

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

ADJILE, INC.,
STANLEY WOJCIECHOWSKI,
HERSHEY WOJCIECHOWSKI,
READWAY, INC., TRUSTEE,
WALTER LOWICKI, TRUSTEE OF
WALTER LOWICKI REVOCABLE
TRUST, JANEVE CO., INC.

Plaintiffs in Error/ Petitioners/
Appellants Below

v.

CITY OF WILMINGTON, a Municipal
Corporation under the laws of the State of
Delaware, DEPARTMENT OF LICENSES
AND INSPECTION, JEFFREY J.
STARKEY, Commissioner, BOARD OF
LICENSE AND INSPECTION REVIEW,
DONALD L. GOUGE, JR.,
MAMIE BAYNARD,
G. JERRY VELAZQUEZ,
JOANN WOODRING,
BOARD MEMBERS

Defendants in Error/ Respondents/
Appellees Below.

C.A. No. 09A-05-004 WCC

Submitted: February 12, 2010
Decided: May 28, 2010

ORDER

Appellee City of Wilmington's Motion for Sanctions - DENIED.

Stanley C. Lowicki, Esquire, 830 West Street, Wilmington, Delaware 19801.
Attorney for Plaintiffs in Error/Petitioners/Appellants.

Brenda James-Roberts, Senior First Assistant City Solicitor, Louis L. Redding
City/County Building, 800 N. French St. 9th Floor, Wilmington, Delaware 19801.
Attorney for Defendants in Error/Respondents/Appellees.

CARPENTER, J.

Before this Court is the Appellee City of Wilmington’s (“the City”) Motion for Sanctions against Stanley Lowicki (“Mr. Lowicki”), attorney for the Appellants, pursuant to Superior Court Civil Rule 11(b) for filing annual appeals contesting the Board of Licensing and Inspection’s (the “Board”) denials of vacancy assessments waivers. Upon review of the briefs filed in this matter, the Court hereby denies the City’s motion.

Superior Court Civil Rule 11(b) recognizes a duty of parties before the Court stating:

By representing to the Court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,

- (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
- (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
- (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.¹

¹ Super. Ct. Civ. R. 11(b).

The City filed this Motion for Sanctions on January 22, 2010 contending that Mr. Lowicki has violated Rule 11(b) after a now six-year litigious relationship with Mr. Lowicki, addressing the same or similar issues when appealing the Board's decisions affirming the vacancy assessment fees. To further clarify their position, the City submits that under subsection (1), Mr. Lowicki is "causing unnecessary delay in the resolution of these claims with their continuing appeals for they know that so long as the matter is under court review, any action by the City, including Sheriff Sale of the properties is stayed."² Moreover, under subsection (2), Appellants continue to refuse to believe that the ordinance is valid and repeatedly raise arguments that are merely variations on the ones they have previously argued unsuccessfully.³ In response to the City's motion, Mr. Lowicki generally argues that issues are not variations of other arguments but are different and appropriate for consideration.⁴

The Court cannot say it is surprised that a Motion for Sanctions has been filed against Mr. Lowicki after years of numerous appeals to the Superior and Supreme Court, all which have been denied. However, although the Court may not agree with Mr. Lowicki's decisions to appeal the Board's decision each year, the Court finds that property owners are granted appellate rights under the Wilmington City Code and

² Appellee Mot. at 3.

³ *Id.* at 3-4.

⁴ Lowicki Mot. at 6.

Superior Court Civil Rule 72 and may exercise these rights each year vacancy assessment fees are imposed upon by the City.

Wilmington City Code 4-27, 125.0(b)(4) sets forth “Appeal Rights” and clearly acknowledges a property owner’s right to appeal the vacancy assessments imposed.

Section 125.0(b)(4) states:

The owner shall have the right to appeal the imposition of the registration fees to the licenses and inspection review board, upon filing an action in writing with the applicable \$50.00 non-refundable filing fee to the department of licenses and inspection no later than 30 calendar days from the date of the billing statement. On appeal, the owner shall bear the burden of providing satisfactory objective proof of occupancy, as defined in 125.0(b)(1)©.

Furthermore, Superior Court Civil Rule 72 allows for review of decisions from decision-making Boards.⁵ Such Boards include the Board of Licenses and Inspections.⁶

Therefore under both of these provisions, the Court cannot find that Mr. Lowicki has violated Rule 11(b). Because vacancy assessments are determined annually under the Wilmington City Code, it is reasonable to conclude that a property owner’s appellate rights are renewed each year that a vacancy assessment is imposed.

⁵ Super. Ct. Civ. R. 72(a) sets forth the applicability of the rule and states that this “Rule shall apply to appeals to the Superior Court from all commissions, boards, hearing officers under the Personnel Rules for Non-Judicial Employees, or courts from which an appeal may at any time lie to the Superior Court to be tried or heard on the record made below.”

⁶ See *Goldstein v. Bd. of Licenses and Inspection Review*, 523 A.2d 553, 555 (Del. Super. 1987).

As such, so long as Mr. Lowicki's properties were annually determined to be vacant pursuant to Wilmington City Code 4-27, 125.0, Mr. Lowicki had a right to challenge those assessments each year. This was the case here. Furthermore, under Superior Court Civil Rule 72, property owners are afforded the right to have their appeal before the Board reviewed for error by the Superior Court. Such a review by the Court allows citizens to question the constitutionality of such enactments and also safeguards citizens from improper imposition of fees. It should be noted that with respects to the case here, the Court has held numerous times that the vacant property assessments under the Wilmington City Code are constitutional and affirmed the imposition of fees against the Appellant.

The Court also finds that Mr. Lowicki may raise arguments, even if similar, each year in order to preserve the issues for review.⁷ In essence, because the vacancy fees are independent annual evaluations, Mr. Lowicki's arguments may raise arguments specific to fees imposed upon in that particular year in question.

Despite the Court's conclusions, the Court must express some puzzlement as to Mr. Lowicki's decision to appeal each year, especially since no such appeal before this Court or the Supreme Court has ever been granted in the Appellant's favor. Curiously, Mr. Lowicki has persistently filed an appeal each year and at times appeals

⁷ *Wilmington Trust Co. v. Conner*, 415 A.2d 773, 781 (Del. 1980) (stating that issues not raised below shall not be heard on appeal).

that amount to very similar arguments that the Courts have already reviewed and denied. However, while the Court questions the reasonableness of Mr. Lowicki's actions, the Court finds that in exercising his appellate rights, Mr. Lowicki has not violated Superior Court Civil Rule 11(b).

Needless to say, a Rule 11(b) Motion for Sanctions is a serious matter and should not be taken lightly. A filing of such a motion should signal parties to self-assess and reflect on their conduct before the Court and towards opposing parties. With respect to this motion, the Court would strongly suggest that Mr. Lowicki do the same, for it would be most unfortunate if another Motion for Sanctions was brought before this Court and the Court believed it was necessary to grant the sanctions against Mr. Lowicki who has been a member of the Delaware Bar for almost fifty years. The Court also suggests, as it has in the past, that it would perhaps be appropriate for Mr. Lowicki to step away from the litigation and allow other counsel to review and determine what is appropriately appealed. He should appreciate that his personal involvement with these properties may have clouded his judgment on these matters.

However, at this time, the Court will not find that Mr. Lowicki has violated Superior Court Civil Rule 11(b), and this Court will deny the City's Motion for Sanctions. It should be noted that a denial of this present motion does not safeguard

Mr. Lowicki from future sanctions either by this Court or the Supreme Court that may be garnered through his conduct.

For all of the foregoing reasons, the Motion for Sanctions is hereby DENIED.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.

Judge William C. Carpenter, Jr.