

LAND COURT OF QUEENSLAND

CITATION: *Fatseas v Department of Environment and Resource Management (formerly Natural Resources and Water)* [2009] QLC 0064

PARTIES: Rita Marie Fatseas
(appellant)

v.

Chief Executive, Department of Environment and Resource Management (formerly Natural Resources and Water)
(respondent)

FILE NO: AV2008/1016

DIVISION: Land Court of Queensland

PROCEEDING: Jurisdiction – Appeal against an unimproved value

DELIVERED ON: 8 May 2009

DELIVERED AT: Brisbane

HEARD AT: Brisbane

MEMBER: Mr BR O’Connor, Judicial Registrar

ORDER: **The Court has no jurisdiction to hear this appeal.**

CATCHWORDS: Jurisdiction – Late filing of appeals – Whether reasonable excuse

APPEARANCES: Mrs R Fatseas on her own behalf
Ms T Johnson, Senior Lawyer, Legal Services,
Department of Environment and Resource Management
for the respondent

- [1] The issue for determination in this matter is whether the Court has jurisdiction to hear the appeal lodged over three months after the due date. The 42 days allowed for lodgement of the appeal with the Court expired on 8 July 2008; the appeal was received in the Court Registry on 24 October 2008. Section 57 of the *Valuation of Land Act 1994* (VLA) allows for “reasonable excuse” as a cause for such delay.

57 Late Filing

- (1) If a notice of appeal is filed in the Land Court registry after the time stated in section 55(2), the registrar of the court must notify the owner that the appeal may not be heard unless the owner satisfies the court that the owner has a reasonable excuse for filing the notice after the time stated.

Example of reasonable excuse-

The notice of the chief executive's decision or the notice of appeal was lost or delayed in the ordinary course of post.

The question then is whether the explanation for the late lodgement advanced by the appellant falls within the term "reasonable excuse" as interpreted by the relevant authorities, particularly those since the introduction of s.57 of the *VLA* as amended in 2000.

- [2] The authorities on the term "reasonable excuse" or similar expressions are usefully collected in the decision of the Land Court in *Anthony v. Chief Executive, Department of Natural Resources*, 10 November 2000. In essence, the authorities establish that the excuse must be "substantial" and "what one is looking for is some cause which a reasonable man would regard as sufficient a case, consistent with a reasonable standard of conduct, the kind of thing which one might have expected to delay the taking of action by a reasonable man".

Background

- [3] Evidence as to the reasons for late lodgement was provided to the Court by the appellant, Mrs Rita Fatseas, the owner of the subject land. In her written response to the Court as to why she had lodged her appeal outside the prescribed time, Mrs Fatseas referred to personal health issues.
- [4] While Mrs Fatseas was in hospital and recuperating in March and April 2008, it became evident from her subsequent oral evidence at the hearing that the alleged reason for late filing was not really related to her state of health. While it is not necessary to go into precise detail on this particular issue, her evidence reveals she was able to attend collection of her mail at times well before the cut-off date for the lodgement of the appeal.
- [5] At the hearing Mrs Fatseas claimed, for the first time, she had not received the decision on objection from the Department in written form. She states that when she apparently had not heard from the respondent in response to her objection, she decided to lodge an appeal with the Land Court. She claims to have obtained details of how and where to lodge such an appeal from a response to an objection notice she had in her possession in relation to another property of hers.

[6] Counsel for the respondent tendered a copy of the decision on objection form (containing a date of issue of 27 May 2008). Mrs Fatseas' address was clearly shown on this form. Mrs Fatseas acknowledged such was the correct address; however she states she cannot recall receiving such notice.

Decision

[7] In present circumstances, I cannot conclude reasonable excuse has been established for the following reasons:

- Mrs Fatseas changed her original explanation as to why she had not earlier lodged the notice of appeal with the Land Court from that submitted in written response to a Court request for explanation.
- There is evidence that the decision on objection was sent to Mrs Fatseas at her normal address for service. (While the dispensing of this decision to Mrs Fatseas was not strictly proven by the respondent, I am prepared to accept that it was sufficiently sent under the rules of evidence applicable to the Land Court)
- The respondent is entitled to rely on the presumption that if a notice is sent to the correct address, such was in fact received unless the contrary is proven – s. 39(1)(b) of the *Acts Interpretation Act 1954*. Mrs Fatseas, despite her claim of non-receipt, has not proven otherwise.
- Mrs Fatseas could not point to any system of her recording of receipted mail, as for example a business may adopt, to back her claim of non-receipt. She merely stated that she could not recall receiving the document.
- The length of time between the 42 day maximum date and the eventual lodging in the Land Court exceeds three months.

Order

No jurisdiction is found to lie in this matter.

**BR O'CONNOR
JUDICIAL REGISTRAR**