IN THE DISTRICT COURT
AT WHANGAREI

CIV-2014-088-000486
[2015] NZDC 21698

BETWEEN	KAIPARA DISTRICT COUNCIL Plaintiff
AND	RICHARD ROGAN HEATHER ROGAN Defendants

Hearing:	30 June and 1 July 2015
Appearances:	D Neutze for the Plaintiff J Browne for the Defendants
Judgment:	11 November 2015

RESERVED JUDGMENT OF JUDGE K B de RIDDER

Introduction

[1] Between 2011 and July 2015 the Kaipara District Council ("KDC") sent rates notices to Mr and Mrs Rogan ("the Rogans"). The Rogans say they are not liable to pay the rates, and have not paid them. The KDC has brought this proceeding seeking judgment against the Rogans for the amount of outstanding rates it says are owing.

Background

[2] This proceeding is another development in a long running dispute concerning the construction of a wastewater facility in Mangawhai. Most of the cost of approximately $57.7m was funded by borrowings. The project spawned a series of developments, including the appointment of Commissioners in September 2012 to direct the Council's operations, a report by the Office of the Controller and Auditor General in November 2013, and the enactment by Parliament of the Kaipara District

Council (Validation of Rates and Other Matters) Act 2013 ("the Validation Act") on 10 December 2013.

[3] In the meantime between 2006 and 2012 the KDC levied rates to enable repayment of the debt that had arisen from the development and construction of the facility. The result was that there were very significant increases in rates for the ratepayers to which there was widespread opposition. The Mangawhai Ratepayers Residents Association Inc ("the Association") attempted to resolve matters, firstly with the elected representatives of the KDC, and later the Commissioners. When matters did not progress to the Association's satisfaction it issued proceedings in the High Court seeking a judicial review of the KDC's decisions to enter into the contracts for the construction of the facility and to levy rates to meet outstanding debts. In that decision, the Court was satisfied that the rating decisions made between 2006 and 2012 were made unlawfully, but the Court declined to make a declaration that when Parliament enacted the Validation Act it removed the Association's right to seek a judicial review contrary to s 27(2) of the New Zealand Bill of Rights Act 1990.

[4] In a subsequent decision the High Court also refused an application for an order preventing the KDC from taking enforcement action against ratepayers to recover rates set and assessed in relation to the facility.

[5] Subsequent to the above developments the KDC continued to issue rates demands for the period 2011 to 2015. It also included rates demands on behalf of the Northland Regional Council for the period 1 July 2012 to 30 June 2014. A significant number of ratepayers, including the Rogans, chose not to pay the rates demanded by the KDC. Accordingly, the KDC issued proceedings against the defaulting ratepayers. Statements of defence to those proceedings have been filed. The proceedings, other than these proceedings against the Rogans, have been stayed pending the Court's decision on the Rogan proceeding, as the issues are essentially identical in all proceedings issued by the KDC. On 19 June 2015 I made an order granting the Council's application to join the Northland Regional Council as a second plaintiff, with the reasons to follow later.

Issues

[6] The KDC argues that the Rogans are not entitled to refuse to pay the rates on the basis of an alleged invalidity as s 60 of the Local Government (Rating) Act 2002 ("the Rating Act") provides an absolute bar to the defences raised by the Rogans.

[7] There is no issue that the Rogans are the ratepayers for the rating unit in question. They do not dispute that they owe the outstanding rates but allege that the assessments and invoices issued by the Council are invalid because they do not meet the requirements of ss 45-46 of the Rating Act, and GST and penalties have been incorrectly applied. They also allege that the KDC did not have power or authority, statutorily or otherwise, to recover rates on behalf of the Northland Regional Council.

[8] Therefore, the following matters require consideration:

(a) Reasons for joining the Northland Regional Council as a second plaintiff.

(b) What is the effect of the Validation Act on the defences raised by the Rogans?

(c) Is s 60 of the Rating Act an absolute bar to the defences raised by the Rogans?

(d) Does the KDC have the power to recover rates on behalf of the Northland Regional Council?

Evidence for the Council

[9] Ms Puchaux is a revenue manager employed by the KDC.

[10] Ms Puchaux produced a copy of an agreement entered into between the KDC and the Northland Regional Council whereby the Northland Regional Council

authorised the KDC to recover Northland Regional Council rates on its behalf for the period 1 July 2012 to 30 June 2015.

[11] Ms Puchaux noted that the Rogans owe rates totalling $22,158.49 as at 22 May 2015. These are broken down as follows:

(a) 2011/2012 (year ended 30 June 2012) - $3,083.80

(b) 2012/2013 (year ended 30 June 2013) - $5,672.20

(c) 2013/2014 (year ended 30 June 2014) - $6,190.80

(d) 2014/2015 (year ended 30 June 2015) - $7,211.69

Total $22,158.49

[12] Ms Puchaux noted that the KDC rates have been set by it in accordance with rating resolutions copies of which she produced and which have been certified by the Acting Chief Executive Officer of the KDC.

[13] She also noted that the Northland Regional Council rates have similarly been set in accordance with rating resolutions, copies of which she further attached and which also had been certified by the Chief Executive Officer of the Northland Regional Council.

[14] The KDC delivered rates assessment notices and rates invoices to the Rogans consisting of six separate instalments for each of the years 1 July 2011 to 30 June 2012, and 1 July 2012 to 30 June 2013 and four separate instalments for the years 1 July 2013 to 30 June 2014, and 1 July 2014 to 30 June 2015. The notices and invoices were delivered to the Rogans by posting them to the postal address provided to the KDC by the Rogans.

Evidence for the Rogans

[15] In his evidence Mr Rogan briefly traces the history of the conflict between the KDC and the ratepayers over the development of the facility and the setting of rates in relation to it. He also outlines his efforts at negotiating a settlement of outstanding issues. Much of his evidence in relation to these matters is largely irrelevant to the issues in dispute in this proceeding.

[16] He notes that he offered part payment of the sum claimed by the KDC in full and final settlement but that was not accepted.

[17] He asserts that there are a "large number of defects and instances of non-compliance with the legislation" in respect of the rates assessments and rates invoices issued by the Council.

[18] Finally, with the exception of rates attributable to loan repayments for the facility, the Rogans accept that the underlying rates are valid but that they have not been served with correct and valid rates assessment notices and rates invoices and therefore they are not liable to pay until they are served with "valid correct ones".

Joinder of Northland Regional Council as Second Plaintiff

[19] The application by the KDC to join the Northland Regional Council as second plaintiff was filed on 16 June 2015. The application was opposed.

[20] A teleconference was convened on 19 June 2015 in order to hear submissions from counsel regarding the application. After having heard counsel's submissions and considered the written submissions filed, I granted the application, and indicated that my reasons would follow later. These are now my reasons.

[21] I note that the defendants first raised the issue of whether or not the KDC had power to recover the Northland Regional Council rates in this proceeding in the first

amended statement of defence dated 20 May 2015. The issue had not been raised prior to that date.

[22] The affidavit of Ms L G Walsh filed in support of the application notes that information had been supplied to the Rogans in May 2015 pursuant to the Local Government and Official Information and Meetings Act 1987.

[23] I note that the Rogans do not dispute that the KDC can issue rates assessment notices and rates invoices that include rates owed to the Northland Regional Council. But they do dispute that the KDC has power to commence proceedings and claim rates owing to the Northland Regional Council.

[24] Mr Brown argued that to join the Northland Regional Council as a second plaintiff would raise "a whole host of new issues", including re-pleading, further discovery, interlocutories, and further evidence. He further submitted that there was simply insufficient time to deal with all of those issues before the hearing was due to commence.

[25] The application is founded on Rule 4.56 and 7.12 of the District Court Rules 2014. I have also had regard to the commentary on High Court Rule 4.56 in Westlaw at HC 4.56.02. The key issues are whether joinder is necessary to secure determination of all disputes relating to the same subject matter without delay, the interests of the proposed party, and, importantly, ensuring that existing parties are not prejudiced in any way. In my view the issues raised by the Rogans in respect of this proceeding apply equally to the KDC and to the Northland Regional Council. The same issues fall for determination. If there were to be two separate hearings involving the two separate Councils there would simply be a repetition of the same argument.

[26] However, more fundamentally, having considered the issue prior to hearing submissions from counsel, I had formed the view that the KDC is entitled to issue proceedings in the District Court to recover rates owing to the Northland Regional Council given that there is an appropriate agreement between the two Councils in

place. I heard nothing in the submissions for the Rogans which changed my view. Accordingly, the application was granted.

The Validation Act

[27] The Validation Act consists of only 14 sections. However that is preceded by a 73 paragraph preamble. The preamble summarises the steps taken by the KDC to set rates for the financial years from 2006/2007 to 2012/2013, and how in each of those financial years it failed to comply with specified provisions of the Act. In particular, in each of those rating years it failed to comply with the requirements of s 45 of the Act which stipulates the matters that must be identified in a rates assessment in that they did not:

(a) Set out the categories to which a rating unit belonged for the purposes of setting one or more targeted rates (s 45(1)(h)(ii));

(b) Set out the information on the factors used to calculate the amount of the liability of a rating unit in respect of one or more targeted rates (s 45(1)(i));

(c) State the methods by which rates could be paid (s 45(1)(m));

(d) State the right of ratepayers to inspect the rating information database and rates records, and the right of ratepayers to object to any of the information included in the rating information database and rates records (s 45(1)(p));

[28] Paragraph 71 of the preamble states:

> "It is desirable that the omissions relating to the Council's rates assessments for the financial years 2006/2007 to 2012/2013 (inclusive) be validated."

[29] Section 3(e) of the Validation Act states that:

"The purposes of this Act are to:

(e) validate the information contained in rates assessments for the financial years relating to 2006/2007 to 2012/2013 inclusive';

[30] Section 9 then provides:

"Despite the failure of the Council to comply with s 45(1) of the Local Government (Rating) Act 2002, the specified rates assessments are valid and declared to be and always have been lawful."

[31] The KDC points to s 3 as an aide to the proper interpretation of the Validation Act, and further submits that the combined effect of ss 5, 6, 8 and 9 means that the defences raised by the Rogans must fail. It also argues that the Validation Act covers all assessments up to and including 2012/2013.

[32] The Rogans argue that the Validation Act did not validate the actual rates assessment notices, or in the alternative, did not validate the 2012/2013 notices. They further submit that it did not validate the rates invoices for any year, and until valid rates invoices are provided no rates for the period are due.

[33] In order to determine the effect of the Validation Act, s 5 of the Interpretation Act 1999 is relevant. That provides:

"(1) The meaning of an enactment must be ascertained from its text and in the light of its purpose;

(2) The matters that may be considered to ascertain the meaning of enactment include the indications provided in the enactment;

(3) Examples of those indications are preambles...."

[34] In my view, the combined effect of paragraph (71) of the preamble, and s 3(e), and s 9 of the Validation Act is such that it is patently clear that the rates assessments for 2011/2012 are valid. In that regard, that is a complete answer to the Rogans argument that the assessments for that year are not valid.

[35] The next issue is whether or not the Validation Act operates similarly to determine that the rates assessments for the 2012/2013 year are valid. In that regard, it is somewhat unusually drafted. Section 9 provides that:

> "The specified rates assessments are valid and declared to be and to always have been lawful".

[36] The phrase "specified rates assessment" is not defined in the Validation Act however "specified rates" are defined as including five specific rates, which each are in turn further specifically defined. Three of those which appear to apply to the Rogans are the Mangawhai uniform targeted rate, the Mangawhai uniform annual charge, and the wastewater disposal rate. Each of those are separately defined relating to various financial years, but in respect of all three the latest years specified are 2011/2012. The definitions do not refer to the financial year 2012/2013.

[37] However, again applying s 5 of the Interpretation Act, it is clear that the intent of the legislation was to validate the rates assessments of the financial years from 2006/2007 to 2012/2013. Although the Validation Act does not specifically include the year 2012/2013 in the definitions section, it is clear that overall that was the intention of the Act. Therefore, in my view, the effect of the Validation Act is to make the Rogans liable for rates as assessed for each of the years as claimed.

[38] I am supported in that view by the decision of Heath J in *Mangawhai Ratepayers and Residents Association Inc v Kaipara District Council* [1] where he said at paragraph [69]:

> "The operative provisions of the Act make it clear that the Validation Act is intended to validate, *for all purposes*, the decisions to which it applies."

[39] The Rogans then argue that if the rates assessments are valid, the rates invoices do not comply with s 46 and therefore they are not liable to pay the rates for the years 2011/2012 and 2012/2013 despite the Validation Act.

[40] The answer to that argument is provided by s 47(2) of the Act which provides that:

> "The ratepayers liability to pay is not affected by the fact that the correction of the rates invoice is required."

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[1] [2014] NZHC 1147

[41] Accordingly, I am satisfied that the Rogans are liable for the rates as assessed and invoiced by the KDC for the years 2011/2012 and 2012/2013 by virtue of the provisions of the Validation Act.

[42] However the Validation Act does not cover the years 2013/2014 and 2014/2015.

Section 60 of the Act

[43] Section 60 provides as follows:

> "A person must not refuse to pay rates on the grounds 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."

[44] The KDC submits that any challenge to the rates based on errors in a rates assessment amounts to a challenge to the validity of rates and s 60 prevents such a challenge unless proceedings are brought in the High Court.

[45] Section 3(a) of the Act states that one of the purposes of the Act is to provide a local authority with flexible powers to collect rates, and this purpose is achieved by avoiding challenges to collection of rates on grounds of validity except by commencing judicial review proceedings in the High Court.

[46] The KDC points to the prohibition contained in s 138 of the Rating Powers Act 1988 which was more restrictive than s 60. Section 138 only prevented a defence based on the invalidity of the rate as a whole and specifically provided that the application of the rate to particular land or the quantum of the rate as matters that might be raised as a defence. By way of contrast however, s 60 of the Act makes no such allowance for such defences. Therefore, the KDC submits that s 60 was designed to address the shortcomings of s 138 of the Rating Powers Act to prevent any argument of validity of rate setting or assessment in District Court rates recovery proceedings.

[47] The KDC further submits that the intent of s 60 is clear, and that is that it is to ensure that the District Court is not inundated with challenges to rates assessments. There are good policy reasons why the only place for challenges to be made is in the High Court on judicial review which is to ensure that rating streams are not compromised by nullifying assessments and invoices for minor irregularities. It further submits that even if proceedings were brought in the High Court on review, the courts will not intervene to correct what the KDC describes as patently insignificant errors of law or fact in accordance with the "de minimis" principle.

[48] For the Rogans, Mr Brown argues that s 60 simply does not apply. That is because the Rogans are not challenging the validity of the rates themselves but rather are saying that their liability to pay the rates has not been triggered as they have not been issued compliant rates assessment notices and rates invoices. He pointed to cases decided on s 138 of the Rating Powers Act which held that s 138 did not apply where the matters raised affected only the amount due from each individual ratepayer, such as the failure to keep proper rates records or to give proper notice of rates payable, because they did not affect the validity of the rates as a whole. He further submits that there is nothing in the wording of s 60 to suggest that the same approach should not continue to apply.

[49] I note that there is very clearly a distinct difference in the wording of s 138 of the Rating Powers Act and s 60 of the Act.

[50] The report of the Local Government and Environment Committee in its report on the Bill before being passed by Parliament does not contain any comment on the change in wording from s 138 to s 60. However, in my view, the plain meaning of the words used in s 60 is to restrict the right of a ratepayer to refuse to pay rates on the ground that the rates are invalid. Any argument that rates are invalid is caught by the section. A person may only refuse to pay rates on the ground that the rates are invalid if the ratepayer brings proceedings in the High Court to challenge the validity of the rates, but even then the challenge is restricted to the grounds that the local authority is not empowered to set or assess the rates on a particular rating unit. That singular very restrictive ground of challenge in the High Court does not include alleged defective assessments or invoices.

[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 2011/2012 and 2012/2013 years.

[52] The learned authors of Lexis Nexis Local Government comment at LGR 44.5:

> "Any challenge to the rates based on a failure to deliver, or errors in, a rates assessment amounts to a challenge to the validity of the rates. Section 60 prevents such a challenge unless proceedings are bought (sic) in the High Court challenging the validity of the rates on the ground that the local authority is not empowered to set or assess the rates on the particular unit. (The prohibition to challenging invalidity is broader than the prohibition in the Rating Powers Act 1988 – which only prohibited challenges to the general invalidity of rates, rather than the validity in relation to particular land."

[53] They further comment at LGR 60.5:

> "The present provision is broader than its predecessor and appears to prevent any invalidity being raised, regardless of the nature of the claim or alleged defect, unless proceedings are brought in the High Court challenging the validity of the rates."

Penalties/GST

[54] The Rogans challenge the ability of both the KDC and the Northland Regional Council to add penalties to unpaid rates. As I understand their argument, it is focused on the relevant resolutions in relation to the rates which provides that in respect of the Rating Units 2012/2013 and 2013/2014 and 2014/2015 the appropriate rates resolution states that penalties "may be added" and that that wording does not in fact authorise the adding of penalties.

[55] In my view, there are two answers to that submission. Firstly, s 57 and s 58 of the Rating Act clearly authorise the imposition of penalties and the wording of the appropriate advice to the Rogans clearly signals that they may be liable for penalties.

[56] More significantly however is the fact that any technical argument about whether the wording is sufficient to allow penalties for the years 2011-2013 is clearly met by the Validation Act. Section 3(a) of the Act clearly states that a purpose is to:

> (a) Validate the specified rates set and assessed by the Council *and the penalties* added to those rates....(emphasis added)

[57] More specifically, s 6(2) provides:

> The penalties are valid and declared to be and always to have been lawfully imposed by the Council to the extent that the penalties would have been lawfully imposed if the specified rates had always been lawfully payable.

[58] That is then complimented by s 8 which provides:

> Any part of the specified rates and any penalties payable in respect of those rates that have not been paid to the Council on or after the commencement of this Act-
>
> (a) Are declared to be lawfully payable to the Council; and
>
> (b) May be recovered by the Council as if the rates or penalties had always been lawfully payable.

[59] As to GST that is clearly payable as provided for in s 5(7) of the Goods and Services Tax Act 1987. Simply put, there is nothing in the actions of either the KDC or the Northland Regional Council that is in breach of the Rating Act or the Rogans' rights.

Northland Regional Council

[60] The Rogans challenge the right of the KDC to issue rates assessments and rates invoices on behalf of the Northland Regional Council. The clear wording of s 53 of the Act specifically provides that the Northland Regional Council can appoint

the KDC to collect rates on its behalf. The appropriate agreement between the two Councils is in place.

[61] As I understand the Rogans argument, whilst the Northland Regional Council may appoint the KDC to collect its rates, the Council cannot take legal proceedings to collect rates payable to the Northland Regional Council. That submission ignores the plain wording of s 63(1) which provides:

> A local authority may commence proceedings in a Court of competent jurisdiction to recover as a debt due rates unpaid for four months after the due date for payment.

[62] The wording of that section is wide and simply refers to "a local authority". That must include a local authority who has been appointed by another authority to collect rates. If the intention had been that only the local authority that had actually assessed the rates for rating units within its territory should be able to issue legal proceedings then s 63(1) would have been worded appropriately to reflect that. The section is not restricted in that way, and the reference to "a local authority" in s 63(1) must include a local authority authorised to collect rates pursuant to s 53.

Compliance with s 63

[63] A Local Authority is not authorised to commence proceedings to recover unpaid rates if they remain unpaid for four months after the due date for payment.

[64] The Rogans argue that the invoice issued to the Rogans dated 11 July 2014 includes all rates and penalties as at that date and specifies they are due for payment on 20 August 2014. Therefore the proceedings issued by the KDC on 14 October 2014 have not been commenced after four months for the due date of payment has passed.

[65] That assertion is plainly wrong. The invoices issued to the Rogans for the years from 2011 all have dates specified for payment which the Rogans have not paid. Therefore, by 14 October 2014 when the proceedings were issued, more than four months have passed in respect of those years. The invoice dated 11 July 2015

simply specified that the first instalment for the rating year 2014/2015 was due and payable by 20 August 2014.

[66] However, I note that the KDC issued an amended statement of claim on 23 June 2015 in which it claimed all rates owing up to and including the rating year 1 July 2014 to 30 June 2015. However, instalment four of the rates for that year as invoiced on 9 June 2015 was only issued some 14 days earlier than the amended statement of claim. Accordingly, as at the date of the amended statement of claim, the instalment for payment on 20 May 2015 had not been outstanding for four months and therefore the Council is not able to claim that amount. That is the instalment of $1,279.59.

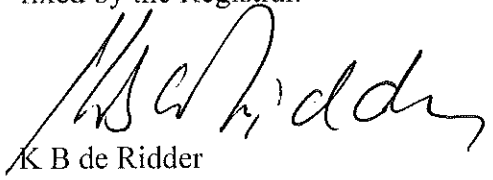
Result

[67] I am satisfied that the plaintiff is entitled to judgment.

[68] There will be judgment for the plaintiff against the defendants in the sum of $20,878.90.

[69] There will also be an order that the defendants pay interest at the rate of 5% from 14 October 2014 until the date of payment.

[70] There is an order for costs on a 2B basis together with disbursements to be fixed by the Registrar.



K B de Ridder
District Court Judge