

HONG KONG / JUDGMENT

CHEUNG MEI YIN v. POSTMASTER GENERAL

COURT

Court of First Instance

DECIDED

5 July 2007

CASE / FILE NUMBER

HCAL66/2007

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bjbj HCAL 66/2007 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE CONSTITUTIONAL AND ADMINISTRATIVE LAW LIST NO
66 OF 2007

BETWEEN CHEUNG MEI YIN Applicant and POSTMASTER GENERAL Respondent

Before: Hon A Cheung J in Court Date of Hearing: 4 July 2007 Date of Judgment: 5 July 2007

J U D G M E N T

This is a hopelessly late application for leave to apply for judicial review. Regulation 28 of the Post Office Regulations (Cap 98A) provides that the issue of postage stamps for use under the Post Office Ordinance (Cap 98) and the withdrawal of postage stamps from such use shall be under the control and management of the Postmaster General. In anticipation of the Mainland Government's resumption of exercise of sovereignty over Hong Kong on 1 July 1997, the Postmaster General announced on 23 May 1996 that postage stamps bearing the Queen's portrait or the Royal Cypher would no longer be valid for postage as from 1 July 1997. There was a press conference held on the same day and the announcement was widely reported in the local media. On 6 June 1997, the Government Gazette published a notification of the Postmaster General's withdrawal of the affected postage stamps from use after 30 June 1997 (GN 2757). The notification stated that the postage stamps affected might be exchanged for current definitive stamps of an equivalent value at the Post Office from 3 to 31 July 1997, both days inclusive. The Applicant claims that she bought some postage stamps bearing the Queen's portrait in 1996 or early 1997. She claims that she was not aware of the announcement made by the Postmaster General to withdraw the affected stamps

from use, nor the notification given in the Government Gazette. She did not exchange her stamps for valid stamps within the period specified in the Gazette. The Applicant claims that she only became aware of the problem when she tried to post letters by using some of the affected stamps on 25 May 2007. Through solicitors, she entered into correspondence with the Postmaster General with a view to persuading the latter to let her use the affected stamps for postage or exchange them for valid stamps. Having failed in her efforts, she now applies for leave to apply for judicial review of the Postmaster General's announcement made on 23 May 1996 or alternatively the notification in the Government Gazette on 6 June 1997. The decisions under challenge are more than ten years old. Section 21K(6)(a) of the High Court Ordinance (Cap 4) provides that where it considers that there has been undue delay in making an application for judicial review, the court may refuse to grant leave for the making of the application. Order 53 rule 4(1) of the Rules of the High Court (Cap 4A) further provides that an application for leave to apply for judicial review shall be made promptly and in any event within three months from the date when grounds for the application first arose. Mr Lam, appearing for the Applicant, has referred the Court to some authorities on how the courts have approached the question of delay. But each case turns on its own facts and it is important to stay focussed on the facts of the present case. In the instant case, the delay of 10 years is as lengthy as can be imagined. The only reason given for the very long delay is that the Applicant was unaware of the Postmaster General's public announcement or Gazette notification. I do not accept that as a reasonable excuse for the undue delay. Ignorance of the Postmaster General's public announcement and Gazette notification is no excuse. Nor do I see any good reason for extending the period within which to make the application, as the court is empowered to do under Order 53 rule 4(1). In that regard, I have considered the grounds for applying for judicial review set out in the supporting documents. They pray in aid provisions in the Basic Law, the Hong Kong Bill of Rights and the International Covenant on Civil and Political Rights, as well as standard public law grounds for judicial review. Since this is merely a leave application, all I need say is that I am not impressed by them. It must be remembered that this is not a case where the Postmaster General made a sudden and immediate decision to withdraw from use postage stamps that had been sold to the public. The public announcement in question came more than one year before the withdrawal of the affected stamps from use upon the resumption of the exercise of sovereignty on 1 July 1997. Moreover, this is not a case where the Postmaster General did not allow for the exchange of the affected stamps for current and valid stamps, after the affected stamps had been withdrawn from use. Rather, the Postmaster General stipulated a period of almost one month in July 1997, immediately following the withdrawal of the affected stamps from use, for the exchange. There is no question of any unlawful deprivation of property without compensation here (see article 105 of the Basis Law). I do not consider the period of exchange to be *Wednesbury* unreasonable. The only reason why the Applicant was unable to exchange her stamps for current and valid stamps was, according to her case, that she was ignorant of the announcement and Gazette notification at the time. As I said, her ignorance of such announcement and notification cannot be an excuse for her late application for leave, and still less, in my view, can it be turned into a ground for challenging the announcement or notification. Given the resumption of the exercise of sovereignty, it is wholly unarguable to suggest that the Postmaster General's decision to withdraw

from use stamps bearing the Queen's portrait or the Royal Cypher was Wednesday unreasonable. What happens to the use of banknotes and coins is quite outside the Postmaster General's domain, and cannot affect the legitimacy of his decision (in the public law sense). I see no merit in the contention that regulation 28, made under section 3 of the Post Office Ordinance, may be ultra vires the primary legislation. As I said, I am not impressed by the grounds and there are many raised in the supporting documents. I do not propose to comment on them individually save to say that in considering how the Court's discretion on extension of time should be exercised, they have all been considered and taken into account. For obvious reasons, if the Postmaster General's relevant decisions embodied in the public announcement and Gazette notification, which were made more than ten years ago, can be re-opened in the court now, there will likely be financial as well as administrative implications. Indeed Mr Lam has suggested in his written submission that there may be a substantial number of people who are still in possession of the affected stamps. I do not see allowing the intended judicial review application to proceed or granting relief as being conducive to good administration. Having looked at the matter in the round, I am of the firm view that no extension of time should be granted. In the exercise of my discretion, I refuse to extend the time for making the application for leave to apply for judicial review. In those circumstances, the application for leave to apply for judicial review must be refused. I so order. I make no order as to costs. (Andrew Cheung) Judge of the Court of First Instance High Court Mr Andy Lam instructed by Messrs Ivan Tang & Co, for the Applicant PAGE - 1udk 1udk H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V .vd= i\$& n@m@/ ;r,6 J<6B (_c8 }WDx .CxX: T4]> "w>" nG1m qc@n wv^:K ?FPyf0H~ },2l nG1m .CxX "w>` qc@n ?FPy ;r,6 (_c8 'k^0 'k^0 'k^0 6XuF) 4u<B dXHy hca.dot setup Microsoft Word 9.0 Judiciary Hong Kong Title Microsoft Word Document MSWordDoc Word.Document.8

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