

Docket: 2015-5507(IT)G

BETWEEN:

LILYFIELD DEVELOPMENT INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion heard on December 13, 2019, at Winnipeg, Manitoba
Before: The Honourable Justice Ronald MacPhee

Appearances:

Agent for the Appellant: Daniel Lester
Counsel for the Respondent: Sandra Hoepfner

JUDGMENT

The Respondent's Motion to Quash this Appeal is allowed.

The Appeal from the assessments made under the *Income Tax Act* for the Appellant's 2008, 2009, 2010 and 2011 taxation years, is hereby quashed.

Costs in accordance with the Tariff are payable by the Appellant to the Respondent.

Signed at Ottawa, Canada, this 29th day of January 2020.

“R. MacPhee”

MacPhee J.

Citation: 2020 TCC 16
Date: 20200129
Docket: 2015-5507(IT)G

BETWEEN:

LILYFIELD DEVELOPMENT INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

MacPhee J.

[1] The Respondent has brought a Motion to Quash the Appeal of the Appellant. The basis for this request is that the Appellant, which is a dissolved corporation, lacked the capacity either to initiate the Appeal, or to take any action within the Appeal.¹

FACTS:

[2] The Appellant's corporate status was dissolved on April 21, 2017, pursuant to paragraph 205(1)(a) of the *Corporations Act of Manitoba C.C.S.M. c. C225* (the "Manitoba CA") for a failure to file returns.

[3] The Notice of Appeal in this proceeding was filed on May 26, 2017. Prior to filing the Notice of Appeal, the Appellant had filed an Application to extend time to file the Notice of Appeal. This matter was commenced on December 21, 2015. An Order was provided by the Tax Court on May 26, 2017 which allowed the Application.

¹ The Respondent has also filed a Motion seeking a Direction or Order from the Tax Court that the Appellant be required to appoint counsel pursuant to Rule 30(2) of the *Tax Court of Canada Rules (General Procedure)*. The Respondent was directed by the Tax Court Canada to proceed with this Motion first.

[4] As a result of the Application, the Tax Court accepted the draft Notice of Appeal, which was an Exhibit to the Application, as a filed Notice of Appeal. As mentioned above, this occurred on May 26, 2017.

[5] At the end of the hearing of this Motion I indicated to the parties that I would not write my decision for at least another 30 days, and if the Appellant wished to revive the corporate Appellant, and put me on notice that this step had occurred, then I would not grant the Order to quash the Appeal. I further let the parties know that if the corporate Appellant chose to take no action, then the Order requested by the Respondent would most likely be granted. I have not heard from either party since the conclusion of the hearing.

APPLICABLE LAW:

[6] Subsection 219(2) of the Manitoba CA states as follows:

Continuation of actions

219(2) Notwithstanding the dissolution of a corporation under this Act,

- (a) a civil, criminal or administrative action or proceeding commenced by or against the corporation before its dissolution may be continued as if the corporation had not been dissolved;
- (b) a civil, criminal or administrative action or proceeding may be brought against the corporation within two years after its dissolution as if the corporation had not been dissolved; and
- (c) any property that would have been available to satisfy any judgment or order if the corporation had not been dissolved remains available for that purpose.

[7] A similar provision from the *Ontario Business Corporations Act*, R.S.O. 1990, c. B16 (the “*Ontario BCA*”) was interpreted by the Federal Court of Appeal (the “FCA”) in *1455257 Ontario Inc. v. Her Majesty the Queen*, 2016 FCA 100.

[8] The provision in that case was strikingly similar to the one before this Court. It read:

Proceedings after dissolution

242 (1) Despite the dissolution of a corporation under this Act,

- (a) a civil, criminal, administrative, investigative or other action or proceeding commenced by or against the corporation before its dissolution may be continued as if it had not been dissolved;
- (b) a civil, criminal, administrative, investigative or other action or proceeding may be brought against the corporation as if it had not been dissolved;
- (c) property that would have been available to satisfy a judgment, order or decision if the corporation had not been dissolved remains available for that purpose, subject to subsections (1.1) and (1.2); and
- (d) land belonging to the corporation immediately before the dissolution remains available to be sold in power of sale proceedings, subject to subsection (1.1). 2015, c. 38, Sched. 7, s. 44 (11).

[9] The FCA provided the following analysis:

[30]. Under section 17.2 of the *Tax Court of Canada Act*, R.S.C. 1985, c. T-2 a proceeding is instituted before the Tax Court by filing “[a]n originating document” as prescribed by the *Tax Court of Canada Rules (General Procedure)*, SOR/90-688a. The proceeding is deemed to be “instituted” on the day the originating document is received by the Registry of the Tax Court. Contrary to the situation before the Supreme Court in *Johnson*, the Minister plays no role in the commencement of the proceeding; the material before the Minister is not transmitted directly to the Tax Court by the Minister. There is no provision that deems the matter to be an action or proceeding.

[31] When this legislative regime is considered, in my respectful view, it is no longer correct to say that the filing of a notice of appeal in the Tax Court does not constitute the initiation of a legal proceeding. Filing a notice of appeal in the Tax Court does constitute the initiation of a legal proceeding. The fact that the legal proceeding is directed against the Minister's assessment is a separate issue that does not detract from the conclusion that by filing a notice of appeal in the Tax Court one institutes a legal proceeding.

[32]. Subsection 242(1) of the Ontario BCA does not authorize a dissolved corporation to initiate a civil proceeding. It follows that the Tax Court did not err by adjourning the appeal and requiring the appellant to revive its corporate status so that it could continue the appeal.

[10] The Appellant argues that in filing an Application in December 2015, an originating document had been filed prior to the Appellant being dissolved, and therefore the Appellant corporation may continue with the litigation. I do not accept this position. The Application filed was a separate and distinct proceeding filed under subparagraph 18.29(1)(3)(vii) of the *Tax Court of Canada Act*. The

matter was concluded on May 26, 2017, the day the Order was issued by the Tax Court.

[11] As noted in *1455257*, a proceeding is instituted before the Tax Court by filing “[a]n originating document” as prescribed by the *Tax Court of Canada Rules (General Procedure)*.

[12] Pursuant to the *Tax Court of Canada Rules (General Procedure)*, an originating document means a document that is filed under section 21 of the *Tax Court of Canada Act*, R.S.C. 1985, c. T-2 (the “*TCCA*”). The only document filed by the Appellant under section 21 of the *TCCA* was the Notice of Appeal, which was filed on May 26, 2017, a little more than a month after the corporation was dissolved.

[13] Therefore, the Appellant initiated an action on May 26, 2017, a time in which it was dissolved. Subsection 242(1) of the Manitoba CA does not allow a dissolved corporation to initiate a civil procedure. On that basis, I must allow the Motion and quash this Appeal.

[14] The Appeal is quashed.

[15] Costs in accordance with the Tariff are payable by the Appellant to the Respondent.

Signed at Ottawa, Canada, this 29th day of January 2020.

“R. MacPhee”

MacPhee J.

CITATION: 2020 TCC 16

COURT FILE NO.: 2015-5507(IT)G

STYLE OF CAUSE: LILYFIELD DEVELOPMENT INC. AND
HER MAJESTY THE QUEEN

PLACE OF HEARING: Winnipeg, Manitoba

DATE OF HEARING: December 13, 2019

REASONS FOR JUDGMENT BY: The Honourable Justice Ronald MacPhee

DATE OF JUDGMENT: January 29, 2020

APPEARANCES:

Agent for the Appellant:	Daniel Lester
Counsel for the Respondent:	Sandra Hoepfner

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:

Nathalie G. Drouin
Deputy Attorney General of Canada
Ottawa, Canada