

Insights

THE HONG KONG DISTRICT COURT HAS EXCLUSIVE JURISDICTION TO HEAR STAMP DUTY APPEALS

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SUMMARY

John Wiley & Sons UK2 LLP v Collector of Stamp Revenue [2021] 5 HKLRD 20, [2021] HKCFI 3060 was a ruling on whether the Court of First Instance has jurisdiction to hear a stamp duty appeal under section 14 of the Stamp Duty Ordinance (Cap. 117) (“**SDO**”).

BRIEF FACTS

The appellants launched an appeal in the District Court against the assessment of stamp duty by the Collector of Stamp Revenue (the “**Collector**”) pursuant to section 14 of the SDO.

The appellants then applied to the Court of First Instance, with the Collector remaining neutral, for the transfer of the stamp duty appeal from the District Court. The appellants argued that the transfer order should be made for the following reasons:-

1. the appeal disclosed an important matter of law on the proper construction of section 45 of the SDO (relief in case of conveyance from one associated body corporate to another) and that the disposal of the appeal was likely to have material fiscal consequences for duty-payers holding stocks and immovable property in Hong Kong; and
2. the appeal related to disputed tax materially in excess of the ordinary jurisdiction of the District Court in civil matters.

Registrar Kwang directed the parties to explain whether the Court of First Instance had jurisdiction to hear the present proceedings. As the matter involved a question of jurisdiction, the matter was referred to a judge for determination.

APPELLATE JURISDICTION

Pursuant to *Solicitor v Law Society of Hong Kong* (2003) 6 HKCFAR 570, courts have no inherent appellate jurisdiction. Appeals are creatures of statute, whether they are appeals from statutory tribunals to the courts or appeals from lower courts to higher courts. Where the jurisdiction of a court already has been defined by statute, there is no room for a court to exercise jurisdiction wider than that defined by statute.

The Court considered section 14 of the SDO, which is the primary statute conferring the right of stamp duty appeal:-

"(1) Any person who is dissatisfied with the assessment of the Collector under section 13 or 47L may ... appeal against the assessment to the court and may for that purpose require the Collector to state and sign a case setting forth the question upon which his opinion was required and the assessment made by him.

...

(6) In this section...court (法庭) means the District Court"

The Court considered the statute confers jurisdiction only on the District Court and on no other courts to hear appeals against the assessment of stamp duty. Outside of the SDO, there was no avenue for appeal. The right to stamp duty appeal invokes the appellate and not original jurisdiction of the District Court.

Once the District Court is seized of jurisdiction, the proceedings are governed by the District Court Ordinance (Cap. 336) ("**DCO**") and the Rules of the District Court (Cap. 336H).

Section 42 of the DCO provides that:-

"The Court may, either of its own motion or on the application of any party, order at any stage the transfer to the Court of First Instance or the Lands Tribunal of all or part of any action or proceedings before it which are within the jurisdiction of the Court of First Instance or the Lands Tribunal, as the case may be."

The Court said it is plain that the court to which a case is transferred must itself have jurisdiction in the first place. Parties cannot (by consent) and a court cannot (by transfer) confer jurisdiction on another court which does not have the jurisdiction in the first place.

DOES THE COURT OF FIRST INSTANCE HAVE JURISDICTION TO HEAR STAMP DUTY APPEALS?

Section 12(2) of the High Court Ordinance (Cap. 4) ("**HCO**") provides the civil jurisdiction of the Court of First Instance shall consist of "*(a) original jurisdiction and authority of a like nature and extent as that held and exercised by the Chancery, Family and Queen's Bench Divisions of the High*

Court of Justice in England; and (b) any other jurisdiction, whether original or appellate jurisdiction, conferred on it by any law".

The Court held that there was no statutory provision conferring jurisdiction to hear stamp duty appeals on the Court of First Instance. Applying the legal principles on appellate jurisdiction, it is plain that the Court of First Instance does not have jurisdiction to hear stamp duty appeals.

Section 12(1) of the HCO provides that the Court of First Instance shall be "*a superior court of record*".

The High Court which comprises of the Court of Appeal and the Court of First Instance is a court of unlimited civil jurisdiction. The significance of the Court of First Instance being a "superior" (as opposed to an "inferior") court of record is that the "presumption of jurisdiction" applies. This means, prima facie, no matter is deemed to be beyond the jurisdiction of a superior court unless it is shown, by express words or necessary implication, to be so. Where an ordinance creates a right or remedy, i.e. the right or remedy has no existence independently of the ordinance creating it, and, at the same time, the ordinance lays down a particular method of pursuing it in a particular court or tribunal, the courts will, without more, tend to confine a person in pursuit of that right or remedy to that particular court or tribunal.

In the present case, the appellants invoked section 14 of the SDO, whose express words confer express jurisdiction on the District Court. By necessary implication, in view of the legal principles on appellate jurisdiction and section 12 of the HCO, a similar jurisdiction is not conferred on the Court of First Instance.

The fact that section 14 of the SDO does not use the term "exclusive jurisdiction" or that "only" the District Court has jurisdiction, did not undermine the conclusion.

Past instance of a stamp duty appeal

The Collector was asked by Registrar Kwang to ascertain if there were any previous stamp duty appeals being transferred from the District Court to the Court of First Instance.

The Collector found just one such previous case: *World Magnate Shipping Ltd v Collector of Stamp Revenue* [1969] HKLR 67. Because of the practical importance, and on the appellant's application with the concurrence of the then Collector, the stamp duty appeal in *World Magnate Shipping* was transferred to the Supreme Court (now the Court of First Instance). The appeal further was transferred to a Full Court of the Supreme Court (with a panel of three judges, including the then Chief Justice), that being the equivalent of the current Court of Appeal. It was upon the direction of the then Chief Justice under section 28 of the Supreme Court Ordinance that the matter be heard, in the first instance, before the Full Court without the necessity of being first tried and determined by a Supreme Court judge sitting alone.

The Court disagreed that *World Magnate Shipping* was binding on this Court, because of the following reasons:-

1. The issues of jurisdiction and whether the case could be transferred to the Supreme Court did not appear to have been argued in *World Magnate Shipping*.
2. Section 28 of the Supreme Court Ordinance was akin to a "leap-frogging" approach which bypassed the single judge court and had a case directly heard by the equivalent of the Court of Appeal. Such a provision does not exist under the current HCO.
3. Since *World Magnate Shipping*, the Court of Final Appeal has laid down the legal principles on appellate jurisdiction in *Solicitor v The Law Society of Hong Kong* (see above). That principle is binding on the judge in *John Wiley & Sons UK2 LLP v Collector of Stamp Revenue*.

CONCLUSION

For the reasons given above, it was held that the District Court has exclusive jurisdiction to hear a stamp duty appeal under section 14 of the SDO, and the District Court could not transfer a stamp duty appeal to the Court of First Instance, even by consent.

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MEET THE TEAM



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