

**IN THE HIGH COURT OF THE COOK ISLANDS**  
**HELD AT RAROTONGA**  
**(CIVIL DIVISION)**

Application No. O A 3/2003

**IN THE MATTER** of the Declaratory  
Judgments Act 1908

**BETWEEN** Hedley Radford  
Of Rarotonga  
Chartered Architect

**Applicant**

**AND** Geoffrey Stoddart  
Of Rarotonga  
Collector of Inland Revenue

**Respondent**

Mr A Manarangi for Applicant  
Ms K Harvey for Respondent

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**DECISION OF GREIG CJ**

**Delivered the 16 day of December 2004**

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1. The Applicant seeks declarations that his letters of objection to Notice of assessments of tax issued by the Respondent are valid and in time and that the Respondent is bound to consider them and give notice whether he allows or disallows the objections.

2. The Respondent issued Notice of Assessments of tax due by the Applicant on 22 December 2000 for the income tax years 1997, 1998, 1999 and 2000. No objection was filed. The Respondent issued proceeding for recovery of the tax so assessed. On 21 November 2001 judgment was given against the Respondent for the amount claimed. The claim that the Respondent was exempt from payment of the tax was rejected.
3. During the year 2001 the Respondent issued from time to time assessments for withholding tax in respect of the months of January to August. On 5 November 2001 the respondent issued a further assessment for the months of September and October 2001. On 7 December the Applicant lodged a written objection against the assessment of 5 November 2001. No objection was made in respect of any of the earlier assessments at that time or before it. The respondent has accepted that the objection of 7 December was made in time but was disallowed.
4. On or about 3 September 2002 the Applicant lodged with the Respondent what purported to be objections to the earlier assessments. They were treated as being out of time and were rejected by letter of 23 June 2003. On or about 24 February 2003 the Applicant lodged objection against other assessments. In another letter dated 23 June 2003 the Respondent disallowed objection to assessments from November 2001 to March 2004. In that letter there is the following:

*“ If you wish the validity of these assessments to be considered by the High Court (along with the earlier assessments you have requested to be considered in that forum) you are required to request to me in writing, that your objection be heard and determined by the High Court ”*
5. Parts III and IV of the Act set out the scheme as to returns and assessments and objections to assessments. It is an exclusive scheme. By s.18 assessments are made by the Collector, who is the principal officer of the Revenue Management Division which in turn is responsible for the administration of the Act. Assessments are made in such form and manner as the Collector thinks fit, s.18 (2). S.24 provides that the validity of an assessment is not affected by reason that any provision of the Act has not been complied with. S.25 declares that except in proceedings by way of objection under Part IV no assessment may be disputed on any ground “and shall be conclusively deemed and taken to be correct, and the liability of the person shall be determined accordingly”. The Collector is required to give notice of assessments to the taxpayer but the omission to give the notice does not invalidate the assessment or its operation, S.27.
6. Part IV of the Act begins with section 28 which I quote:

*28. Objections to assessments, how originated. – (1) Any person who has been assessed for income tax may object to the assessment by delivering or posting to the Collector a written notice of objection stating shortly the grounds of that person's objection so that it reaches the Collector within the time specified in that behalf in the notice of assessment, being not less than six weeks after the date on which that notice is given.*

*(2) If the Collector is satisfied that there is no suitable mail or means of delivery by which the written notice of objection can reach the Collector within the time so specified, then advice to the Collector by radio, telephone, facsimile, or other electronic means that the taxpayer objects to an assessment will constitute an effective notice of objection if–*

*(a) the advice is received by the Collector within the time so specified; and*

*(b) the taxpayer posts to the Collector by the next available mail a written statement setting out shortly the grounds of the objection.*

*(3) No notice of objection given after the time so specified shall be of any force or effect unless the Collector accepts the same and gives notice to the objector accordingly.”*

7. S.29 requires the Collector to consider every objection. He may alter it or may disallow the objection. Within 3 months after notice of such disallowance the objector has the right to require the objection to be heard by the High Court. It is heard and dealt with by the procedure of a case stated. There is a right of appeal to the Court of Appeal from the determination of the High Court.
8. Each of the assessments in issue was in a form which the Collector provided. Each one contained the following notice about the right to object and the date specified pursuant to S.28 (1) of the Act: “*ANY OBJECTION to this assessment must be made in writing stating the grounds of the objection and must be delivered or posted to the TREASURER REVENUE MANAGEMENT P O Box 120 RAROTONGA within SIX WEEKS from the date of this notice otherwise the assessment becomes final. Any objection does not suspend the liability to pay the Tax.*”
9. The argument for the Applicant is that the notice was defective. The notice is given not on its date but when it is received by the objector, *CIR v Sea Hunter Fishing Limited* (2002) 20 NZTC 17,478 Court of Appeal NZ. The time runs from the day after that date, Acts Interpretation Act s.25. The time allowed must be not less than 6 weeks from that date. There appears to be no provision for deeming receipt in course of post. The six weeks from the date of the

notice, as specified, did not comply with the Act or allow for the exclusion of the day of receipt or allow for the receipt or time lapse between date and receipt. I agree that the notice in each case did not comply with the requirements of the Act or give not less than 6 weeks from the proper time for giving the notice of objection. I observe that it is not the case that the clause about the 6 weeks in s.28 means that the time for objection necessarily expires at the end of 6 weeks. That period is the minimum that the Collector may give for objection but he may give more. He is to give at least that time. That clause does not provide, as it were, the outside limit for notice of objection.

10. It is the Applicant's contention that as a result the period for objection did not expire and the right of objection remained open at least until the purported objections were sent to the Collector. I do not agree.
11. The Collector did specify a time which I have no doubt gave the Applicant sufficient time, if he was so minded, to consider his position, seek advice and make an objection in a reasonable time span. The assessment remained valid in spite of the non-compliance with the Act and even if the Collector had omitted to give the notice. The failure to specify a time which is the same as or more than the 6 weeks properly calculated does not in the circumstances mean that the period for objection remains open. It is to be noted that in this case the objector has waited for many months until making a form of objection. Even in the face of the Collector's proceedings for recovery of the tax assessed on which I gave judgment in November 2001 the Applicant did not attempt to notify his objection except by submission in the Court. A submission which was rejected on the merits.
12. The purported objections were out of time and are of no force or effect unless the Collector has accepted them and given notice accordingly. That is the alternative submission on the part of the Applicant.
13. It is submitted that the letter of 23 June 2003, with the sentence I have quoted already, is or must be read as that acceptance and notice accordingly. It is said that the letter is not confined to declining the objection of December 2001, that it refers to the earlier assessments with the invitation which refers to the November 2001 to March 2004 assessments.
14. The letter of 23 June 2003 which is relied on is headed with reference to "*Objections to withholding tax assessments for months of November 2001 to March 2004 (inclusive)*". It disallows the objections and states some numbered grounds for the disallowance. It then ends with the sentence quoted above. It is limited to an invitation to join the other matters to be dealt with by the Court with a case stated on these named particularized withholding tax assessments. There is no reference to the assessments which are the subject of this application which the Collector had separately rejected; not disallowed. The letter does not, as I read it, deal with the December 2001 objection or the

objections in issue in this application. It is limited in terms to the withholding tax assessments specified and with an invitation to join those with other matters previously requested to be heard by the Court. There were, it appears, other valid objections to assessments of September and October 2001 which were then, June 2003, to be heard in the Court. The letter cannot be read as expressly accepting the objections to the assessments in issue in this application because they are not referred to. Equally it cannot be read as implying that the Collector was accepting them when the letter is specific in its reference, the withholding assessments named, and the invitation is merely to join other already accepted matters to go before the Court. The rejected objections cannot be included in that invitation by any form of implication or over or under reading of the words in that letter. I believe that s.28(3) requires an express acceptance or at the least an implication or inference which is compelling and without ambiguity.

15. There was a submission that the Collector is obliged to make correct assessments and that in the circumstances there is some obligation on him now to reassess the Applicant. But the Collector does not accept the Applicant's submissions which at least in part have already been dismissed in the Court. That decision may be subject to appeal but no appeal had been heard. It cannot be the case that the Collector is under any obligation to make any further assessment on the basis of objections which he considers to be spurious and without merit.
16. In the result the application fails except as to the objection of 7 December 2001 the answer to each of the declarations is no. The Respondent is entitled to costs. I will accept submission on the quantum if Counsel are unable to agree.

*Wright*

*Note!*

*Copies issued to:*

*Mr Mamerang:*

*Miss Harvey:- of  
Decuria.*

*[Signature]*  
*16/12/04*