

LAND COURT OF QUEENSLAND

CITATION: *Ganthorpe Hill Pty Ltd as Tte v Valuer-General*
[2021] QLC 8

PARTIES: **Ganthorpe Hill Pty Ltd as Tte**
(applicant)

v

Valuer-General
(respondent)

FILE NO: LVA018-21

DIVISION: General Division

PROCEEDING: Jurisdiction - Appeal against objection decision on a valuation under the *Land Valuation Act 2010*

DELIVERED ON: 11 March 2021

DELIVERED AT: Brisbane

HEARD ON: On the papers

HEARD AT: Heard on the papers

JUDICIAL REGISTRAR: GJ Smith

ORDERS: **1. The Court has jurisdiction to hear and determine the appeal.**

2. The matter be adjourned for a Preliminary Conference on a date and time to be advised.

CATCHWORDS: PRACTICE AND PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – COMMENCING PROCEEDINGS – TIME FOR SERVICE OF ORIGINATING PROCESS OR RENEWAL – where the appellant failed to appeal to the Land Court in time – where the Notice of Appeal was lost or delayed in the post– whether there was a reasonable excuse for the failure to lodge the appeal in time – where the Court found there was a reasonable excuse therefore jurisdiction to hear the appeal

Land Valuation Act 2010, s 155, s 157, s 158

ISPT Pty Ltd v Valuer General [2012] QLC 48, cited

APPEARANCES: Not applicable

Background

- [1] The Court in this matter must decide if it has jurisdiction pursuant to s 157 of the *Land Valuation Act 2010* (the LVA) to hear and determine a proposed appeal lodged on behalf of Ganthorpe Hill Pty Ltd as Tte against a decision on objection by the respondent regarding an annual valuation as at 1 October 2019. The subject land is situated at Coochin within the Scenic Rim Regional Council local government area.
- [2] An objection decision notice was issued by the respondent in respect of the subject property on 2 December 2020. A Notice of Appeal in respect of this decision was filed in the Land Court registry on Tuesday 2 February 2021, one day after the expiry of the appeal period. In the circumstances, the Court will have jurisdiction to hear and determine the appeal only if a “reasonable excuse” as required by s 158 of the LVA is established.
- [3] On 8 February 2021, a Deputy Registrar emailed the appellant to advise that the Court could not hear the proposed appeal without a reasonable excuse being established for not filing the Notice of Appeal within the appeal period.
- [4] On 24 February 2021, an affidavit of Mr John De Luchi¹, a director of Ganthorpe Hill Pty Ltd, was filed. The affidavit details information from Australia Post which demonstrates that the Notice of Appeal in the ordinary course of post would have been received in the Land Court registry on Monday 1 February 2021.
- [5] On 25 February 2021, the registry received email correspondence on behalf of the respondent from In-house Legal, Department of Resources, advising that the respondent did not oppose the Court finding that jurisdiction was established in this matter. Even though a finding that the Court has jurisdiction is unopposed,

¹ Ex 1.

reasonable excuse must still be established in respect of the failure to lodge the Notice of Appeal within the prescribed period.²

Legislation

[6] 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*).”

[7] Section 158 of the LVA provides:

“158 - 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.”

Evidence and conclusion

[8] The only evidence before the Court is Exhibit 1, the affidavit of Mr De Luchi, evidence which is unchallenged and uncontradicted.

[9] On the basis of Mr De Luchi’s evidence I am satisfied that the proposed Notice of Appeal was delayed in the ordinary course of post and as a consequence that notice was not filed within the appeal period. It therefore follows that I am also satisfied that a reasonable excuse for not filing within the appeal period is established.

Orders:

1. The Court has jurisdiction to hear and determine the appeal.

² *ISPT Pty Ltd v Valuer General* [2012] QLC 48 [5].

- 2. The matter be adjourned for a Preliminary Conference on a date and time to be advised.**