

IN THE HIGH COURT OF NEW ZEALAND
WANGANUI REGISTRY

8/7

AP No. 16/94

950

IN THE MATTER

of Section 107 Summary
Proceedings Act 1957

BETWEEN

THE COMMISSIONER OF
INLAND REVENUE

Appellant

AND

RATAHI ORCHARD
MANAGEMENT LIMITED

First Respondent

AND

DONALD CUMMING
JOHNSTON

Second Respondent

AND

JUDITH ANNE WEEKES

Third Respondent

**NOT
RECOMMENDED**

Date of Hearing: 24 June 1994

Date of Judgment: 29 June 1994

Counsel: S.J. Ross for Appellant
C.P. Brosnahan for Respondents

REASONS FOR JUDGMENT OF NEAZOR J

This is an application under s 107 of the Summary Proceedings Act 1957 for extension of time within which to file an appeal by way of case stated against the decision of the

District Court to dismiss informations against Ratahi Orchard Management Ltd and two others being officers of the company.

The informations laid under the Income Tax Act 1976 were for the offence of wilfully or negligently making a false return of income for the year ended 31 March 1989. It was laid on 31 July 1992 by Mr D.J. Mills, described in the information as Assistant Controller, Investigations, Inland Revenue Department. There was a long delay between the filing of the information and its final disposition. The first day of hearing was 23 September 1992 and it was called on 8 occasions until August 1993 when it was part heard. The hearing was resumed on 23 March 1994. At the end of the prosecution evidence, counsel for the defendant took the point that there was no proof that Mr Mills in laying the information was acting under delegated authority of the Commissioner of Inland Revenue. No application was made by prosecuting counsel in respect of that application and the learned Judge accepted it and dismissed the charges. It is that decision that the informant wishes to challenge.

By virtue of s 107(2) of the Summary Proceedings Act a notice of appeal by way of case stated should have been filed within 14 days of the dismissal of the information and by virtue of s 107(3) a draft of the case lodged within a further 14 days or such further time as the District Court might allow. Neither of the statutory dates was met. The notice of appeal was dated 27 April 1994 and filed on 6 May 1994 and the case stated lodged on the same date. The appeal was then 30 days out of time.

The District Court Judge has declined to deal with an application to allow more time for lodging the case until this Court has extended the time to lodge the notice of appeal.

The reasons for the delay are a series of delays in the mail and errors within the Inland Revenue Department as to the time available within which to appeal. Counsel who prosecuted reported on 29 March 1994 but the decision to proceed on appeal was not taken for some time. The misunderstandings about time in part seem to have come about from the not uncommon approach of relying on recollection as to times allowed instead of checking the statute.

For the prosecutor it was submitted that the time lapse was not long, and should not have caused prejudice, that it came about through a series of explainable delays and through error and that the appeal should be allowed to proceed because the point would affect very many prosecutions.

For the respondents it was submitted that there was prejudice, principally because after the statutory time had elapsed counsel had disposed of his notes and the whole matter would have to be prepared again if the decision was overturned. Further it was submitted that the prosecution related to a small sum of GST which has been paid.

At the end of the hearing, at 5.15 p.m. on a Friday on circuit, I indicated that the time would not be extended and that reasons would be given in writing.

There are 5 reasons for not extending the time:

- (1) no good reason has been shown for the failure. An organisation such as the Inland Revenue Department which deals with very many prosecutions can be expected to have staff who know what time limitations apply and that proposed appeals require prompt attention. It can also be expected to know of the possibility of protective appeals;
- (2) the notice of appeal was late not just by a few days but by 30 days (excluding the statutory period);
- (3) if the practice followed in laying the information is the usual practice a case will readily be found to appeal in time if the point is taken again;
- (4) the prosecution had already been very long drawn out;
- (5) the practical way of dealing with this kind of objection was indicated by Somers J in *Timaru Transport v Ministry of Transport* [1980] 2 NZLR 638, 647: if such an objection is taken after the close of the prosecution case, leave should ordinarily be given to prove the authority.

Further, it appears that the learned Judge's attention in this case was directed only to s 11 of the Inland Revenue Department Act 1974 which provides for the delegation of the Commissioner's powers to officers of the Department. His attention was not drawn to s 21B of the Act which provides:

"The fact that an officer of the Department authorised in that behalf by the Commissioner lays an information for an offence against any of the Inland Revenue Acts shall be conclusive evidence of his authority to do so."

There is certainly room for argument as to what effect that rather circular provision (which replaced a clear provision in the Inland Revenue Department Amendment Act 1980) has when the existence of authority to act on behalf of the Commissioner is challenged, but the prospect of resolving such a dispute does not to my mind warrant extending the time in the circumstances of this case.

I cannot refrain from wondering why the legislature in 1980 saw fit to open the door for the taking of objection to a prosecution, which objection so far as I can see is entirely without merit and likely in the great majority of cases to produce nothing but a waste of time and the incurring of expense in overcoming it. Under the ordinary criminal law (s 13 Summary Proceedings Act 1957) no authority is required to be shown for commencing a prosecution, and there are avenues for disposing of prosecutions improperly commenced: withdrawal by the prosecuting authority, stay by the Solicitor-General, dismissal for abuse of process. If the Inland Revenue Act 1974 provided for prosecutions to be commenced by any person purporting in the information to be an officer of the Department, such an objection as was taken in the present case would scarcely be possible. One might expect that the Commissioner of Inland Revenue could readily and adequately, by internal direction, control the institution of prosecutions by placing the decision at an appropriate level.



D.P. Neazor J

Solicitors: Crown Solicitor, Wanganui for Appellant
C.P. Brosnahan, Wanganui for Respondents

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