CITATION: *Coomalie Community Government Council v The Owner of Section 1233, Hundred of Goyder (unknown)* [2006] NTMC 077

PARTIES:	COOMALIE COMMUNITY GOVERNMENT COUNCIL v THE OWNER OF SECTION 1233, HUNDRED OF GOYDER (UNKNOWN)
TITLE OF COURT:	Local Government Tribunal
JURISDICTION:	Local Government Act
FILE NO(s):	20617751
DELIVERED ON:	20 September 2006
DELIVERED AT:	Darwin
HEARING DATE(s):	21 July 2006, 1 August 2006
JUDGMENT OF:	Mr R.J. Wallace SM

CATCHWORDS:

LOCAL GOVERNMENT – POWERS AND FUNCTIONS
Dates – Statutory Change – Sale of land – limitation period

Local Government Act 1993 s 94

REPRESENTATION:

Counsel:

Applicant:	Ms K.S. Martin
Respondent:	-

Solicitors:

Applicant:	Cridlands Lawyers
Respondent:	-

Judgment category classification:	B
Judgment ID number:	[2006] NTMC 077
Number of paragraphs:	19

IN THE LOCAL GOVERNMENT TRIBUNAL
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20617751

BETWEEN:

COOMALIE COMMUNITY GOVERNMENT COUNCIL
Applicant

AND:

THE OWNER OF SECTION 1233, HUNDREN OF GOYDER (UNKNOWN)
Respondent

REASONS FOR DECISION

(Delivered 20 September 2006)

Mr WALLACE SM:

1. This is an application for directions brought by the Coomalie Community Government Council ("the Council") pursuant to s 94 of the *Local Government Act 1993* ("the Act"). It relates to a parcel of land, Section 1233, Hundred of Goyder, ("Section 1233") which lies within the area of the Council's jurisdiction. The Council was established in 1990 (pursuant to the 1985 eponym of the Act). It soon afterwards began to declare rates payable on lands within its jurisdiction, including Section 1233. The rates and charges thus levied have not been paid. Section 94 of the Act provides a procedure whereby the Council may proceed through various stages, eventually to sell a parcel of land in order to recover unpaid rates and charges:

> "**94. Sale of land for unpaid rates and charges**
>
> (1) Where a rate or charge payable to a municipal council under this or another Act in relation to ratable land has remained unpaid for

more than 3 years from the date on which it became payable, the council may apply to the Registrar-General to register its overriding statutory charge on the land and then-

(a) if the charge is registered before to the commencement of the *Law of Property Act* – sell the land in accordance with the *Real Property Act* as if that Act had not been repealed; or

(b) if the charge is registered after the commencement of the *Law of Property Act* – exercise, subject to subsection (4), its power of sale under the overriding statutory charge.

(2) An application under subsection (1) is not to be made unless, in the 3 year period, the council either exercised its rights under section 92 to sue the ratepayer or applied to the Tribunal under subsection (3).

(3) Notwithstanding subsection (2), a council which, after reasonable enquiry having regard to the amount of rates and charges unpaid and the estimated value of the land or interest in land on which they are a charge, is unable to locate a person liable for payment of the rate or charge may apply to the Tribunal under section 226(1) for directions.

(4) In exercising its power of sale to sell land under an overriding statutory charge the council –

(a) has the powers and obligations of a mortgagee specified in sections 86, 87, 89, 90, 91, 92, 93, 94, 95, 97, 98, 99, 100, 101 and 102 of the *Law of Property Act*; and

(b) those provisions apply with the necessary changes and the council must comply with them to the extent necessary as if the council were a mortgagee within the meaning of the *Law of Property Act* and the ratepayer in respect of which the council is exercising its power to sell land were a mortgagor within the meaning of that Act who has defaulted in the payment of principal money or interest secured by a mortgage.

(5) When complying with section 89 of the *Law of Property Act*, the council must include in the notice served on the ratepayer a statement that –

(a) if the ratepayer pays all money that is a charge on the land and all the costs relating to the registration of the overriding statutory charge or to the sale to the council at least 7 working days before the date fixed for the sale; or

(b) if the ratepayer enters into an arrangement satisfactory to the payment of the money or costs referred to in paragraph (a) within the time referred to in that paragraph,

the council will not sell the land."

2. The ownership of Section 1233 is not readily ascertainable. The registered proprietors are (and here I rely on the Affidavit of Kathryn Samantha Martin sworn 21 June 2006) "Thomas Ward Townend (Executor) of Pine Lodge, Walton on Thames, County of Surrey, England", "Gerald Shillingford Townend (Executor) of Cumberland Lodge, Walton on Thames, County of Surrey England" and "George William Biddle (Executor) of Walton Cottage, Woking, County of Surrey, England". Ms Martin thereafter refers to Mr Biddle and Messrs Townend as "the Owners", and so will I. In paragraph 8 of that Affidavit she deposes:

> "The registration date of the title is not recorded. The Certificate issued by the then Registrar General of South Australia and Northern Territory contains an entry, being application number 3647, transferring the title in the abovenamed land to the Owners on what appears to be the 21 August 1918. Assuming that the Owners were persons of legal capacity at that date and they were alive today, they would be in excess of 109 years of age. Annexed hereto and marked with the letter "KSM7" is a true copy of the original Certificate of Title".

3. It seems to me to be a safe assumption that the Owners were persons of legal capacity at that date, being described as executors. It remains unknown on the material before me for whose Will the Owners may have been executors. Similarly I cannot know whether all or any of them had a beneficial interest in Section 1233.

4. Until the Council was established in 1990, as I understand it, Section 1233 was land untaxed and unrated, and had been left in limbo by government as well as by its owners. There are other parcels of land similarly placed. Only a month or two ago, this Tribunal (constituted by Mr Loadman SM) dealt ex tempore with an application for directions in a similar case. Mr

Bradley CM sitting as the Tribunal in 2001 published reasons for his decision in the matter *Coomalie Community Government Council v Benjamin King* (27 June 2001, matter no. 20100142). Ms Martin, counsel for the Council in this matter, informed me from the bar table that there were others pending. No doubt some, perhaps most of the parcels of land listed in the NT Government Gazette notices reproduced in Annexure LW6 to the affidavit of Lisa Wain sworn 6 June 2006, are among those pending. [One of these, Section 866 Hundred of Cavenagh has as its Owner, according to the Rates Book, Frederick James Townend, of 'Alverly', 2 Para Hillrise (sic), Croydon, Surrey, England, conceivably the testator of the Will of which the Owners were executors; if not, very likely a relative.]

5. I come now to the matters which in my view need to be proved in order to permit the obtaining of directions from the Tribunal pursuant to s 94 of the Act. The relevant material before me is contained mainly in the affidavit of Lisa Wain sworn 6 June 2006, and also in the affidavit of Ms Martin sworn 21 June 2006.

6. I am satisfied that the Council has established a scheme, pursuant to s 98 of the Act, and that the scheme provides the power to strike and levy rates and charges.

7. I am satisfied that rates have been so struck and levied on Section 1233 since the year 1991/92 and yearly thereafter (to 2005/6) and that none of these rates and charges have been paid. At least so far as the rates levied to and including 2001/02, those rates and charges have remained unpaid for more than 3 years, so the Council has standing to apply to the Registrar General to register an overriding statutory charge, pursuant to s 94(1) of the Act.

8. I am satisfied that there has been service, in accordance with s 76(3)(c) of the Act, of notice of rates and charges levied to and including those of 2000/01, by notices in the NT Government Gazette.

9. I am satisfied that the Owners have been properly identified as the persons responsible to pay the rates and charges.

Time Periods and Limitations of Actions

10. In the *Benjamin King* case, Mr Bradley considered the apparently contradictory provisions of s 94 of the Act in relation to limitations. He wrote [I have substituted roman numbers for Mr Bradley's paragraphs to avoid confusion with my own]:

> "xxv It can be seen that s 94 has an unusual structure and references are made to a 3 year period, whereas s 92 gives Councils up to 6 years to sue for payment of rates and charges. On the face of s 94 (2) it is necessary for the Council to have done one of two things within 3 years of the rates becoming payable, namely to have sued or applied to this Tribunal for directions. Neither of these things have occurred in this case in respect of rates or charges prior to 1998. It is this time limit issue that has concerned the Council and detailed submissions were made to the Tribunal to declare that the time limit is a procedural provision only or alternatively, the time be extended to permit the registration of the statutory charge.
>
> xxvi With respect, it seems to me that the applications for extension of time misconstrues the intent of the section. The key to the section seems to me to lie in the Orders which the Tribunal may make which are set out in s 236. That section, which I read as limiting the scope of the functions of the Tribunal reads as follows:
>
> "236. APPLICATION UNDER SECTION 94 FOR DIRECTIONS
>
> After considering an application for directions under section 94 the Tribunal may direct –
>
> (a) that **the council** need take no further action and **shall be deemed to have exercised its rights under section 92** for the purposes of section 94(2);
>
> (b) that the council make further enquiries or that the council give public notice of its intention to act under section 94, in a form approved by the Tribunal, in a newspaper or by displaying a notice on the land, and that after taking the appropriate action the council, on a date to be fixed by the

Tribunal, shall be deemed to have exercised its rights under section 92 for the purposes of section 94(2); or

(c) that the council take such other action as the Tribunal thinks appropriate."

xxvii It is therefore clear that the role of the Tribunal is to supervise the pre-cursers to selling property and in doing so, the Tribunal has the power to order that the Council is deemed to have exercised its rights under s 92 for the purposes of s 94(2). The Tribunal would only do this if it was reasonable in all the circumstances to do so. The effect of such a ruling is, in my view, that the time limit prescribed by s 94(2) is notionally satisfied and a Council is thereby permitted to proceed to apply under s 94(1) to the Registrar General to register its overriding statutory charge. I can think of no other logic which explains the apparent discrepancies in time limits between s 92 and s 94 and the overriding provision of s 94(3). The purpose of s 94(3) when viewed with s 236(a), is to cover the situation where a Council has not been able to effectively pursue other means of recovery because the property owner is unable to be located. In this regard, it is to be noted that no time limit is prescribed within s 94(3) to bring an application to the Tribunal in limited circumstances envisaged.

xxviii There being no time limit in the Act itself, the next question is whether there is any time limit for bringing applications to the Tribunal. At Common Law, no time limits apply other than those introduced under the equitable principles of laches and delay. The question therefore arises whether the *Limitation Act* 1981 (NT) applies to restrict the time within which an application can be made to the Tribunal. That Act in s 12 provides for a 3 year limitation period in respect of "(d) an **action** to recover money recoverable by virtue of an enactment…" That description would appear to cover this situation if the application to the Tribunal is an "action" within the meaning of the *Limitation Act*. That Act defines action as including "any proceeding in a Court of competent jurisdiction". The *Interpretation Act 1978* (NT) not very helpfully says in s 17 that a "Court of competent jurisdiction" means a **Court** having jurisdiction to entertain the legal proceedings referred to in the Act in which the expression occurs…" Unfortunately the *Interpretation Act* does not define the term "Court".

xxix It is clear from the *Local Government Act* that this Tribunal has jurisdiction to carry out the functions described above and

the question whether *Limitation Act* applies therefore depends on whether or not the Tribunal is a Court for the purposes of the law of the Northern Territory. There is no other relevant legislative definition, of which I am aware, to assist me in determining the meaning of "Court".

xxx The origin of the word "Court" in its legal sense appears to have originated from the Kings Court in England which was the original source of justice. Today, however, Butterworths Australia Legal Dictionary describes it as "a place where justice is administered". The Encyclopaedic Australian Legal Dictionary says that "generally it is a body appointed to adjudicate disputes; a person or body (who or which is not a Court of law but may be presided over by a Judge) who (or which), in arriving at the decision in question, is expressly or indirectly required by law to act in a judicial matter to the extent of observing one or more of the rules of natural justice or, in administrative law, a body which reviews administrative action or makes primary decisions.

xxxi In the third edition of Words and Phrases legally defined, it says "it has acquired the meaning of the place where justice is administered and, further, has come to mean the persons who exercise judicial functions under authority derived either directly or indirectly from the sovereign. All Tribunals, however, are not Courts, in the sense in which the term is here employed. Courts are Tribunals which exercise jurisdiction over persons by reason of the sanction of the law and not merely by the reason of voluntary submission to their jurisdiction."

xxxii The leading case appears to be *Shell Co of Australia Ltd v Federal Commissioner of Taxation* [1931] AC 275. In that case the privy council determined that a Board of Review constituted to review the decisions of the Commissioner of Taxation and which could make final decisions, was an administrative as distinguished from a judicial tribunal and thus didn't have to comply with Chapter 3 of the Constitution.

xxxiii At page 296-7 their Lordships say

"The Authorities are clear to show that there are Tribunals with many of the trappings of a Court which, nevertheless, are not Courts in the strict sense of exercising judicial power…

In that connection, it may be useful to innumerate some negative propositions on this subject: (1) A Tribunal is not necessarily a Court in this strict sense because it gives a final decision. (2) Nor because it hears witnesses on oath. (3) Nor because two or more contending parties appear before it between whom it has to decide. (4) Nor because it gives decisions which affect the rights of subjects. (5) Nor because there is an appeal to a Court. (6) Nor because it is a body to which a matter is referred by another body."

xxxiv Again, at page 298 their Lordships say:

"an administrative Tribunal may act judicially, but still remain an administrative Tribunal as distinguished from a Court, strictly so-called. Mere externals do not make a direction to an administrative officer by an ad hoc Tribunal an exercise by a Court of judicial power."

xxxv In my view, it is necessary to look at the nature of the establishment of the Tribunal under the Act, its character and the purposes which it is expressly carrying out under the provisions of s 94 of the Act. Pt 10 of the Act establishes the Tribunal and describes its jurisdiction in a fairly limited fashion to determine matters referred to it under specific sections of the Act. Fairly laissez faire provisions are made with respect to the proceedings of the Tribunal. It may sit at such times as are necessary to conduct its business. It is not bound to follow strict legal procedure. The parties may be represented by legal practitioners or other persons authorised in writing. On the other hand, the Tribunal is given the power to summons people, to require evidence to be given under oath. It may order costs and provisions are made for appeals to the Supreme Court. In relation to the current application, I have specific regard to the very limited nature of the Orders which the Tribunal may make. (See s 236 above). The functions thus described are more administrative in nature and it is hard to establish a lis inter-partes upon which the Tribunal is to determine the rights of opposing parties.

xxxvi In all the circumstances I have reached the view that the Tribunal is not a **Court** within the meaning of that word in the *Interpretation Act* in the definition of "Court of Competent Jurisdiction". These proceedings therefore are not an **action** as defined in the *Limitation Act* for the purposes of the limitation period set out in s 12(1)(d) of that Act. The effect of these findings is that there is no specific time limit which applies by virtue of the operation of law other than that time which is

proper and reasonable having regard to equitable principles. On the information before me, details of which have been set out generally in the decision above, I am of the view that the Council has not been unreasonable in the time that it has taken to make this application. In my view, therefore, the application is good, notwithstanding that it is made in respect of rates declared more than 3 years past.

xxxvii In finding that no specific time limit applies to applications to this Tribunal, I do not thereby imply that the 3 year period referred to in s 94(1) is not still applicable. It seems to me that that period must still expire before an application can be made to the Registrar-General to register the statutory charge. It is s 90 which creates the charge upon rates being due but unpaid. It would thus appear that 3 years must expire before the charge can be registered but once registered, it can be effective for all rates then due and unpaid'.

11. With respect (and with considerable gratitude) I adopt that reasoning and agree with that outcome.

12. In this case that would permit the registration of a charge for all the rates due and unpaid. As I read the Act, only those rates notice of which has properly be served can properly be characterised as due i.e. (on the material before me) up to and including 2000/01. If the Council wishes to claim more, it will need to serve notice i.e. post a notice in the Gazette, of subsequent rates and charges.

Efforts to Locate the Owners

13. Ms Martin's affidavit of 21 June 2006 sets out the enquiries made to ascertain the whereabouts of the Owners. There were searches of the Registry of Births, Deaths and Marriages, and the Registry of Probates in the Northern Territory. An advertisement was placed in the NT News. Casting her net more widely, Ms Martin placed an advertisement in The Australian newspaper, and, more widely still, in The Times, of London. This last advertisement produced results.

14. In a second affidavit, of 7 July 2006, Ms Martin deposed:

"On or about 20 May 2006, I received an email from Ms Carolyn Felgate of Anglia Research in the United Kingdom stating that they had located the heirs of one of the registered proprietors of Section 1233 Hundred of Goyder. Annexed hereto and marked with the letter "A" is a true copy of that email.

Despite ongoing email correspondence between myself and Ms Felgate, I have not received proof of identity from Anglia Research in relation to the alleged beneficiaries, nor have I received any indication that those persons intend on paying the outstanding rates owing to the Council. Annexed hereto and marked with the letters "B" through to "G" are true copies of the following email correspondence".

15. The email correspondence spoken of was as follows:

"**20.02.2006**

Dear Kathryn,

We refer to your advertisement in the Times on 19th May 2006 seeking any issue from the possible beneficiaries of Thomas Ward Townend, Gerald Shillingford Townend and George William Biddle. We have contacted heirs in this regard and we would be grateful of you could provide us with some further information in order that we can advise them further on Monday 22nd May 2006.

Best regards

Carolyn Felgate

23.05.2006

Good Morning Carolyn

Very generally, the three named individuals are noted as the executors of the registered proprietor of a piece of land in the Northern Territory of Australia. The Coomalie Community Government Council has been levying rates over the land for a number of years and there is now a significant debt owed to the Council.

They have instructed us to register a statutory charge over the property so that it can then be sold to repay the outstanding rates.

Please indicate whether you require any further information.

Kind regards

Kathryn Martin

30.05.2006

Dear Carolyn

We refer to your email of 20 May 2006 and our subsequent telephone conversation with Phil of your office in relation to the notice we place in The Times on 19 May 2006.

First and foremost, in order for us to provide you with any further details in relation to the matter, we would need to see an authority signed by the persons claiming to be the beneficiaries of the abovenamed individuals, stating that you act on their behalf.

Secondly, we will need evidence of the relationship between the claimants and the abovenamed persons.

We are instructed by the Council named in the notice that their only goal is to recover the entire amount of unpaid rates in respect of the property owned by the abovenamed persons, and to secure an ongoing ratepayer. This will occur either by the registration of a statutory charge and subsequent sale of the property of by beneficiaries coming forward and paying the debt.

Your clients will need to seek independent advice as to what consequences this will have for them, if any.

Kind regards

Kathryn Martin
Lawyer

07.06.2006

Dear Kathryn,

We thank you for your email dated 30 May 2006. We expect to be in receipt of the beneficiaries' agreements shortly and we will forward these to you in due course.

In the meantime on behalf of our clients we wish it to be noted that we do not want the property, that was owned by the abovenamed persons, to be sold.

Finally we would be grateful if you could advise the value of the debt due to the Council in respect of unpaid rates on the property.

Best regards

Carolyn Felgate

08.06.2006

Dear Carolyn

The total debt recoverable by the Council is currently $14.948.58.

We are instructed to advise you as follows:

If the beneficiaries pay the total amount outstanding to either Cridlands Trust Account of Coomalie Community Government Council Trust Account, the recovery proceedings will be stayed. The beneficiaries will then need to provide us with an address to forward next financial year's rates notice to.

Alternatively, if the beneficiaries are unable to pay the full amount outstanding immediately. And would like to enter into an arrangement with the Council we will require the following:

1. An authority signed by the beneficiaries that you are acting on their behalf.

2. Evidence that the persons claiming to be beneficiaries, are in fact heirs of the registered owners.

3. Written confirmation from the beneficiaries that they will pay the total outstanding debt to the Council and when they will do so, and confirmation of when they will make arrangements for the land to be transferred to their names, to ensure they are liable for all ongoing rates and charges.

We have instructions to commence recovery proceedings on 30 June 2006 if one of the above options has not been followed.

Yours sincerely

CRIDLANDS

Kathryn Martin

30.06.2006

Dear Kathryn Martin,

I am writing of behalf of Carolyn Felgate whom I believe you have been corresponding with on this matter. Carolyn is on annual leave and I have therefore assumed responsibility for the file in her absence.

I can confirm to you that we represent Mrs Kathleen Betty Talbot and Mr Gerald Patrick Townend, the two children of Gerald Shillingford Townend who died in 1943.

There is no remaining issue from the two other persons mentioned in your advertisement, Thomas Ward Townend and George William Biddle.

We consider that our clients have two options in this matter:-

Firstly, to settle the outstanding debt owed to the Council and to make the necessary arrangements to have the title for the land transferred into their names.

Secondly, to allow the Council to continue with their recovery proceedings and have the balance of funds, following the deduction of rates to date, transferred to our clients.

In order for us to make an informed decision I would be grateful if you would kindly provide:-

1. A full breakdown of the nature of the debt owed to the Council.

2. Precise details as to the geological location of the land that will enable us to have an independent survey conducted, along with any other relevant information or details.

Yours sincerely,

Mr P Turney

ANGLIA RESEARCH

03.07.2006

Dear Mr Turvey

We are able to provide some additional details of the debt owing to the Council, however, as your client has had over 6 weeks to attend to this matter we have instructions to commence proceedings immediately.

Should we receive payment of the debt by your client, we will seek instructions at that time to discontinue those proceedings.

As previously explained, the debt is for unpaid rates in relation to the property. These rates are levied each financial year and have been accruing since 1991. The amount of unpaid rates is $10,816.83. Further the Council is able to, pursuant to the Local Government Act, recover the cost of chasing the debt – the amount spent so far being approximately $4,500.

As stated in the notice, the precise 'geological location' of the land is Section 1233 of Goyder.

Kind regards

Kathryn Martin"

16. There matters rested at the dates the case was heard before me (21/07/06 and 1/8/06) and there, as far as I know it still rests.

17. The Owners having been quiet since, it seems, 21 August 1918, some might think Ms Martin somewhat brisk in citing 6 weeks of inaction as reason enough to proceed with the Council's application. Brisk or not, I agree with her that the correspondence appears to have reached a stalemate. In my opinion the interest of the heirs of Mr GS Townend in Section 1233 (if they have an interest, i.e. if their father was a beneficiary as well as an executor) can be adequately protected by directions, allied with s 94(5) of the Act.

18. I propose to make orders 1, 2 and 3 as sought. In my opinion, in order to give the possible beneficial owners sufficient time to consider their position in the light of these orders, the sale ought not to proceed within the minimum time periods envisaged in the *Law of Property Act*. I should be grateful for any suggestion as to how they may be reliably informed of this decision, and I will hear a submission by the Council as to what might be, in the circumstances, a reasonable time for them to decide what to do. They should also be informed of the FJ Townend block (Section 866 Hundred of Cavenagh) in case they have an interest, because, if they do, that interest might affect their decision concerning Section 1233. (I am assuming that Section 866 has not already been sold to pay its rates.)

19. In relation to costs, I agree with Ms Martin's submission that there is no scale of costs fixed by the Act, and no other relevant scale except the Supreme Court Scale. I decline to award a lump sum for costs, which will need to be taxed. On the taxation, it will be a minor point, but I should say I can not see that it was necessary to file in triplicate all the affidavit material in a proceeding predictably without a contradictor. So unless there was some necessary procedural reason for that, if I were taxing the costs – which heaven forfend I would disallow some copying costs.

Dated this 20th day of September 2006.

_____

Richard Wallace
STIPENDIARY MAGISTRATE