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**PACIFIC RIM RESORT PROPERTIES INC.
NEDERLAND HOLDINGS LTD.
ANGLELAND HOLDINGS INC.**

v.

ASSESSOR OF AREA 05 - PORT ALBERNI

SUPREME COURT OF BRITISH COLUMBIA (L022856) Vancouver Registry

Before the HONOURABLE MR. JUSTICE OPPAL
Date and Place of Hearing: February 3, 2003, Vancouver, BC

J.R. Lakes for the Appellants
R. Macquisten for the Respondent

Reasons for Judgment (Oral)

February 3, 2003

[1] THE COURT: On August 7th, 2002, the Property Assessment Appeal Board dismissed the Appellant's appeal from a decision of the Property Assessment Review Panel on the grounds that the Board lacked jurisdiction due to the failure of the Appellant to meet a statutory deadline in the filing of its Notice of Appeal.

[2] This appeal was heard by way of Stated Case. Accordingly the facts are not in dispute.

[3] The Appellant was dissatisfied with a decision of the Assessor of Area #05 - Port Alberni. In January 2002, Mr. English, the principal of the Appellant, indicated his wish or intent to appeal from the decision.

[4] On April the 8th, 2002, Mr. English attended at an appeal management conference with his then counsel and stated that he intended to appeal the decision of the review panel.

[5] The statutory deadline for filing the Notice of Appeal was April 30th, 2002. That deadline was not met. A Notice of Appeal was filed on May 6th, 2002. There is evidence that there was confusion between the Appellant and his then counsel as to who was going to file the notice. The Appellant thought his lawyer would file a notice. However, the Appellant did not receive the decision of the review panel until June 14th. The lateness was attributed to a failure on the part of Canada Post, which apparently had failed to comply with their request of a change of address for the Appellant.

[6] The Appeal Board dealt with this issue as follows:

In this case, Mr. English knew he was dissatisfied with the decisions of the review panel, although he had not received copies and he knew he wanted to appeal. Further, he knew the appeal deadline was April 30, as evidenced in the record of the AMC held April 8th, 2002. The deadline for appeal was not missed on account of lack of notice of a deadline, or an inability to determine dissatisfaction with the decision of the ARP. Rather, it was missed as a result of an apparent error in communication or misunderstanding between Mr. English and his then counsel. In the circumstances, the appellant did not need the decision notices to file the appeal and, in fact, did file the appeal before the decision notices were actually received. In the circumstances, there is no reason why the appeal could not have been filed by April 30th.

[7] The law is not in dispute. The burden is on the Appellant in this appeal. Under the *Assessment Act*, R.S.B.C. 1996, c. 20, there is a mandatory limitation period prescribed by which a Notice of Appeal must be filed; however, the Board has a discretion to extend the time, particularly if there is a so-called intervention.

[8] In this case, the action or non-action of Canada Post is said to be the intervention. The Appellant's position is that it could not file a notice within the prescribed period because it had not received the decision of the panel within the time limit. To that extent, the case of *Pacific National Investments v. Assessor of Area No. 01 - Saanich/Capital*, a decision of the Court of Appeal, Victoria Registry, number V101675, dated May 20th, 1994, is of assistance. The court, at page 12, in its reasons, stated as follows:

On the facts of this case, the appellant has satisfied the burden of proving that it did not receive by 30 September 1990 the notice of assessment which the assessor was required by subsection 2(1) to give. The appellant's receipt of that notice after October 1990 due to the wrongful intervention of a third party is a lawful excuse for its not delivering written notice of its complaint before that date. The law will not require an impossibility.

[9] Similarly, in *Arbanas v. Assessor of Area Number 5 - Port Alberni*, a decision of the Assessment Appeal Board, at page 2, stated as follows:

The courts have consistently held that there is no jurisdiction in the Board to extend the time for filing an appeal, or to relieve against the mandatory provisions of the *Assessment Act*; see *Tiberon Investments Inc. and Gandalf Enterprises Ltd. v. Assessor of Area No. 1 - Saanich Capital* (1985), Stated Case 203 (SCBC), and *Lennox and Page v. Assessor of Area No. 01 - Saanich Capital* (1987), Stated Case 281 (SCBC). The exception to this rule would appear to be where there has been an intervention of a third party such that a taxpayer did not receive the original assessment notice prior to the deadline for appealing to the court of revision.

[10] The reasons in *Powell River Town Centre Ltd. v. The Assessor of Area Number 6 - Courtenay* are useful. They are, in part, as follows, at p. 10:

In considering the validity of an appeal to the board which has been made after the statutory deadline has passed, the following conditions should be met: (1) a sworn declaration must be presented confirming that the person entitled to the decision of the Court of Revision did not receive it; (2) the proposed appellant must have displayed an overt intent to appeal; (3) there should be a logical explanation as to why the notice was not received, as in the *Craig* decision, *supra*, where the postmistress inadvertently withheld the letter containing the decision from the taxpayer; (4) there must be no unusual or suspicious reasons for the decision not being received, such as a refusal to pick up the letter containing the notice; and (5) no prejudice will be done to either side if the appeal is ruled valid.

[11] It is not in dispute that all five of those factors have been met in this appeal.

[12] In this case, counsel for the Respondent has argued that there is no causal link between the lateness of the filing of the notice and the lateness of the notice of the decision. In other words, it is said that the lateness is not relevant. It is said that the real cause of the delay here was the inaction on the part of the Appellant and his former counsel. In any event, it is argued that he knew the grounds from which he was appealing.

[13] With the greatest of respect, I must disagree with that argument. It is simply not logical to conclude that a meaningful Notice of Appeal can be filed without any close examination of the decision that is being appealed. How can it be said that the decision was in error when there is no decision? The fact that the Appellant and/or his counsel filed a notice on May 6 really is not relevant, because that notice surely could not have contained any meaningful grounds without any reference to a decision, which did not come to the attention of the Appellant until June 14th.

[14] Our experience in these courts has shown us that it serves no useful purpose to file a perfunctory Notice of Appeal that has no regard to a decision, for invariably Notices of Appeal of that kind are amended.

[15] With the greatest of respect to the decision of the Board, it is my view that it is somewhat restrictive and somewhat unfair. The interests of fairness dictates that the time be extended. I must also point out here that there is no prejudice resulting to any person by the late filing in this case.

[16] For those reasons, I am allowing the appeal.

[17] Thank you.

[18] MR. LAKES: My Lord, may I make a point about costs? We asked for costs.

[19] THE COURT: Do you have any comments on that?

[20] MR. MACQUISTEN: Well, the only comment, My Lord, I guess I can make is that we're here as a result of a decision of the Board, not our decision to have denied the appeal in the first instance. So it's --

[21] THE COURT: Well, there is some validity to that argument, but I think I am going to follow the normal rule, and that is that the costs follow the event, and you were successful and you are entitled.

[22] All right. Thank you.