

LAND COURT OF QUEENSLAND

CITATION: *Postle & Anor v Valuer-General* [2024] QLC 5

PARTIES: **Jason Trevor Postle and Leslie Kathleen Postle**
(applicants)

V

Valuer-General
(respondent)

FILE NO: LVA403-23

PROCEEDING: Jurisdiction – s 158(2) of the *Land Valuation Act 2010*

DELIVERED ON: 14 March 2024

DELIVERED AT: Brisbane

HEARD ON: Submissions closed 22 December 2023

HEARD AT: Heard on the Papers

JUDICIAL REGISTRAR: GJ Smith

ORDERS:

- 1. The application in respect of LVA403-23 is dismissed.**
- 2. The Court does not have jurisdiction to hear and determine the proposed appeal.**

CATCHWORDS: PRACTICE AND PROCEDURE – Failure to file notice of appeal in time – whether cause particularised – nature of evidence – whether reasonable excuse is established.

Land Valuation Act 2010 s 158

AG Russell v The Crown (1992-1993) 14 QLCR 202, applied.
Hughes v. Chief Executive, Department of Natural Resources and Water [2007] QLC 129, applied.

APPEARANCES: Not applicable

Background

- [1] In this matter the Court is required by s 158 of the *Land Valuation Act* 2010 (the LVA) to decide if there is a reasonable excuse established for not filing the notice of appeal within the appeal period. The proposed appeal relates to the unimproved value of grazing land situated within the Maranoa Regional Council local government area. The relevant date of valuation is 1 October 2022.
- [2] An online objection against the unimproved value was lodged by the applicants pursuant to s 105 of the LVA on 15 May 2023. In response to this objection, the Valuer-General issued a decision on objection on 9 August 2023. It is not in dispute that the appeal period expired on 9 October 2023. The Notice of Appeal is recorded as having been filed in the registry on 10 October 2023.
- [3] On 11 October 2023 a Deputy Registrar of the Land Court advised the parties via an emailed letter that the appeal period appeared to have expired on 9 October 2023 at 4:30pm. The letter also advised that the Court would need to determine the question of whether there was a reasonable excuse for the notice not having been filed within the appeal period.
- [4] On 24 October 2023 the Court issued orders for the filing of affidavit material and submissions by the parties. These orders provided for the question of jurisdiction to be determined on the basis of the material filed without an oral hearing. Further orders were made on 1 December 2023 and 19 December 2023 to extend the timeframes for compliance set out in the original orders made on 24 October 2023.

Evidence

- [5] A joint affidavit by both applicants was sworn and filed in the Court on 8 December 2023.¹ The affidavit deposes that the appeal was not submitted to the Land Court on time due to a lack of knowledge of the legal system and also due to the current drought which resulted in considerable pressure to maintain property work, with one person working full-time to assist. Exhibit A to the affidavit included approximately 55 pages of further information relating to both the subject property and the objection lodged with the Valuer-General.
- [6] No evidence was filed on behalf of the Respondent.

¹ Ex 1.

Legislation

[7] Section 157 (2) of the LVA provides –

- (2) Subject to section 158, an appeal cannot be started after 60 days after the day of issue stated in the objection decision notice (the appeal period).

[8] Section 158 (1)(2) of the LVA provides –

Late filing

- (1) This section applies if a valuation appeal notice is filed after the appeal period has ended.
- (2) The Land Court can hear the appeal only if—
 - (a) the valuation appeal notice was filed 1 year or less after the objection decision notice was issued; and
 - (b) the appellant satisfies the court there was a reasonable excuse for not filing the notice within the appeal period.

Example of reasonable excuse—

The notice of the valuer-general's decision or the valuation appeal notice was lost or delayed in the ordinary course of post.

Applicants' submission

[9] Although no formal submissions were filed by the applicants, the affidavit filed includes a contention that the decision on objection requires greater consideration of substantive issues such as land use, country classification and adverse characteristics.

Respondent's submission

[10] On behalf of the respondent, it is submitted that a reasonable excuse has not been established by the applicants for failing to file the notice of appeal within the appeal period prescribed by the LVA. This submission is made on the basis of the following factors:

- i. The absence of supporting evidence regarding the effects of the drought or the nature of the challenges encountered regarding the work on the property.
- ii. Exhibit A to the affidavit relates to substantive valuation issues which are not relevant to establish a reasonable excuse for filing the appeal out of time.
- iii. Decisions by the Court must be based on the evidence presented and facts and circumstances cannot be assumed in the absence of direct evidence.

- iv. It is critical that the submissions identify the excuse for the delay supported by satisfactory explanation and evidence that on an objective assessment can be deemed *a cause consistent with a reasonable standard of conduct, the kind of thing which one might expect to delay the taking of action by a reasonable man.*

Conclusion

- [11] The matters deposed by the applicants to demonstrate the existence of a reasonable excuse are set out at paragraph [5] herein. The respondent submits, that without detailed evidence or an explanation regarding how the matters caused or brought about the failure to lodge the appeal notice during the appeal period, a finding of reasonable excuse could not be made.

- [12] In *Hughes v. Chief Executive, Department of Natural Resources and Water*² Member Scott, when considering the determination of reasonable excuse observed:

It can be understood from this quotation that for a Court to conclude that a "reasonable excuse" exists for the delay there must first be identified an actual cause or causes of the delay. I cannot conclude that a case has been made out that the fact that the file was boxed for removal was the cause of the lateness of filing of the Notice of Appeal. There is an absence of particularity as to the true nature of the cause.³

- [13] The submission on behalf of the respondent regarding the absence of detailed evidence to support the application is accepted by the Court. It must follow that a finding of reasonable excuse cannot be made on the evidence filed and therefore the Court does not have jurisdiction to hear and determine the proposed appeal.

Orders

1. **The application in respect of LVA403-23 is dismissed.**
2. **The Court does not have jurisdiction to hear and determine the proposed appeal.**

² [2007] QLC 129.

³ Ibid.