

NOT FOR PUBLICATION WITHOUT APPROVAL OF
THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY

Patrick DeAlmeida
Presiding Judge



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Re: Singh Real Estate Enterprises, Inc. v. Township of Evesham
Docket No. 009624-2012

Dear Counsel:

This letter constitutes the court's opinion with respect to defendant's motion to dismiss the Complaint because plaintiff provided a false response to a request for income and expense information from the municipal tax assessor pursuant to N.J.S.A. 54:4-34, commonly known as Chapter 91 (L. 1979, c. 91). For the reasons explained more fully below, defendant's motion is granted, subject to plaintiff's right to a reasonableness hearing pursuant to Ocean Pines, Ltd v. Borough of Point Pleasant, 112 N.J. 1 (1988).

*

I. Findings of Fact and Procedural History

The following findings of fact are based on the credible evidence submitted by the parties on defendant's motion. R. 1:6-2(f). Plaintiff Singh Real Estate Enterprises, Inc. owns real property in defendant Evesham Township. The property is designated by the township as Block 5.01, Lot 2 and is commonly known as 555 Lincoln Drive West.

On or about July 15, 2011, the municipal tax assessor mailed to plaintiff, via certified mail, return receipt requested, a request for income and expense information relating to the subject property. The request complied with N.J.S.A. 54:4-34 in all respects and was intended to assist the tax assessor in determining an assessment for the property for tax year 2012.

On August 29, 2011, the taxpayer responded to the assessor's request. The response, signed by plaintiff's CFO, states that the property is owner occupied and reports no rental income or expenses associated with the property.

On October 21, 2011, plaintiff's counsel served on defendant's counsel answers to discovery requests propounded by defendant in a Tax Court appeal of the tax year 2011 assessment on the subject property. The discovery responses established without question that the subject property generates rental income from a number of leases. In addition, the discovery responses contained three years of income and expense information and all leases associated with the subject property. The record does not contain evidence establishing that defendant's counsel transmitted plaintiff's discovery responses to the tax assessor. During oral argument on the motion, however, counsel candidly stated that it is her practice to forward discovery responses in tax appeals to the assessor.

On April 2, 2012, plaintiff filed a Complaint challenging the tax year 2012 assessment on the subject property.

On October 15, 2012, defendant moved to dismiss the Complaint because plaintiff's response to the assessor's Chapter 91 request was false. Plaintiff opposed the motion. It does not contest the fact that the response was not true. Plaintiff argues, however, that its false response to the assessor's information request should be excused because, by October 21, 2011, prior to the deadline for setting an assessment for the subject property, defendant's counsel, and most likely the municipal assessor, were in possession of discovery responses establishing that the subject property was income producing and detailing recent rental income and expenses.

The court heard oral argument from counsel on defendant's motion.

II. Conclusions of Law

N.J.S.A. 54:4-34 provides

Every owner of real property of the taxing district shall, on written request of the assessor, made by certified mail, render a full and true account of his name and real property and the income therefrom, in the case of income-producing property . . . and if he . . . shall render a false or fraudulent account, the assessor shall value his property at such amount as he may, from any information in his possession or available to him, reasonably determine to be the full and fair value thereof. No appeal shall be heard from the assessor's valuation and assessment with respect to income-producing property where the owner . . . shall have rendered a false or fraudulent account.

"The purpose of Chapter 91 is to assist the municipal tax assessors, who are charged with the responsibility for property valuations, by affording them access to fiscal information that can aid the valuation of property." Lucent Techs, Inc. v. Township of Berkeley Heights, 405 N.J. Super. 257, 263 (App. Div. 2009), rev'd in part, aff'd in part, 201 N.J. 237 (2010). "The correct and timely availability of this information to the tax assessor 'avoid[s] unnecessary expense, time and effort in litigation.'" Ibid. (quoting Ocean Pines, supra, 112 N.J. at 7)(internal quotations omitted). The assessor must send the request by certified mail to the owner of the property and

must enclose the full text of the statute. N.J.S.A. 54:4-34. “The government must speak in clear and unequivocal language where the consequence of non-compliance [with a Chapter 91 request] is the loss of the right to appeal assessments.” Cassini v. City of Orange, 16 N.J. Tax 438, 453 (Tax 1997). In addition, “[t]o advance the purpose of N.J.S.A. 54:4-34, the assessor’s request must be timely, so that upon its receipt, the assessor can utilize the information by January 10” in setting an assessment for the upcoming tax year. John Hancock Mut. Life Ins. Co. v. Township of Wayne, 13 N.J. Tax 417, 422 (Tax 1993).

The taxpayer does not dispute that the municipal tax assessor’s request for income and expense information satisfied the requirements of Chapter 91 and was timely made by the assessor. Nor does plaintiff dispute that the response provided by plaintiff was false. The subject property is not owner occupied. Plaintiff’s only defense to the motion is that its false response should be excused because defendant’s counsel, and most likely the assessor, were in possession of discovery responses establishing that the subject property is income producing and detailing the income and expenses associated with the rental of the property for three years. The court is not persuaded by plaintiff’s argument.

The Appellate Division’s holding in Summerton Shopping Plaza v. Township of Manalapan, 15 N.J. Tax 173 (App. Div. 1995), is particularly illuminating and guides this court’s decision. In Summerton, the municipal tax assessor sent to the property owner a Chapter 91 request for income and expense information relating to the property to assist in reaching an assessment for tax year 1993. The property owner did not respond to the request. Id. at 175.

At the time that the request was sent, the property owner and the municipality were engaged in discussions regarding the assessment on the property for tax year 1992, for which an appeal had been filed. Ibid. During the course of those discussions, and after the 45-day period

for responding to the assessor's 1993 request, the property owner's counsel sent to the municipality's counsel in response to interrogatories in the 1992 appeal data relevant to the income producing capability of the property. Ibid. The 1992 appeal ultimately was withdrawn.

After the property owner filed an appeal for tax year 1993, the municipality moved to dismiss the 1993 Complaint because of the property owner's failure to respond to the assessor's 1993 Chapter 91 request. The taxpayer opposed the motion, arguing that it had "substantially complied" with Chapter 91 because the assessor, through the municipal attorney, had access to the information he requested as a result of the taxpayer having answered interrogatories in the 1992 appeal. Both this court and the Appellate Division rejected the property owner's position.

As the Appellate Division explained,

[w]e are not at liberty to tamper with the plain language of the statute which mandates dismissal of an appeal not preceded by timely compliance with the assessor's demand, subject to the reasonableness exception recognized in Ocean Pines. . . . We note that no "good cause" argument was here proffered to explain non-compliance, nor is any reasonable basis therefore apparent.

It was not "unfair" to require timely compliance with N.J.S.A. 54:4-34 in order to assist the assessor in meeting the assessment deadline for all properties in the taxing district. Special treatment for one requires special treatment for all, thwarting efficient operation of the assessment process.

[Id. at 176-177.]

The court also rejected the argument that production of income and expense information in a context other than a response to a Chapter 91 request constitutes "substantial compliance" with the statute:

As to the argument that the material given to a municipal attorney in connection with one appeal should be deemed to have "substantially complied" with the assessor's N.J.S.A. 54:4-34 demand respecting the 1993 assessment, we think that the

Legislature meant the assessor's request notice to the taxpayer must be clear and certified, and similarly that the response should be directed to the assessor, rather than charging the assessor with knowledge of information in the hands of other municipal entities.

[Id. at 177.]

While the taxpayer here contends that rental income and expense information contained in plaintiff's discovery responses was most likely transmitted to the assessor by defendant's counsel in October 2011, the Appellate Division's holding remains persuasive in this context.

Statutory construction begins with the statute's plain language. Merin v. Maglaki, 126 N.J. 430, 434 (1992). "A statute should be interpreted in accordance with its plain meaning if it is clear and unambiguous on its face and admits of only one interpretation." Board of Educ. v. Neptune Twp. Educ. Ass'n, 144 N.J. 16, 25 (1996)(quotations omitted). "[T]he best approach to the meaning of a tax statute is to give to the words used by the Legislature their generally accepted meaning, unless another or different meaning is expressly indicated." Public Serv. Elec. & Gas Co. v. Township of Woodbridge, 73 N.J. 474, 478 (1977)(quotations omitted).

The language of N.J.S.A. 54:4-34 is plain: "No appeal shall be heard from the assessor's valuation and assessment with respect to income-producing property where the owner . . . shall have rendered a false or fraudulent account." The statute does not say "unless the assessor later comes into possession of information that makes plain that the response was false" or "unless the taxpayer has substantially revealed the false nature of its response through the production of the requested information to the taxing district's counsel." Had the Legislature intended to include such exceptions in the statute it easily could have done so. It chose instead to establish a bright line rule. A taxpayer's false response to a valid Chapter 91 request vests in the municipality the right to seek dismissal of the Complaint, subject to an Ocean Pines reasonableness hearing.

Nothing in the statute suggests that N.J.S.A. 54:4-34 does not apply if the tax assessor later comes into possession of information that makes clear that the property owner provided a false response.

If, as appears to be the case, the assessor had, at the time that he set the assessment on the subject property, available to him information relevant to the true market value of the subject property, plaintiff may during its Ocean Pines hearing explore the “(1) the reasonableness of the underlying data used by the assessor, and (2) the reasonableness of the methodology used by the assessor in arriving at the valuation.” 112 N.J. at 11. This is the sole remedy available to plaintiff in light of its false answer to the assessor’s information request.

Defendant’s motion is granted. An Order effectuating the court’s decision and establishing a date for a reasonableness hearing is enclosed.

Very truly yours,

A handwritten signature in cursive script that reads "Patrick DeAlmeida".

Patrick DeAlmeida, P.J.T.C.