

LAND COURT OF QUEENSLAND

CITATION: *Branch v Department of Natural Resources and Mines*
[2002] QLC 86

PARTIES: **Leonard Edgar and Rosemary Lynette Branch**
(applicants)
v.
**Chief Executive, Department of Natural Resources
and Mines**
(respondent)

FILE NO: AV2002/0811

DIVISION: Land Court of Queensland

PROCEEDING: Jurisdiction – Appeal against Unimproved Valuation

DELIVERED ON: 8 November 2002

DELIVERED AT: Brisbane

HEARD AT: Brisbane

JUDICIAL REGISTRAR: Mr BR O'Connor

ORDER: **1. The Court has no jurisdiction to hear the appeal.**

CATCHWORDS: Jurisdiction – late filing of appeal – whether reasonable
excuse

APPEARANCES: Mr LE Branch for the applicants
Ms R Trigge (Senior Legal Officer) for the respondent

[1] The issue for determination in this matter is whether the Court has jurisdiction to hear the appeal lodged 6 days after the due date. Section 57 of the *Valuation of Land Act 1944* allows for "reasonable excuse" as a cause for such delay:

"57.(1) If a notice of appeal is filed in the Land Court registry after the time stated in s.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 lodgment advanced by the appellant falls within the term "reasonable excuse" as interpreted by the cases, particularly those since the introduction of s.57 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 cause, 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] The prescribed time for lodging this appeal expired on 24 September 2002. Mr and Mrs Branch's Notice of Appeal was received by post in the Court Registry on 30 September 2002 having been postmarked on 29 September 2002. These dates reveal a period of 6 days exceeding the due date.

- [4.] Mr Branch gave oral evidence to the Court and tendered a short written statement signed by himself and his wife outlining reasons for delay. The key part of the statement reads:

"On the 4th April 2002 we lodged our **initial** valuation objection letter to the Department of Natural Resources.

On the 23rd April 2002 the Department of Natural Resources & Mines acknowledged receipt of our objection letter and advised that the results of our objection would be known within 90 days.

On or about the 1st July 2002 we both went on holidays to remote areas of Cape York.

On the 13th August 2002 the Department of Natural resources & Mines posted a revaluation letter to our residence. The letter also advised that we had 42 days to make an appeal. However before going away we were not to know that our objection to the valuation would be basically rejected and that any appeal time would be limited to 42 days.

We returned home on the 25th September and immediately prepared more detailed documentation for our appeal. This was posted on the 27th September 2002.

In this instance it would not have been possible to have the appeal letter forwarded to us, as we were bush camping. In addition documentation required to support our final submission was at home."

- [5] Mr Branch also stated in oral evidence that his two adult sons had general responsibility to attend incoming mail in his absence. However, he considered dealing with a valuation appeal (with necessary detailed grounds of appeal) outside their capabilities, in the

absence of background knowledge. He further stated that he was out of phone contact for a period of four weeks during the six-week appeal period.

[6] The appellants are certainly entitled to take holidays in remote areas where they might be uncontactable for certain periods. However, it could set an undesirable precedent if the circumstances of the present case were held to satisfy "reasonable excuse", which has been fairly tightly interpreted. Having planned to be absent for an extended period of time, the appellants perhaps should have inquired of the Department before they left of the state of their appeal or, alternatively, made more detailed arrangements with someone to attend to such matters in their absence.

[7] "Reasonable excuse" may well have been established if something unforeseen had occurred on their trip or if their home "agent" had failed to properly carry out instructions.

[8] Having considered the evidence before the Court, I am not convinced a reasonable excuse has been established. Unlike other recent cases such as *Zolgaze* (decision of 22 August 2001), *Craven* (decision of 14 September 2001) and *Gerber* (decision of 14 September 2001) where there was some evidence of departmental conduct, which could have misled the appellants, none is apparent here. There is no other evidence of delay in the post or of sickness or other personal circumstances of the appellants which would amount to "reasonable excuse"

Decision

[9] Having considered the tests outlined in the authorities and the facts of those cases, I conclude that a reasonable excuse has not been established in the circumstances of the present case. Accordingly, I find the Court has no jurisdiction to hear the subject appeal.

**BR O'CONNOR
JUDICIAL REGISTRAR**