

立法會
Legislative Council

LC Paper No. FC171/16-17

Ref : CB1/F/A/9 (2)

Tel : 3919 3129

Date : 12 June 2017

From : Clerk to the Finance Committee

To : Members of the Finance Committee

Finance Committee

Application for leave to apply for judicial review (HCAL44/2015)

Further to LC Paper No. FC160/16-17 dated 2 June 2017, I attach a summary of the salient points of the judgment of the Court of First Instance of the High Court on the captioned leave application for judicial review prepared by the Legal Service Division for members' information.

(Anita SIT)
Clerk to the Finance Committee

Encl.

c.c. President, Legislative Council

Summary of the Court of First Instance's judgment on the judicial review application against the Chairman of the Finance Committee (HCAL 44/2015)

On 31 March 2015, the Applicant, TSANG Kwong-kuen, sought leave to apply for judicial review ("leave application") against the decision of the Chairman of the Finance Committee ("FC") made during the FC meeting on 27 June 2014 when FC was considering the funding approval for the design and site investigation in relation to the development of residential areas in Kwu Tung North and Fanling North. At that meeting, Dr Hon Fernando CHEUNG moved a motion pursuant to Rule 84(3A) of the Rules of Procedure asking for the withdrawal of another FC member, Hon IP Kwok-him, from the FC meeting ("Motion"). The decision under challenge in the judicial review application is that the Chairman decided not to put the Motion to FC for discussion and vote ("the Decision"). At the time of the Applicant's leave application, the 3-month statutory period for making such application had lapsed.

2. By an order dated 7 May 2015, the Court of First Instance ("the Court") granted *ex parte* leave to the Applicant to apply for judicial review, without prejudice to the Chairman's right to oppose the application also on the basis that an extension of time should not be granted to the Applicant. The judicial review application was heard before Hon AU J on 27 October 2016. The Chairman, represented by Counsel, opposed the application.

3. The Court handed down its judgment on 31 May 2017 and dismissed the judicial review application. The main reasons for the Court's decision are summarized below:

- (a) the Decision concerns solely with the Chairman's exercise of his power or discretion to regulate the FC's proceedings. Based on the non-intervention principle under which the court will not intervene on the regularity or irregularity of the internal process of the legislature but will leave it to determine exclusively for itself matters of this kind¹, the court should not and could not intervene on the correctness or otherwise of such exercise of power;²

¹ Paragraph 27 of the judgment.

² Paragraph 35 of the judgment.

- (b) the Applicant has not provided a good explanation for the delay in making the leave application. The Court does not accept that the time taken by the Applicant to apply for legal aid by itself amounts to a good reason to extend the time for making the leave application. On this basis, the Court refused to grant an extension of time and set aside the *ex parte* leave previously granted to the Applicant to apply for judicial review;³ and
- (c) the Applicant lacks the necessary locus in the judicial review application in light of the existence of Dr CHEUNG who, as the mover of the Motion, clearly has a much greater and better interest in bringing the judicial review, and the lack of merits in the ground of judicial review.⁴

4. The Court makes an order *nisi* that costs of the judicial review be to the Chairman to be taxed if not agreed. The costs order *nisi* shall become absolute 14 days from the date of judgment (i.e. on 14 June 2017) unless any of the parties applies to vary it by summons. Solicitors for the FC Chairman in the above proceedings are in the course of recovering costs from the Applicant.

Prepared by

Legal Service Division
Legislative Council Secretariat
7 June 2017

³ Paragraphs 41 and 42 of the judgment.

⁴ Paragraph 44(7) of the judgment.