

Indexed as:

Northwood Oaks Ltd. v. Winnipeg (City) Board of Revision

Between

**Northwood Oaks Ltd., Tuxedo Village Ltd. and Shelard Manor
Ltd., (applicants) appellants, and
The Board of Revision of the City of Winnipeg, (respondent)
respondent, and
The Assessor for the City of Winnipeg and the City of
Winnipeg, (intervenors) respondents**

[1999] M.J. No. 578

[1999] 11 W.W.R. 77

138 Man.R. (2d) 86

89 A.C.W.S. (3d) 424

Docket No. AI99-30-04097

Manitoba Court of Appeal

Huband, Twaddle and Lyon JJ.A.

Heard: June 11, 1999.

Oral judgment: June 11, 1999.

Written reasons: June 28, 1999.

(23 paras.)

Real property tax -- Assessment appeals -- Persons entitled to appear, appearance by agent -- Provincially or municipally appointed tribunal or board -- Jurisdiction, when appeal withdrawn -- Practice -- Discontinuance -- As a bar to subsequent action -- Withdrawal.

Appeal by Northwood Oaks from the dismissal of its application for an order of mandamus. Appeal by the City of Winnipeg Board of Revision from a declaration that Northwood's tax assessment appeal remained valid. Northwood owned an apartment block in the City. In 1990, Northwood instructed a tax consulting company to file with the Board a complaint against the municipal tax as-

assessment of its property. The tax consulting company indicated on the complaint to the Board that service of notice regarding the complaint was to be addressed to it. In 1991, a complaint of the 1991 tax assessment was filed, with the address for service again shown as that of the tax consulting company. In April 1992, Northwood decided to terminate the services of its tax consulting company and to hire a new one. Northwood sent a letter to the tax consulting company confirming that its services were no longer required for the tax assessment appeals. This letter of termination showed copies being sent to the Board, but there was no evidence that a copy was in fact sent to the Board. In January 1993, the tax consulting company that had been terminated filed with the Board a notice of withdrawal of Northwood's tax assessment appeals. Northwood had not authorized the withdrawal of its appeals, nor did it intend to withdraw the appeals. Northwood intended only that the new tax consulting company retained in April 1992 was to become responsible for the appeals. However, the Board was not advised of the fact that the original tax consulting company was no longer acting for Northwood until December 1993. Northwood did not learn of the withdrawal of its appeals until the fall of 1995. Northwood attempted to have the Board hear the appeals, notwithstanding that they had been withdrawn. The Board declined to reinstate the appeals on the ground that it lacked the jurisdiction to do so. Northwood then appeal to the court for an order declaring that its appeals were valid and subsisting, and for an order of mandamus directing the Board to hear the appeals. The court granted a declaration that, as the notice of withdrawal was improperly filed without Northwood's authority, the appeals remained valid and subsisting. However, the court dismissed the application for mandamus, finding that Northwood had delayed prosecuting its application for judicial relief and that the Board had suffered prejudice.

HELD: Northwood's appeal dismissed, and Board's appeal allowed. The declaration that Northwood's tax assessment appeals remained valid and subsisting was set aside. The tax consulting company originally appointed to handle Northwood's appeals filed the complaints on Northwood's behalf. The tax consulting company's address was shown as the address for service. Notice terminating the tax consulting company's authority was not received by the Board. The tax consulting company therefore remained the agent of record when the notice withdrawing the complaints was filed. Therefore, the notice of withdrawal was effective, and the complaints could not subsequently be reactivated.

Court Note:

Trial decision reported at: (1999), 135 Man.R. (2d) 1

Counsel:

M.J. Mercury, Q.C., for the appellants.

D.A. Bedford, for the respondent Board of Revision.

D.A.M. Pambrun, for the respondent Assessor for the City of Winnipeg.

The judgment of the Court was delivered by

1 TWADDLE J.A.:-- This is an administrative law appeal dealing with the effect of a withdrawal of process filed by an agent of record whose actual authority has been terminated.

2 The applicants each own an apartment block in the City of Winnipeg. In 1990, each thought the assessment of its property for municipal tax purposes to be too high. Through the agency of a common manager each instructed a tax consulting company to file a complaint against the assessment of its property with the Winnipeg Board of Revision. This was done, the tax consulting company indicating on the complaint that service of notice regarding the complaint should be addressed to it at the stated address.

3 In like manner, similar complaints with respect to the 1991 assessment roll were filed in 1991. The address for service was again shown as that of the tax consulting company.

4 In April 1992, the applicants replaced their common manager with another. It was then decided that the tax consulting company's services should be terminated and a new tax agent appointed. Accordingly, a letter was sent to the tax consulting company confirming that its services were no longer required for the property assessment appeals. The new manager was obviously aware that the Board of Revision and the City of Winnipeg should be advised of the termination of the tax consulting company's mandate as it indicated in the letter of termination that it was "requesting the Courts to change the authorized agent' responsible for these appeals."

5 Although the letter of termination showed copies being sent to the Board of Revision and the Winnipeg Assessment Department, there is no evidence that a copy was in fact sent to either. There is evidence, on the other hand, that neither received a copy.

6 In January 1993, the tax consulting company filed with the Board of Revision a notice of withdrawal of the appeals of each applicant for the years 1990 and 1991. What the tax consulting company had intended to do was to file a notice of its withdrawal as agent. There is, however, no ambiguity in the notice filed: the appeals were said to be withdrawn and no replacement agent or address for service was given.

7 The applicants had not authorized the withdrawal of their appeals. Nor had they intended that they should be withdrawn. What the applicants intended was that the new tax agent retained by them in May 1992 should become responsible for the appeals. But no notice of the applicants' intention that this should be done was given to the Board or the City prior to the filing of the appeal withdrawals.

8 The Board was not advised of the fact that the tax consulting company was no longer acting as agent for the applicants until December 1993, some 11 months after the withdrawals had been filed. The applicants themselves did not learn of the withdrawals until the fall of 1995.

9 Between the fall of 1995 and December 1997, the applicants attempted to have the Board hear their appeals notwithstanding that they had been withdrawn. The Board, however, declined to reinstate them, stating that it lacked the jurisdiction to do so.

10 The applicants then applied to the Court of Queen's Bench for an order declaring their assessment appeals of 1990 and 1991 were valid and subsisting and for an order of mandamus directing the Board of Revision to hear them.

11 This Court had previously held in *Winnipeg (City) et al. v. Board of Revision (Winnipeg) and Lakeview-National Hotels Inc.* (1993), 88 Man.R. (2d) 130, that the withdrawal of an assessment appeal by a taxpayer "leaves the Board with no application to hear and no jurisdiction to proceed" (per Helper J.A. at p. 133). The motions judge in the present case recognized that this was so, but distinguished the two cases on the fact that in the earlier case the taxpayer had intended to withdraw

its appeal. She held that, as the notice of withdrawal was improperly filed without authority in the present case, the appeals remained valid and subsisting and granted a declaration to that effect.

12 Turning to the application for mandamus, the motions judge found the applicants to have been guilty of delay in prosecuting its application for judicial relief and the City to have suffered prejudice. She therefore refused to exercise her discretion to issue the order of mandamus.

13 The applicants appealed from the denial of mandamus while the Board cross-appealed from the declaratory order.

14 When the appeals came on for hearing, we indicated to counsel that the cross-appeal should be argued first. We did so because the applicants' appeal was predicated on their success in maintaining the declaratory order.

15 In the field of civil litigation, it is a well-established rule that a solicitor of record remains as such until a notice of change of solicitors or of the litigant's intention to act in person is filed: see *Lady De la Pole v. Dick* (1885), 29 Ch. D. 351 wherein Cotton L.J. said at p. 357:

[T]he solicitor on the record must be taken, as between him and the opposite party, to represent the client, unless the client not only discharges him but substitutes another solicitor on the record.

16 This statement of the law was quoted with approval in this province by Molloy C.C.J. in *Howard v. Howard* (1958), 65 Man.R. 112, at p. 117.

17 There are sound policy reasons for this rule. Where a litigant chooses to deal with the court through an agent, as is ordinarily the case, the court must be assured at all times that the agent has the authority of his or her client for all he or she does. It would be an intolerable situation if the court had to verify the authority of the agent before accepting a document for filing or acting upon it.

18 Other parties to the litigation need protection too. They need to know that service on the agent of record is effective and that a document filed by the agent, such as a notice of discontinuance or abandonment of an appeal, can be relied on.

19 There is simply no place in our legal system for a requirement that a court or party to litigation verify the authority of an agent of record before relying upon the acts of the agent.

20 I can see no valid reason why this rule applicable to civil litigation should not apply to proceedings before a tribunal such as the Board of Revision which accepts notice of complaint from an agent with the agent's address for service recorded on it. The policy reasons supporting the rule in civil litigation are equally applicable to proceedings before such a board.

21 In the present case, the tax consulting company originally appointed to handle the assessment appeals filed the complaint on the owners' behalf. The agent's address was shown as the address for service. Notice terminating the agent's authority was not received either by the Board or the City. The tax consulting company thus remained the agent of record when the notice withdrawing the complaints was filed. The notice of withdrawal was therefore effective and the complaint cannot subsequently be reactivated: see *Winnipeg (City) et al. v. Board of Revision (Winnipeg) and Lakeview-National Hotels Inc.*, supra.

22 As the issue does not arise in the present case, I deliberately refrain from commenting upon the effect, if any, of the Board being notified of the agent's termination without notification of the identity and address of the replacement agent or of the party's intention to act in person.

23 At the conclusion of the hearing, we advised the parties that we would set aside the declaratory order and dismiss the application for relief. These are our reasons for doing so. The applicants must pay the costs of both the Board and the City in each court.

TWADDLE J.A.

HUBAND J.A.:-- I agree.

LYON J.A.:-- I agree.

cp/i/nc/qljpn