

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 28287

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAIIIn the Matter of the Tax Appeal  
of  
THOMAS A. MARZEC, Appellant-Appellant  
vs.CITY AND COUNTY OF HONOLULU-  
REAL PROPERTY TAX DIVISION, Appellee-AppelleeAPPEAL FROM THE TAX APPEAL COURT  
(Tax Appeal No. 06-1-0075)SUMMARY DISPOSITION ORDER

(By: Recktenwald, Chief Judge, Watanabe, and Nakamura, JJ.)

Appellant-Appellant Thomas A. Marzec (Marzec) appeals pro se from the Final Judgment in favor of Appellee-Appellee City and County of Honolulu (City). The Final Judgment was entered on October 24, 2006, by the Tax Appeal Court (tax court) of the State of Hawaii.<sup>1</sup> Marzec claimed that he timely appealed his 2006-2007 real property tax assessment to the City's Board of Review (Board) by sending his notice of appeal by facsimile transmission to the City's Real Property Assessment Division (Assessment Division) at about 8:00 p.m. on the last day for appealing the assessment. The tax court determined that Marzec could not perfect his notice of appeal by sending it by means of facsimile transmission, and thus Marzec had failed to file a timely notice of appeal. The tax court granted the City's motion to dismiss, or in the alternative, for summary judgment, and dismissed Marzec's appeal with prejudice.

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<sup>1</sup> The Honorable Gary W.B. Chang presided.

NORMA T. YARA  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

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We hold that under the applicable ordinance and rules, Marzec was not entitled to lodge or file his notice of appeal of his real property tax assessment by means of a facsimile transmission. Accordingly, we affirm the tax court's decision to dismiss Marzec's appeal with prejudice.

I.

Marzec owned real property in Kailua. The deadline for appealing the City's 2006-2007 real property tax assessments was January 17, 2006.<sup>2</sup> In a declaration filed in the tax court, Marzec stated that he faxed his notice of appeal to the Assessment Division at about 8:00 p.m. on January 17, 2006. Marzec also mailed a notice of appeal the following day, which was received by the Assessment Division in an envelope postmarked January 18, 2006.<sup>3</sup>

The City submitted the declaration of Gail Nakamoto, a clerical supervisor with the Assessment Division. Nakamoto stated in her declaration that the Assessment Division had no record that a notice of appeal from Marzec was ever transmitted to or received by the Assessment Division via facsimile transmission on January 17, 2006.<sup>4</sup> Nakamoto stated that the notice of appeal Marzec mailed was received by the Assessment Division in an envelope postmarked January 18, 2006.

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<sup>2</sup> The normal deadline for appealing the City's real property tax assessment is the January 15th preceding the tax year. Revised Ordinances of Honolulu (ROH) § 8-12.1. However, because January 15, 2006, fell on Sunday, and the next day was a State of Hawai'i holiday, taxpayers had until Tuesday, January 17, 2006, to appeal their 2006-2007 real property tax assessments. See ROH § 8-1.16.

<sup>3</sup> Marzec does not contend that his mailed notice of appeal was timely. This appeal therefore turns on whether Marzec was entitled to lodge or file his notice of appeal by facsimile transmission.

<sup>4</sup> The record indicates that in May 2006, Marzec asked the supervising clerk for the Assessment Division to check the activity log of the Assessment Division's facsimile machine to determine whether there was any record of the receipt of a notice of appeal from Marzec on January 17, 2006. The supervising clerk determined that the activity log records for the facsimile machine did not go back earlier than April 25, 2006, and that the facsimile machine only kept an activity log going back two weeks.

II.

At the time relevant to this case, the Revised Ordinances of Honolulu (ROH) § 8-12.9 (2006) provided, in relevant part, as follows:

(a) A notice of appeal to the board of review must be lodged with the director<sup>5</sup> on or before the date fixed by law for the taking of the appeal. Notwithstanding any other provision to the contrary, a notice of appeal deposited in the mail, postage prepaid, and properly addressed to the director, shall be deemed to have been lodged with the director on the date shown by the post office cancellation mark stamped upon the envelope or other appropriate wrapper containing the notice of appeal.

(b) The notice of appeal must be in writing and any such notice, however informal it may be, identifying the assessment involved in the appeal, stating the valuation claimed by the taxpayer and the grounds of objection to the assessment shall be sufficient. Upon the necessary information being furnished by the taxpayer to the director, the director shall prepare the notice of appeal upon request of the taxpayer or county and any notice so prepared by the director shall be deemed sufficient as to its form.

(Emphasis added.)<sup>6</sup>

The City's Boards of Review have established rules pertaining to appeals of real property tax assessments to the Board. The rules applicable to this case provide, in relevant part:

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<sup>5</sup> "Director" is defined in ROH § 8-1.2 to mean "the director of budget and fiscal services of the City and County of Honolulu or the director's authorized subordinate."

<sup>6</sup> We note that ROH § 8-12.9 was amended effective November 26, 2007, to specifically prohibit the lodging of a notice of appeal by facsimile transmission. The amended ordinance provides in relevant part:

(a) A notice of appeal to the board of review must be lodged with the director on or before the date fixed by law for the taking of the appeal by either personal delivery, depositing the appeal in the mail, or by electronic transmission, provided, however, that a notice of appeal cannot be lodged by facsimile transmission.

ROH § 8-12.9 (emphasis added). The amended ordinance further provides that in order to perfect the appeal, the payment of costs for the appeal must be made on or before the date fixed by law for the taking of the appeal. Under the amended ordinance, 1) a notice of appeal personally delivered with the payment of costs shall be deemed lodged when delivered before the close of business hours; 2) a notice of appeal deposited in the mail with the payment of costs shall be deemed lodged on the date shown on the postal service cancellation mark stamped on the envelope; and 3) a notice of appeal transmitted electronically with payment of costs also transmitted electronically shall be deemed lodged on the date the electronic transmission and electronic payment are received by the server designated by the director.

Rule 4. Filing of papers.

4.1. Papers required to be filed with the board shall be deemed filed upon actual receipt by the Chair or the director, accompanied by proof of service upon all parties to be served.

4.2. The notice of appeal to the board and the decision of the board on each appeal decided by it, shall be filed with the director.

Rule 5. Commencement of Appeal.

5.1. An appeal to the board is taken by filing a written notice of appeal with the director on or before the date fixed by law for taking of the appeal and the deposit of costs of \$3 for each appeal.

5.2. An appeal to the board shall be deemed to have been taken in time if the notice thereof shall have been deposited in the mail, postage prepaid, properly addressed to the director, on or before said date.

(Emphasis added.)

We construe the applicable ordinance and rules as not permitting a notice of appeal to be lodged or filed by facsimile transmission. See Love v. College Level Assessment Services, Inc., 928 S.W.2d 36, 38-39 (Tenn. 1996) (holding that facsimile transmission of a notice of appeal was insufficient to perfect the appeal). In support of our construction, we note that there was no provision in the ordinance or rules that authorized the lodging or filing of a notice of appeal by facsimile transmission. In addition, the traditional means of lodging and filing a notice of appeal is by personal delivery. The applicable ordinance and rules specifically provided for an alternative to personal delivery by deeming a notice of appeal to have been lodged or filed if sent through the mail. No other alternative means of perfecting the notice of appeal was identified. We interpret the specific identification of one alternative means to lodge or file a notice of appeal to signify that other unspecified means of lodging or filing the notice of appeal were not authorized. Therefore, assuming that Marzec sent his notice of appeal by facsimile transmission to the Assessment Division at about 8:00 p.m. on January 17, 2006, we conclude that this was not a valid filing or lodging of his notice of appeal.

Marzec suggests that he relied on the City's instructions for filing a real-property-tax-assessment notice of appeal in believing that he could lodge or file his notice of appeal by facsimile transmission. Although the City's instructions listed facsimile numbers below the Assessment Division's addresses, the instructions also provided that "[t]he appeal must be received on or before January 15th, 4:30 p.m.," at one of the listed addresses for the Assessment Division or "[i]f the appeal is mailed, it must be postmarked by the U.S. Postal Service by midnight, January 15th."<sup>7</sup> Under Marzec's version of events, he sent the notice of appeal by facsimile transmission after 4:30 p.m. on the last day to appeal. Marzec, therefore, cannot claim that he acted in reasonable reliance on the City's instructions.

III.

Marzec's asserted submission of his notice of appeal to the Board by facsimile transmission was invalid. The notice of appeal he sent to the Board by mail was untimely. Accordingly, the tax court properly dismissed Marzec's appeal with prejudice. The October 24, 2006, Final Judgment entered by the tax court is affirmed.

DATED: Honolulu, Hawai'i, August 27, 2008.

On the briefs:

Thomas A. Marzec  
Taxpayer-Appellant Pro Se

Susan A. Bender  
Deputy Corporation Counsel  
City and County of Honolulu  
Real Property Tax Division  
for Appellee-Appellee

*Mun Reamund*  
Chief Judge

*Corinne K A Watanabe*  
Associate Judge

*Craig H. Nakamura*  
Associate Judge

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<sup>7</sup> The instructions also contained a reference to ROH § 8-1.16 which extends a due date that falls on a Saturday, Sunday, or legal holiday. See supra note 2.