IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA107/2018
[2018] NZCA 478

BETWEEN	RICHARD BRUCE ROGAN AND HEATHER ELIZABETH ROGAN Appellants
AND	KAIPARA DISTRICT COUNCIL First Respondent
AND	NORTHLAND REGIONAL COUNCIL Second Respondent

Hearing:	11 September 2018
Court:	Kós P, Asher and Gilbert JJ
Counsel:	J A Browne for Appellants D J Neutze for Respondents
Judgment:	6 November 2018 at 3 pm

JUDGMENT OF THE COURT

A The appeal is dismissed.

B The appellants must pay one set of costs to the respondents on a band A basis and usual disbursements.

REASONS OF THE COURT

(Given by Gilbert J)

[1] Section 45 of the Local Government (Rating) Act 2002 (the Act) prescribes the information that must be included in a rates assessment sent to a ratepayer. Section 46 is a companion provision that sets out the information that must be included

in a rates invoice. The question that arises on this appeal is whether a ratepayer is entitled to withhold payment of rates where a rates assessment or rates invoice does not contain or accurately record all the specified information. For the reasons set out in this judgment, we agree with the conclusion reached in each of the Courts below that the answer is "no".[1]

Background

[2] The appellants, Richard and Heather Rogan, were at material times the owners of a property situated at Mangawhai Heads within the district of the Kaipara District Council, the first respondent (Council). The present dispute has its origins in the well-publicised problems stemming from major cost overruns associated with the construction of a new sewage and wastewater treatment scheme commissioned in 2010.[2] Borrowings for this project led to very substantial increases in rates. Mr and Mrs Rogan, along with many other ratepayers in the district, refused to pay these rates which they regarded as having been levied unlawfully. Commissioners were appointed to run the Council in September 2012. Legislation was enacted in December 2013 validating specified rates for the financial years 1 July 2006 to 30 June 2013.[3]

[3] In August 2014 Mr and Mrs Rogan tendered a cheque for the net amount of the outstanding rates for the years ended 30 June 2012 to 30 June 2015, excluding penalties, in full and final settlement of their obligations. This offer was not acceptable to the Council and it then commenced recovery proceedings in October of that year in the District Court at Whangārei. One of Mr and Mrs Rogan's principal defences was that the rates assessments and invoices did not comply with ss 45 and 46 of the Act respectively and were therefore invalid.

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1 *Kaipara District Council v Rogan* [2015] NZDC 21698 [District Court judgment]; and *Rogan v Kaipara District Council* [2017] NZHC 2329 [High Court judgment].

2 Further background can be found in this Court's judgment in *Mangawhai Ratepayers and Residents Assoc Inc v Kaipara District Council* [2015] NZCA 612, [2016] 2 NZLR 437.

3 Kaipara District Council (Validation of Rates and Other Matters) Act 2013.

District Court judgment

[4] In a reserved judgment delivered on 11 November 2015, Judge de Ridder found in favour of the Council.[4] The Judge considered that the defence based on non-compliance with ss 45 and 46 of the Act was precluded by s 60 which provides:

> **60 Invalidity of rates not ground for refusal to pay rates**
>
> A person must not refuse to pay rates on the ground that the rates are invalid unless the person brings proceedings in the High Court to challenge the validity of the rates on the ground that the local authority is not empowered to set or assess the rates on the particular rating unit.

[5] The Judge summarised his reasoning as follows:

> [51] The assessments and invoices have been sent to the Rogans. Accordingly, pursuant to s 44(2) of the Act, they are liable. Essentially, their argument is that the assessments and invoices are non compliant with the requirements of s 45 and 46 and are therefore invalid. In my view, that in turn clearly means that their argument is that the rates themselves are invalid. Therefore, they are caught by the very restrictive provision of s 60 and their grounds for refusal to pay are not sustainable. That of course covers all of the years invoiced, notwithstanding the finding above that, in any event, the Validation Act specifically validates the rates assessments [for the] 2011/2012 and 2012/2013 years.

High Court judgment

[6] In a reserved judgment delivered on 26 September 2017, Duffy J dismissed Mr and Mrs Rogan's appeal.[5] The Judge agreed with the District Court that s 60 of the Act was a complete answer to the Rogans' contention that the rates assessments and invoices were invalid because they did not comply with ss 45 and 46.[6] The Judge considered that the assessment for compliance is limited to whether the documentation is legally recognisable under ss 45 and 46.[7]

Leave for a second appeal

[7] Duffy J granted leave for a second appeal in a judgment delivered on 23 February 2018.[8] The Judge considered that s 60 was open to several different

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4 District Court judgment, above n 1.
5 High Court judgment, above n 1.
6 At [27]–[30].
7 At [28].
8 *Rogan v Kaipara District Council* [2018] NZHC 228.

interpretations and accordingly there was a wider public interest in having the matter clarified in a second appeal to this Court.[9]

Submissions

[8] Mr Browne, counsel for Mr and Mrs Rogan, submits that s 60 provides a lawful basis to withhold payment of rates in certain circumstances where judicial review proceedings have been brought. However, he argues that it does not relieve the burden on the local authority in recovery proceedings to prove that the rates are due and owing. He contends that such liability is dependent on the local authority delivering rates assessments and rates invoices that comply with ss 45 and 46 of the Act. He says the liability for rates is triggered by a compliant rates assessment and the liability to pay rates by a particular date is triggered by the delivery a compliant rates invoice. Mr Browne argues that s 60 should not be interpreted as removing a person's fundamental right to defend court proceedings brought against them. Alternatively, he submits that s 60 does not apply to the situation where the rates are valid, but the obligation to pay them has not arisen because compliant rates assessments and rates invoices have not been delivered.

[9] Mr Neutze, for the respondents, submits that the Rogans' technical arguments based on non-compliance with the provisions of ss 45 and 46 of the Act amount to a challenge to the validity of the rates. This type of challenge is precluded by s 60. Any challenge to the validity of the rates can only be made by way of an application for judicial review in the High Court.

Statutory scheme

[10] Section 60 must be interpreted in context and in the light of its text and purpose. The purpose of the Act is set out in s 3:

> **3 Purpose**
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> The purpose of this Act is to promote the purpose of local government set out in the Local Government Act 2002 by—
>
> (a) providing local authorities with flexible powers to set, assess, and collect rates to fund local government activities:

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9 At [11]–[12].

(b) ensuring that rates are set in accordance with decisions that are made in a transparent and consultative manner:

(c) providing for processes and information to enable ratepayers to identify and understand their liability for rates.

[11] Section 12 provides that the ratepayer for a rating unit is liable to pay the rates that are due on the unit. A ratepayer is the person named as such in the rating information database and the district valuation roll (s 10).

[12] The procedure for setting rates is prescribed in s 23. Rates set by a local authority must relate to a financial year or part of a financial year and be set in accordance with the relevant provisions of the local authority's long-term plan and funding impact statement for that financial year. A local authority may not set a rate that is not so provided for except in the limited circumstances set out in s 23(3).

[13] Section 24 provides that a local authority must state, in the resolution setting a rate, the financial year to which the rate applies and the date on which the rate must be paid or, if payable by instalments, the dates by which the specified amount must be paid.

[14] Local authorities are required to keep and maintain a rating information database in accordance with s 27 that may be searched according to the reference number of the rating unit or the address of the unit under s 28. A person named in the rating information database as a ratepayer may object to the information contained in the database on any of the grounds set out in s 29. Local authorities must also keep and maintain a rates record for each unit in its district showing the ratepayer's liability for rates in respect of that unit (s 37). Ratepayers may inspect the rates record for their rating unit (s 38) and may object to the information on the grounds that the rates are incorrectly calculated or the rates balance shown in respect of the rating unit is incorrect (s 39). The local authority is required to issue an amended rates assessment if there is an error in the rating information database or rates record in respect of a rating unit and refund any corresponding excess in the rates paid (s 41). Any deficiency may be recovered in the circumstances described in s 41(3) but not otherwise. Section 41A provides for amended rates assessments following successful objections to the valuation of the rating unit under the Rating Valuations Act 1998.

[15] Assessment, payment and recovery of rates is dealt with in subpt 1 of pt 3 of the Act. Section 43(1) ensures that rates are assessed in a transparent manner, generally in accordance with the information set out in the rating information database:

> **43 Rates must be assessed in accordance with values and factors**
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> (1) Rates must be assessed in accordance with either—
>
> (a) a rating unit and its rateable values that are set out in the rating information database; or
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> (b) the factors relevant to a rating unit that are set out in the rating information database; or
>
> (c) in the case of a targeted rate under section 19, the quantity of water provided by the local authority to the rating unit during the period specified in the resolution setting that rate.

[16] Rates assessed in respect of a rating unit are a charge against that unit (s 59).

[17] Section 44 is important. It provides that a ratepayer becomes liable for rates upon delivery of a rates assessment:

> **44 Notice of rates assessment**
>
> (1) A local authority must deliver a rates assessment to a ratepayer to give notice of the ratepayer's liability for rates on a rating unit.
>
> (2) A ratepayer is liable for rates on a rating unit when the local authority delivers the rates assessment for that unit to the ratepayer.

[18] A rates assessment is defined in s 5 as meaning:

> the document that gives notice of the ratepayer's liability to pay rates on a rating unit.

[19] Section 45 is a mandatory provision requiring that a rates assessment clearly identifies various information including the name and address of the local authority and the ratepayer, the number and district valuation roll of the rating unit, the legal description and location of the rating unit, the rateable value of the rating unit, the amount and a description of each rate, the financial year for which the rates are payable, the total amount of rates payable on the rating unit for the financial year, the methods by which rates may be paid and the date or dates (if payable by

instalments) by which the specified amounts must be paid and any applicable penalty if the rates are not paid on time.

[20] If a rates payment is due for a particular period, the local authority must deliver a rates invoice for the rating unit for that period (s 46). A rates invoice is defined in s 5 as meaning:

> the document that notifies a ratepayer of the amount of rates that are payable for a rating unit under s 46.

[21] Section 46 requires that rates invoices contain specified information similar to (and in part replicating) the information required under s 45 for rates assessments.

[22] Section 47 is also important for present purposes. It provides that if a rates invoice is incorrect *as to the amount of rates payable*, an amended invoice must be delivered setting out the correct liability of the ratepayer as to the amount of rates due for the rating unit (s 47(1)). But the ratepayer's liability to pay is not affected by the fact that correction of the rates invoice is required (s 47(2)).

[23] The rates assessment must be delivered to the ratepayer before the rates invoice but if the rates assessment includes all the information required for a rates invoice under s 46 a local authority need not deliver a separate rates invoice (s 48). The rates invoice must be delivered to the ratepayer at least 14 days before the due date for payment (s 48(3)). If a rates invoice is not delivered at least 14 days before the due date, the date for payment is suspended until 14 days after the rates invoice is delivered (s 49). Penalties may be added to rates that are not paid by the due date (ss 57 and 58).

[24] Finally, we note that s 63 provides that a local authority may commence court proceedings to recover as a debt any rates unpaid for four months after the due date for payment. The local authority may also recover the outstanding rates as a debt from the first mortgagee which may then treat the amount paid as secured by the mortgage until it is repaid (s 62).

Analysis

[25] Does s 60 operate to preclude the Rogans' defence based on the rates assessments and rates invoices being non-compliant with ss 45 and 46? For ease of reference, we set out this section again:

> **60 Invalidity of rates not ground for refusal to pay rates**
>
> A person must not refuse to pay rates on the ground that the rates are invalid unless the person brings proceedings in the High Court to challenge the validity of the rates on the ground that the local authority is not empowered to set or assess the rates on the particular rating unit.

[26] Section 60 is concerned only with challenges to the validity of the underlying rates. It provides that a person cannot refuse to pay rates on the ground that the rates are invalid unless he or she makes good on the objection by bringing judicial review proceedings in the High Court. Even then, he or she must not refuse to pay the rates unless the challenge is based on the contention that the local authority is not empowered to set or assess the rates on the particular rating unit. This could be where, for example, the rating unit is outside the local authority's territorial boundary.

[27] In respectful disagreement with the views expressed in the Courts below, we do not consider that the Rogans' defence based on non-compliance with ss 45 and 46 amounts to a challenge to the validity of the rates and is therefore caught by s 60. Rates must be distinguished from a rates assessment or a rates invoice. A rate means a general rate, a targeted rate or a uniform annual charge set in accordance with subpt 2 of pt 1 of the Act. The rates assessment gives notice of a ratepayer's liability to pay rates on a rating unit. A rates invoice crystallises the payment obligation in respect of the ratepayer's liability for the rates that accrues on delivery of the rates assessment. The "rates" in s 60 are not the rates assessment or the rates invoice.

[28] The Rogans do not challenge the validity of the underlying rates. Their challenge is confined to the validity of the documents giving notice of their liability and triggering their payment obligation, namely the rates assessments and the rates invoices. The object of their challenge is to avoid payment of penalties.

[29] What then is the consequence of errors or omissions in a rates assessment or rates invoice amounting to non-compliance with the mandatory requirements for such documents set out in ss 45 and 46? Does non-compliance invalidate the documents and suspend the payment obligation? For reasons that follow, we consider the answer is "no".

[30] The starting point is that rates *must* be assessed by the local authority in accordance with s 43 of the Act. Once the rates are assessed in respect of a rating unit, the rates immediately become a charge against that unit (s 59). The ratepayer's liability for the rates crystallises on delivery of the rates assessment (s 44(2)) being a document that gives notice of the ratepayer's liability to pay rates on a rating unit (s 5). So long as the rates assessment fulfils that function, the ratepayer's liability for the rates crystallises. However, the payment obligation depends on delivery of a rates invoice which notifies the ratepayer of the amount of rates payable for the rating unit for the relevant period (s 5). So long as the rates invoice fulfils this requirement, the ratepayer's payment obligation is triggered.

[31] Section 45 sets out a comprehensive suite of information that must be included in a rates assessment. However, there is nothing to indicate that Parliament intended that any error or omission in this information would invalidate the rates assessment and suspend the ratepayer's liability for rates. The only circumstances in which an amended rates assessment must be delivered is where there is an error in the rating information database or rates record affecting the amount payable (s 41) or where there has been a change to the valuation in the district valuation roll (s 41A). It is significant that Parliament has not required local authorities to issue an amended rates assessment in any other circumstances, including where there is some other inaccuracy in the information required under s 45. Further, the interpretation contended for, that would allow ratepayers to seize on any error or omission in the information set out in the rates assessment and refuse payment on that account, would tend to defeat one of the principal purposes of the Act which is to enable local authorities to rely on the collection of rates from all ratepayers in their districts to fund local government activities.

[32] Section 47 also demonstrates that the interpretation advanced by the Rogans is contrary to Parliament's intention. This section requires a local authority to issue an amended rates invoice, but only where the amount of rates payable as shown on the rates invoice is incorrect. However, even where there is such a fundamental error, the ratepayer's liability to pay is not affected by the fact that correction of the rates invoice is required. The only consequence is that penalties may not be charged on the difference between the amount stated on the incorrect rates invoice and the amount stated on the amended invoice until 14 days after delivery of the amended invoice. This shows that other errors or omissions in the rates invoice, not relating to the amount payable, do not affect the ratepayer's liability to pay.

[33] The requirement to set out the information specified in ss 45 and 46 is intended to serve one of the purposes of the Act by providing information to enable ratepayers to identify and understand their liability for rates. Local authorities can be compelled to comply with their obligations under ss 45 and 46 when preparing rates assessments and rates invoices but errors or omissions in these documents will not absolve ratepayers from their obligation to pay rates, and penalties if they fail to do so.

[34] We conclude that although s 60 does not apply on the facts of this case, the Rogans were not entitled to refuse payment of the rates because of the asserted errors and omissions in the rates assessments and rates invoices. The sections we have referred to show a statutory obligation to pay irrespective of whether there are errors or omissions in the rates assessment or the rates invoice of the type complained of in this case. It follows that the appeal must be dismissed.

Result

[35] The appeal is dismissed.

[36] The appellants must pay one set of costs to the respondents on a band A basis and usual disbursements.

Solicitors:
Henderson Reeves Connell Rishworth, Whangārei for Appellants

Brookfields, Auckland for Respondents