

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Silco Contracting Ltd.*, 2009 NSCA 120

Date: 20091130

Docket: CAC 311394

Registry: Halifax

Between:

Silco Contracting Limited

Appellant

v.

Her Majesty the Queen

Respondent

Judges: MacDonald, C.J.N.S.; Oland and Fichaud, JJ.A.

Appeal Heard: November 25, 2009, in Halifax, Nova Scotia

Held: Appeal dismissed without costs, per judgment of the Court.

Counsel: J. Walter Thompson, Q.C., for the appellant
Joshua Judah, for the respondent

By the Court:

[1] Following oral submissions, we announced that this appeal would be dismissed with reasons to follow. Here are those reasons.

[2] This is an appeal from the decision of Hood, J. of the Supreme Court denying the appellant Silco's application to extend the time to appeal its November 2007 conviction for using residential land for industrial purposes, contrary to a by-law of the Halifax Regional Municipality.

[3] The Provincial Court conviction was entered *in absentia* after the appellant failed to respond to, (a) a summons which the appellant's recognized agent acknowledged receiving, and (b) a notice of the trial date which the Chambers judge was "satisfied was couriered to Silco".

[4] Then, in April of 2008, some 17 months later and more than 2 months after becoming aware of the conviction and \$16,000. fine, the appellant filed its extension application.

[5] In denying the application, the Chambers judge, after stating the appropriate legal test, said this regarding the appellant's need to establish a reasonable excuse for the delay:

I have a hard time concluding that he had a *bona fide* intention to appeal within the appeal period, which would have been 25 days after the November 22nd Court date when, really, the only evidence of any intention to do anything about the matter appears to have arisen only when contact was made by the Province, which occurred approximately - February 4th of 2009 there was a fax from Service Nova Scotia with respect to the matter. ... furthermore, I'm not satisfied that there's been a reasonable excuse for the delay.

...

There are a number of references to people being ill and correspondence not being looked at. To me, those are not reasonable excuses for the delay. He knew he had served upon him the June - the Summons for the June 19th, 2007 Court date and did nothing further thereafter to follow up, to ask any questions, to do anything.

We don't really know what happened to the letter that I'm satisfied was couriered to Silco. Therefore, I'm not satisfied, either, that there's been, really, any excuse for the delay, let alone a reasonable excuse for the delay in seeking to extend the time for filing an appeal, so, therefore, the application is not granted.

[6] Having reviewed the entire record, we see no error on the part of the Chambers judge. There was no reasonable excuse for such a lengthy delay. Furthermore, this is not one of those exceptional cases where, despite an unreasonable delay, justice dictates that the appeal go forward. See **R. v. D.P.B.**, 2002 NSCA 55.

[7] We therefore dismiss this appeal, but in the circumstances without costs.

MacDonald, C.J.N.S.

Oland, J.A.

Fichaud, J.A.