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JACK SICHERMAN & LEONARD H. MARGOLESE

v.

ASSESSMENT APPEAL BOARD

Supreme Court of British Columbia (A802686) Vancouver Registry

Before: MR. JUSTICE K.E. MEREDITH

Vancouver, October 29, 1980

R.C. Barratt for the petitioners, Sicherman and Margolese.
C.A. Lace for the respondent, Assessment Appeal Board

Reasons for Judgment November 10, 1980

The petitioners apply under the *Judicial Review Procedure Act* for an Order to require the Assessment Appeal Board to hear the petitioners' appeal from a decision of the Kamloops Court of Revision made March 31, 1980. The board has taken the position that the appeal was out of time.

Appeals from decisions of Courts of Revision are authorized under the provisions of the *Assessment Act*. The relevant provisions are as follows:

> "Appeals to board
>
> 67. (1) Where a person, including a municipality, the minister, commissioner, or assessor, is dissatisfied with the decision of a Court of Revision, or with the omission or refusal of the Court of Revision to hear or determine the complaint on the completed assessment roll, he may appeal from the Court of Revision to the board.
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> (2) The assessor, at the time that he notifies a complainant of the decision of the Court of Revision in respect of his complaint, shall also notify him that he may appeal the decision of the Court of Revision to the board and advise him of the procedure to be followed in respect of an appeal.
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> Procedure on appeal to board
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> 68. The procedure in an appeal to the board shall be as follows:
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> (a) the appellant shall, within 14 days from the date of mailing the notice of the decision of the Court of Revision, serve on, or send by registered mail to, the assessor, a written notice of his intention to appeal, and the notice shall contain the ground of appeal."

The notice of the decision of the Court of Revision was mailed on March 31, 1980. It was not received at the petitioners' office to which it was mailed until April 11, 1980. The petitioners were away from their office on that date and did not return until April 17, 1980, and therefore did not receive actual notice of the decision of the Court of Revision until the latter date. They immediately notified the Kamloops Assessor by telephone and by confirming letter dated April 17, 1980 of their decision to appeal the decision to the Assessment Appeal Board. The Assessment

Appeal Board notified the petitioners by letter dated April 29, 1980 that they would not accept the Notice of Appeal, the appeal being out of time.

The Petition does not set forth grounds of the complaint against the decision of the Assessment Appeal Board that the appeal was out of time. This may be because the petitioners' argument is not clear, at least to me. The argument is not based on the proposition that nowhere in the relevant sections is there to be found a specific provision by which an appellant is positively denied his appeal unless he responds to the decision of the Court of Revision within 14 days from the date of mailing. Rather, I think counsel depends, in part at least, upon this paragraph from the judgment of Mr. Justice Southey in *Re Town of Milton and Ontario Municipal Board*, 20 0.R. (2d) 257 at 261:

> "To turn to the provisions of the *Education Act*, *1974*, if it had been discovered after the elapse of 30 days after the mailing of the notice to the Clerk of the municipality by registered mail that the letter had been held up in the post office undelivered for the entire 30-day period because of a postal strike, it would be simply unthinkable that our Courts would hold that there had been service on the day of mailing and that the time for objecting to the decision of the arbitrators expired within 30 days after the mailing. For the purposes of a statutory provision like the one we are here concerned with, if it is established that a letter sent by registered mail was not delivered to the addressee in the ordinary course of the post because of some misadventure, failure of the post office, wrongful act of a third party, or other circumstances not involving a refusal of the addressee to accept the letter, then, in my judgment, service did not occur by virtue of the mailing. In my view, the words in s-s.(8) 'within 30 days of the mailing of copies of the decision', should be interpreted as meaning 'within 30 days of the *effective* mailing of copies of the decision'."

The present case might fall within the proposition stated in the above passage if the appellants had not been in receipt of the notice until after the expiry of the 14-day period or even on the eve of the expiration of that period. Here, the reason that the petitioners failed to respond was by reason of their absence from their mailing address. It seems to me that the assessment procedure would be quite inoperable if delays would be countenanced where an appellant blinds himself to the fact that the assessment had been made. That is what I think the appellants have done in this case They certainly demonstrate that had they been in communication with their office on April 11th when the notice arrived, they were quite able to respond promptly. They did just that on April 17th when the notice of assessment came to their attention.

Under these circumstances, I have no alternative but to dismiss the petition with costs.