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SC 281 Lennox and Page v. AA01

WILBERT LENNOX AND LINDA PAGE

v.

ASSESSOR OF AREA 1-SAANICH-CAPITAL

Supreme Court of British Columbia (A871971) Vancouver Registry

Before MR. JUSTICE MACDONELL

Victoria, October 28, 1987

C. M. Considine for the respondent
Appellant appeared in person

Court of Revision – "Deliver" – Notice of Appeal – Out of Time - Jurisdiction

On November 3, the first working day following the deadline for such notices, the appellant hand delivered a written complaint about his assessment to the assessor, for review by the Court of Revision.

The Court held that the deadline set out in s. 40 (3) (a) of the Assessment Act was mandatory. If a complaint is not delivered or mailed on or before October 31, the appeal will not be valid. Neither the Court of Revision nor the Assessment Appeal Board has jurisdiction to hear an appeal which is out of time.

Reasons for Judgment (Oral)

October 28, 1987

This is a stated case by the Assessment Appeal Board with respect to the question of jurisdiction to hear an appeal, both of the Court of Revision and the Assessment Appeal Board.

The issue is very narrow and that is whether notice of appeal was filed in time to give the Court of Revision jurisdiction, and secondly, whether the Assessment Appeal Board, has jurisdiction to hear the appeal in the circumstances from the order made by the Court of Revision.

The specific questions asked were:

"(1) Was the Board acting in excess of its jurisdiction when it found in each instance that the appeals launched by the Appellants, Wilbert Lennox and Linda Page, respectively, were each validly instituted notwithstanding the failure of the Appellants in each case to comply with Section 40 (3) (a) of the *Assessment Act* by delivering in writing to the assessor not later than October 31, 1986 a notice of each complaint in respect of the entries in the assessment roll?

"(2) Was the Assessment Board acting in excess of its jurisdiction when it directed that each of the said appeals be heard on the merits in respect of the liability for taxation in the year 1987?"

The circumstances briefly are that the appellant prepared that objection to the assessment and delivered it on the 3rd of November, being the Monday following the deadline of October 31st, which was a Friday. And the narrow point is whether there is any relief from the mandatory nature of section 40 (3) (a), which provides as follows: Notice in writing of each complaint in respect of an entry in, "(a) an assessment roll shall be delivered to the assessor not later than October 31 of the year in which the assessment roll is completed."

The *Interpretation Act* dealing with the question of deliver defines deliver as follows:

"Deliver: with reference to a notice or other document, includes mail to or leave with a person, or deposit within any person's mail box or receptacle at the person's residence or place of business."

The section has been judicially considered by the Supreme Court of British Columbia, and the Court of Appeal. The case on all fours, in my view, is the case of *Tiberon Investments Inc. and Gandalf Enterprises Ltd. vs. The Assessor of Area #01 - Saanich Capital*, that was the decision of Mr. Justice Locke, as he then was, of June 10, 1985, where he found there was no jurisdiction in either the Court of Revision or the Assessment Appeal Board to hear an appeal out of time. He was dealing with the precise section we are dealing with here, that is section 40 (3) (a) and of course he also dealt with section 67 of the *Assessment Act*, dealing with appeals.

In this case had the notice of objection or appeal been filed in the first instance or mailed in the first instance on October 31, it would have been sufficient under the Act as it does not require that it be delivered on that day, but merely mailed; however, the Act is specific, requiring that it be either delivered or mailed on or before the 31st. In my view there is no provision for extension of time, nor any jurisdiction for the Assessment Appeal Board or Court of Revision to extend the time for filing.

This is not a case where the time limit expires on a holiday, which has separate provisions dealing with calculation of time under the *Interpretation Act*. As the date expired on the Friday there is no exception available and unfortunately under the circumstances of this case the appeal must succeed.

According to the answers to the questions stated are as follows: In answer to Question 1 is yes; and answer to Question 2 is yes also.

The appeal is accordingly allowed, no costs as have not been asked for.

