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2011 CarswellOnt 9204, 69 O.M.B.R. 448

Municipal Property Assessment Corp., Region No. 18 v. Andrulis

In the matter of Section 40 of the Assessment Act, R.S.O. 1990, c. A.31, as amended

In the matter of appeals with respect to taxation years 2009, 2010 and 2011 on premises known municipally as 3 Macartney Court

Municipal Property Assessment Corporation Region No. 18, Moving Party and Henry Billy Andrulis, Gina Louise Andrulis, and The City of Thorold, Respondents

Ontario **Assessment Review Board**

B. Cowan Member

Heard: July 14, 2011
Judgment: September 12, 2011
Docket: DM 111465

Counsel: P. Legge, D. Langile, for Moving Party

R. **Baranowski**, for Respondents, Henry Andrulis, Gina Andrulis

No one for Municipality

Subject: Public; Tax — Miscellaneous; Civil Practice and Procedure

Municipal law --- Municipal tax assessment — Practice and procedure on assessment appeals and objections — Jurisdiction and power — Miscellaneous

Order for inspection — Applicant Municipal Property Assessment Corporation (MPAC) sought inspection to address and/or obtain information not available from its assessment records respecting classification, negative value adjustment and possible alterations or renovations of property that was subject of appeal, brought by its owner, A — MPAC brought motion under R. 56 of Ontario Assessment Review Board's Rules of Practice and Procedure, R. 32 of Rules of Civil Procedure, and ss. 5.4(1), 25.0.1 and 25.1 of Statutory Powers Procedure Act — Motion dismissed — Board should not be intervening in such disclosure matters when appeals on subject property were set for hearing — MPAC failed to differentiate between inspection for assessment purposes and one for preparation for hearing — Former did not apply to appeals at issue, and latter would not have been fair

in this circumstance, as A was not contesting subject property's quality classification nor negative adjustment that had been incorporated into assessment — Section 10(1) of Assessment Act states, in part, that authorized MPAC representative " . . . shall be given free access . . . for the purpose of making a proper assessment thereof"; MPAC's remedy for non-compliance, under s. 13(1) of Act, is to courts, not to board — For discovery process, R. 56 of board's rules contemplates ordering inspection to ascertain evidence and/or information relevant to property as it might impact assessment appeal's determination, but is to be differentiated from s. 10.(1) inspection, which refers to inspection for preparation of assessment roll".

Municipal law --- Municipal tax assessment — Valuation — Evidence

Applicant Municipal Property Assessment Corporation (MPAC) sought inspection to address and/or obtain information not available from its assessment records respecting classification, negative value adjustment and possible alterations or renovations of property that was subject of appeal, brought by its owner, A — MPAC brought motion under R. 56 of Ontario Assessment Review Board's Rules of Practice and Procedure, R. 32 of Rules of Civil Procedure, and ss. 5.4(1), 25.0.1 and 25.1 of Statutory Powers Procedure Act — Motion dismissed — MPAC was not to be permitted to introduce evidence or arguments at hearing with respect to correctness of subject property's quality classification, as presently incorporated into assessment — Otherwise stated for clarity and as agreed by A, property classification was not at issue for these appeals — This order did not, however, restrict A from cross-examination of MPAC's witness(es) at hearing as to how subject property's quality class was determined — Board was not persuaded as to need for inspection to advance information pertinent to forthcoming hearing — First three issues articulated by MPAC as basis for this motion pertained to deficiencies in its records — Remedy was available by inspection under s. 10(1) of Assessment Act — "Fishing expedition" for evidence for hearing is properly discouraged, particularly so in this instance, where both parties agreed to concessions respecting issues to be addressed at hearing.

Cases considered by *B. Cowan Member*:

Canadian National Railway v. Winnipeg (City) Assessor (1997), 118 Man. R. (2d) 142, 149 W.A.C. 142, 1997 CarswellMan 367 (Man. C.A.) — considered

Statutes considered:

Assessment Act, R.S.O. 1990, c. A.31

s. 10(1) — referred to

s. 13(1) — referred to

Statutory Powers Procedure Act, R.S.O. 1990, c. S.22

s. 5.4(1) [en. 1994, c. 27, s. 56(12)] — pursuant to

s. 25.0.1 [en. 1999, c. 12, Sched. B, s. 16(8)] — pursuant to

s. 25.1 [en. 1994, c. 27, s. 56(38)] — pursuant to

Rules considered:

Rules of Civil Procedure, R.R.O. 1990, Reg. 194

R. 32 — pursuant to

MOTION brought under R. 56 of Assessment Review Board's Rules of Practice and Procedure, R. 32 of Rules of Civil Procedure, and ss. 5.4(1), 25.0.1 and 25.1 of *Statutory Powers Procedure Act* for order for inspection of subject premises.

***B. Cowan Member*:**

1 This motion came before the Assessment Review Board on July 14, 2011 in the City of Thorold.

Motion

2 The Municipal Property Assessment Corporation (MPAC) has served a Notice of Motion asking that the Board order an inspection of the subject premises, 3 Macartney Court, Thorold.

3 MPAC seeks an inspection to address and/or obtain information not available from its assessment records respecting classification, a negative value adjustment and possible alterations or renovations.

4 It brings its motion under Rule 56 of the Board's Rules of Practice and Procedure (Rules), Rule 32 of the Rules of Civil Procedure, and subsections 5.4(1), 25.0.1 and 25.1 of the *Statutory Powers Procedure Act*

Disposition of Motion and Order

5 MPAC's motion for an ordered inspection is denied.

6 *The Board Orders, that:*

1. The appellant shall not be permitted to introduce evidence or arguments at the hearing with respect to the correctness of the subject property's quality classification, as presently incorporated into the assessment. Otherwise stated for clarity and as agreed by the appellant, property classification is not at issue for these appeals.

This order does not, however, restrict the appellant from cross-examination of MPAC's witness(es) at the hearing as to how the subject property's quality class was determined.

2. For these appeals, and with MPAC's consent, MPAC may not seek a higher assessment as contemplated by Rules 33 and 34 of the Board's Rules.

Reasons for Disposition of Motion and Order

7 Based upon requests by the appellant's representative, Mr. R. **Baranowski**, and related responses and correspondence thereto, MPAC's representatives, Ms. D. Langille and Mr. P. Legge concluded that an inspection of the property is necessary to address the following issues:

(i) The absence of a report relating to MPAC's initial February 2009 inspection of the property.

(ii) The quality classification incorporated into the property's assessments.

(iii) Absence of details of the basis for a $25,000 negative adjustment to current value that is incorporated

into the assessments for which the appeals apply.

(iv) The extent of alterations and interior renovations made to the property.

8 Mr. **Baranowski** opposes the inspection sought. He views the inspection as creating an inequity whereby the weight of MPAC's existing evidence to satisfy its statutory onus may be embellished by information derived from an inspection.

9 As MPAC has established its assessments, and because mutual disclosure had occurred prior to the hearing initially scheduled for May 30, 2011, the appellant expected that the appeals would be heard on that date. Instead, Mr. Legge requested an inspection at that hearing, the hearing was adjourned and this motion hearing date was set.

10 It is Mr. **Baranowski's** view that the Board should not be intervening in such disclosure matters when Direct Stream appeals are set for hearing. Furthermore, he argues that MPAC has failed to differentiate between an inspection for assessment purposes and one for preparation for a hearing. He maintains that the former does not apply to the appeals at issue, and the latter would not be fair in this circumstance, as he is not contesting the subject property's quality classification nor the $25,000 negative adjustment that has been incorporated into the assessment.

11 Mr. **Baranowski** is correct in his interpretation of subsection 10.(1) of the *Assessment Act* (*Act*). That subsection states, in part, that an authorized MPAC representative:

*... shall be given free access...**for the purpose of making a proper assessment thereof**.*

(emphasis added)

12 Pursuant to subsection 13.(1) of the *Act*, MPAC's remedy for non compliance with subsection 10.(1) by an offending person is to the courts, not to the Board.

13 However, for the discovery process, Rule 56 of the Board's Rules permits ordering an inspection. In my view, such an inspection is to be differentiated from a subsection 10.(1) inspection. The Rule contemplates ordering an inspection to ascertain evidence and/or information relevant to the property as it might impact the assessment appeal's determination. As well, the explanatory note to Rule 56 specifically states:

Inspection in paragraph (e) above is different from inspection in section 10 and 11 of the *Assessment Act*, which refer to an inspection for preparation of the assessment roll.

14 In this instance, I am not persuaded as to the need for an inspection to advance the information pertinent to the forthcoming hearing. Provided that quality classification is not an issue for the appellant, and recognizing that a current inspection is not likely to glean beyond conjecture what circumstance in 1999 or later resulted in a $25,000 negative assessment adjustment, the first three issues do not necessitate an inspection.

15 The fourth issue pertains to alterations or renovations. Inspections pursuant to Rule 56 are for this purpose. Unless consensual, I agree with Mr. **Baranowski's** representations that it is too late, in this instance, and might serve the inequitable effect of bolstering MPAC's responsibility respecting onus, which should be based on the assessment established. The first three issues articulated by MPAC as the basis for this motion pertain to deficiencies in its records. The remedy is available by a subsection 10.(1) inspection. A "fishing expedition" for

evidence for a hearing is properly discouraged, particularly so in this instance where both parties have agreed to concessions respecting the issues to be addressed at the hearing.

16 Having so concluded, I am reassured by an authority from Mr. **Baranowski** pertaining to my determination respecting the two differing purposes for inspections. Huband J.A., writing for The Court of Appeal of Manitoba, stated in part at paragraphs 17 and 18 in *Canadian National Railway v. Winnipeg (City) Assessor* (1997), 118 Man. R. (2d) 142 (Man. C.A.):

> ...the demand for information and documents is to enable the assessor to make the initial assessment. The assessor is not entitled to build his record of information and documents for the purpose of shoring up his initial assessment when it is questioned on appeal.
>
> That is not to say that the assessor cannot make reference to information or documents beyond what was considered in making the initial assessment That is a wholly different question...

17 Although this case was in a different jurisdiction, dealing with a different issue (onus), and addressed statutory interpretation, in the context of the matter before me the differentiation between an inspection for establishing an assessment and one for an appeal of the assessment value is crystallized and relevant to my like conclusion.

18 I am satisfied that MPAC's requested inspection was predicated on Mr. Legge's expectation that quality classification was at issue. Had this been so, an inspection might well be of assistance in determining the matter, due to its technical nature being within MPAC's realm of expertise. As Mr. **Baranowski** has made it clear that he will not argue the subject's assessed quality classification for these appeals, no inspection is needed for this purpose.

19 I am cognizant of Mr. **Baranowski's** concerns that an inspection could conceivably lead to MPAC seeking an assessment increase. Mr. Legge has assured me and Mr. **Baranowski** that MPAC will not issue a Notice of Increase respecting these appeals under any circumstance.

20 The undertakings of Mr. **Baranowski** and Mr. Legge as to quality classification issues and Notices of Increase respectively, lead to my conclusion that together, the need for an inspection or indeed the basis for opposing one, are substantially dissipated. Accordingly, the motion for an inspection is denied. Rather, I order that the parties honour their respective undertakings, and that the hearing be scheduled in consultation with the parties.

21 My order is not intended to prevent Mr. **Baranowski**, if he so chooses, from cross-examination of MPAC's representative(s) as to how the quality classification was determined, as that is a distinguishable separate matter from the correctness of that classification.

22 My review of the Board's records from the May 30, 2011 hearing indicates that the appeals were adjourned to this motion hearing, prior to evidence being heard. The presiding Member did not receive evidence and is not seized of the matter. Accordingly, although contrary to Mr. **Baranowski's** preference and representation, the next hearing event will be *de novo*. The parties are expected to comply with the disclosure requirements of Rule 48 in that regard.

Motion dismissed.

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