

NZR (1)
11/10 X
IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

M.464/83

1239
BETWEEN

GOLDSTAR PREMIER MOTELS LIMITED a duly incorporated company having its registered office at Auckland and carrying on business as a Motel Proprietor

APPELLANT

AND

McDOWELL WILLIAMSON LIMITED a duly incorporated company having its registered office at Rotorua and carrying on business as Real Estate Agents

RESPONDENT

Hearing: 13th September, 1984
Counsel: Warburton for Appellant
Stokes for Respondent
Judgment: 13th September, 1984.

(ORAL) JUDGMENT OF SINCLAIR, J.

This appeal was filed in this Court on the 8th April, 1983, and it was in respect of a judgment which had been given on the 14th March, 1983, so that the actual filing in this Court was outside the 21 day period allowed by the District Courts Act in respect of appeals from that Court to this in its civil jurisdiction. The matter became further compounded by reason of the fact that the respondent was not served with the notice of appeal until the 11th April, 1983, and there is authority to show that, until a notice of appeal is filed and served, it cannot be regarded as having been brought within the meaning of the appeal sections of the District Courts Act 1947.

The High Court has the power to extend the time for filing an appeal provided that application for extension is made within one month after the expiration of the 21 day period. No such application was made in this case until the 10th September, 1984, which, of course, is well outside the one month period referred to in s.73 (1) of the District Courts Act 1947. There is no discretion granted to this Court to any other Court to extend the time beyond that period of one month and, unlike the Court of Appeal Rules, it is mandatory in its terms. The probable reason is because of the limited jurisdiction of the District Court and the desirability of having finality properly. In any event, it seems to me that I would be bound to follow the decision in Clouston v. Motor Sales (Dunedin) Limited (1973) 1 NZLR 542 where Quilliam, J. had this to say at pp.543 and 544:

" Section 72 is the section which deals with the 'bringing' of an appeal. Section 73, on the other hand, fixes the time within which an appeal is to be brought. Section 73 (1) is as follows:

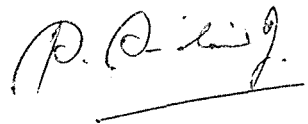
' No appeal shall be brought after the expiration of twenty-one days from the day on which the non-suit, final determination, or direction was given or made or after the expiration of such further time as may be allowed by the Supreme Court or a Judge thereof on application made within one month after the expiration of the said twenty-one days.'

I think it is apparent that the bringing of an appeal is a process which involves more than just the lodging of the notice of motion referred to in s.72 (1). The appellant is required also to serve a duplicate upon other parties affected (subs.(3)), and to lodge a further duplicate with the Registrar of the Court appealed from (subs.(6)). Each of these latter requirements is to be complied with 'either before or immediately after the notice of motion is lodged'. These words suggest strongly that compliance with those requirements is an integral part of the process of bringing an appeal. Not until they have all been complied with can the appeal be said to have been 'brought'.

Section 73 (1) fixes a limit of 21 days as the time within which an appeal shall be 'brought' with the provision for the extension of that time by application made within one month after the expiry of the 21 days. The terms of that subsection are similarly mandatory and it is clear that the power of the Court to grant an extension is limited by the plain words of the subsection. If, therefore, an appeal has not been 'brought' within the prescribed period in the sense of compliance with all the requirements of s.72 within that period then it will be barred."

This is precisely in effect the situation which has been reached in this case and in all the circumstances it seems to me that the application which has been filed by the respondent, namely, to dismiss the appeal, must succeed. The time limits have not been complied with and there is now no residual power of any description in this Court to grant any extension.

Accordingly on the notice of motion to dismiss the appeal there is to be an order that the notice of appeal will be dismissed. Respondent is entitled to costs to follow the event and will be allowed costs in the sum of \$80 plus any disbursements.



Solicitors: Foley & Warburton, Auckland, for Appellant
Hunt Hunt & Chamberlain, Auckland, for Respondent