Section 12A(b) that ambiguity should be resolved in favour of the Respondent. To do otherwise would be to introduce an illogical alternative basis of valuation into the Section.

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7. The word "execution" in Section 12A(b) may if considered alone be ambiguous, as Mr. Justice Devlin (as he then was) considered it to be in Christopher Brown Limited v. Genossenschaft Oesterreichischer [1953] 3 W.L.R. 689. In the context of Section 12A the Respondent contends that the word "execution" refers to the execution of the transfer and not to the making of the Agreement. There is nothing in Section 12A which deals with or refers to the Agreement. All references in the Section are to the transfer and the duty is levied on the transfer. The natural construction of "execution" in the context of the Section is therefore that the term refers to the transfer.

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8. In United Kingdom law ad valorem duty is levied on the amount or value of the consideration actually paid for a sale. This is the result of Finance Act 1963 Section 55(1) which directs (inter alia) that :

" the stamp duty chargeable under the heading "Conveyance or Transfer on Sale" shall be charged by reference to the amount or value of the consideration for the sale "

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United Kingdom law has no provision in relation to arm's-length transactions for increasing the liability to duty. The duty is paid on the consideration and on the consideration alone. The only exception in United Kingdom law is for voluntary dispositions where the market value of the property is the relevant value. Transactions between parties dealing at arm's length will, however, hardly ever fall into the category of voluntary dispositions. United Kingdom law therefore differs substantially from Malaysian law on this point, because Malaysian law plainly envisages that the consideration agreed between the parties will not necessarily be the relevant consideration for the purposes of

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assessing stamp duty. The Appellants accordingly cannot rely upon textbooks and authorities dealing with United Kingdom law. In particular the quotation in the Appellants submissions to the High Court in Malaysia from Sergeant on Stamp Duties 6th edition page 107 cannot be regarded as an authoritative statement in relation to Malaysian stamp duty law.

9. The Respondent further contends that the Appellants argument would if correct render the section of negligible practical use. Most agreements for sale are between parties dealing at arm's length. Such parties rarely negotiate a price which falls short of market value. The Respondent therefore respectfully submits that there is no policy reason for a statutory provision to enable market value to be substituted for the agreed consideration in such agreements. Such a statutory provision would hardly ever be used in practice. Accordingly it would be wrong to attribute to the draftsman of Section 12A an intention to incorporate such a provision. The draftsman is, it is submitted, much more likely to have intended to permit the substitution of market value at the date of the transfer. Only at the date of transfer is there likely ever to be a difference between the agreed consideration and market value. 10 20

10. Under Section 21(1) of the Stamp Ordinance 1949 ad valorem stamp duty can be levied on an agreement for the sale of an equitable estate or interest. Under United Kingdom law a similar result is achieved by the Stamp Act 1891 Section 59. That rule has no application to the present case. Applying the reasoning of the Court of Appeal in West London Syndicate v. Inland Revenue Commissioners [1898] 2 Q.B. 507, the agreements in the present case were not agreements for the sale of any equitable estate or interest. Stamp duty therefore arose in the present case on the transfers and not on the earlier agreements. It is accepted (as the Appellants contended in their written submissions to the High Court in Malaysia) that the effect of the earlier agreements may have been that the beneficial interest in the land passed in equity to the purchasers on signature of the agreements. That does not, however, make the agreements themselves liable to stamp duty. 30 40

11. And the Respondent respectfully submits that the Appeal herein should be dismissed for the following (among other)

R E A S O N S

1. BECAUSE Section 12A of the Stamp Ordinance 1949 as amended is unambiguous and permits the Collector of Stamp Duties to impose duty on the greater of the agreed consideration for the property transferred and the market 50

value of the property transferred as at the date of the execution of the transfer.

2. BECAUSE ad valorem stamp duty is imposed on transfers and therefore it is appropriate that valuation for stamp duty purposes should take place at the date of the transfer and not at any other date.

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3. BECAUSE in the context of Section 12A the word "execution" in Section 12A(b) should be construed as referring to the execution of a transfer and not to the execution of an agreement.

4. BECAUSE if the Appellants' contentions were correct the power conferred by Section 12A to substitute market value for the agreed consideration would be of negligible practical use.

5. BECAUSE the decision of the Federal Court of Malaysia was right and ought to be upheld.

STEWART T. BATES Q.C.

S.J. ALLCOCK

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