

LAND COURT OF QUEENSLAND

CITATION: *Bissell v Department of Natural Resources and Mines*
[2003] QLC 0085

PARTIES: **George M and Gloria E Bissell**
(applicants)
v.
**Chief Executive, Department of Natural Resources
and Mines**
(respondent)

FILE NO: AV2003/0673

DIVISION: Land Court of Queensland

PROCEEDING: Jurisdiction – Appeal against Unimproved Valuation

DELIVERED ON: 12 December 2003

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 G M Bissell for the applicants
Mr J O'Rourke (Principal Legal Officer) for the
respondent

[1] The issue for determination in this matter is whether the Court has jurisdiction to hear the appeal lodged one day 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 2 September 2003. Mr and Mrs Bissell's Notice of Appeal was received by post in the Court Registry on 3 September 2003 having been postmarked on 2 September 2003. These dates reveal a period of one day exceeding the due date.
- [4] Mr Bissell gave oral evidence in this matter. His explanation for late lodgment was that he posted the appeal notice at (Central) GPO at 2.00 p.m. on 2 September 2003 with the expectation that it would be delivered to the Land Court (located within the CBD) by close of business that day. He refers to his business experience in past years where a letter so posted would be placed in a PO Box at Central GPO or delivered to a CBD business address that day of posting.
- [5] The circumstances of the present case are somewhat different to the past practice to which Mr Bissell refers. The Land Court PO Box is not Central GPO, but rather George Street Post Shop; and the address on the envelope posted by Mr Bissell was to that PO Box, not to the Land Court street address of 40 Tank Street, Brisbane.
- [6] Further, it appears the former practice with which Mr Bissell was familiar no longer operates. Mr Bissell was given leave by the Court to make further inquiries of Australia Post as to current practice. He subsequently provided to the Court a written outline of this practice. Apparently mail now posted at Central GPO is automatically taken to either Underwood or Northgate Mail Centres for postmarking and subsequent despatch to all post offices. If a sender makes a special request at the GPO counter, separate

arrangements can then be made for a letter to be then placed in a Central GPO mailbox. (Mr Bissell did not so request and action would not have been possible anyway, given the Land Court post box at George Street).

[7] The present practice then results in a letter posted at 2.00 p.m. in Central GPO going to, say, Underwood, being postmarked at 6.00 p.m. there and then placed in the George Street post box the following morning. It is then collected by the responsible Land Court officer later that day. This would seem to be the normal current standard for mail within the CBD or even perhaps the wider Brisbane region.

[8] The test for reasonable excuse in the decided cases adopts the position of a reasonable man, not someone with any special individual knowledge of the practices which may have been adopted in the past, but have not so operated for some time. Further, as discussed above, the past practice would probably not have seen the appeal notice delivered to the George Street Post Shop on the day of posting at the Central GPO.

[9] I have some sympathy with Mr Bissell's position and realise how he may have been mistakenly relying on his long-term business practice. He was merely one day late. However, the appeal time is fairly generous at 42 days (28 day limits apply to most other Court areas) and consistency needs to be maintained in the reasons in the decided cases on jurisdiction. The Department looks to the Court for such guidance in future cases.

[10] I suppose the key question in the present case is really this: would a reasonable person posting a letter at Central GPO at 2.00 p.m. expect it to be delivered to a PO Box in another Central Brisbane location and collected by the addressee in normal course of business the same day? Considering the evidence and submissions from both sides, I conclude that such a reasonable person would not. The following day would seem to be normal course of post on these facts.

[11] As I pointed out to Mr Bissell at the jurisdiction hearing, he will have a chance to redress any valuation error in the next period (Brisbane City Council area is presently valued annually). This October 2003 figure will be based on market evidence available and relativity with nearby properties. The fact that the 2002 issued figure was not altered would not seem crucial to any appeal by Mr Bissell, particularly if the surrounding circumstances for non appeal are advanced.

[12] Mr Bissell also stated in the jurisdiction hearing that nearby properties had been reduced on appeal, but his not so. Despite this present decision on jurisdiction by the Court, the Department may still wish to review this consistency between Mr Bissell's property and those he mentions, if it has not already done so. Any amendment to the 2002 valuation

could then issue if warranted. This, of course, is merely a suggestion by the Court. It has no power to further be involved at this stage.

Decision

[12] 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