

TAX COURT OF NEW JERSEY



VITO L. BIANCO
JUDGE

77 Headquarters Plaza
1st Floor, North Tower
Morristown, NJ 07960-3964
P: (973) 631-6400
F: (973) 631-6396

**NOT FOR PUBLICATION WITHOUT THE APPROVAL OF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

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Via Regular Mail:

Joseph E. Bock, Jr., Esq.
Dorsey & Semrau
714 Main Street
Boonton, NJ 07005

John J. Coats, Esq.
Brach Eichler, L.L.C.
101 Eisenhower Parkway
Roseland, NJ 07068

Re: Robmar Realty Assoc. v. Township of Rockaway
Docket No. 000533-2012

Dear Counsel:

This letter opinion constitutes the court's decision with respect to the motion filed by defendant, Township of Rockaway ("Rockaway"), seeking to compel more specific discovery from plaintiff, Robmar Realty Assoc. ("Robmar"), in the above captioned matter. For the reasons set forth below, Rockaway's motion is denied.¹

FACTS

Robmar operates income producing property, an apartment building, in Rockaway. On February 21, 2012, Robmar filed a Complaint challenging its 2012 property tax assessment.

As part of discovery, Robmar provided Answers to Interrogatories on April 12, 2013, including income and expense statements for 2009-2011. On April 18, 2013, Rockaway requested additional documents, particularly "copies of the accountant's statements or the tax return schedules for 2008-2011."² Rockaway repeated these requests on May 2, 2013, and May

¹ The parties waived oral argument; the motion was decided on the papers.

² Robmar objected to the request for the 2008 information because standard interrogatory 11 requests income and expense statements "for the year of appeal and each of the preceding two years" and 2008 is outside of this time frame. Because we find that Rockaway is not entitled to more specific discovery, we do not address this issue.

23, 2013. However, Robmar did not provide the additional information. Subsequently, on July 25, 2013, Rockaway filed a Motion to Compel Discovery of the requested information from Robmar.

LAW

In New Jersey, “parties may obtain discovery regarding any non-privileged matter that is relevant to the subject matter of a pending action or is reasonably calculated to lead to the discovery of admissible evidence.” In re Liquidation of Integrity Ins. Co., 165 N.J. 75, 82 (2000). “[D]iscovery rules are to be liberally construed...” Ibid. However, “[t]empering the normal rule favoring wide discovery of relevant issues is a regard for the defendant’s interest in maintaining the confidentiality of information about its financial status.” Hermann v. Sunshine Chem. Specialties, 133 N.J. 329, 343 (1993). “A taxpayer is entitled to nondisclosure of his or her return absent a ‘strong need’ for information contained in the return.” Campione v. Soden, 150 N.J. 163, 190 (1997). “Discovery and inspection of income tax returns” may be permitted “for good cause.” Ibid. “[T]he production of tax returns should not be ordered unless it clearly appears they are relevant to the subject matter of the action or to the issues raised thereunder, and further, that there is a compelling need therefore because the information contained therein is not otherwise readily attainable.” Ullmann v. Hartford Fire Ins. Co., 87 N.J. Super. 409, 415 (App. Div. 1965) (quoting Cooper v. Hallgarten & Co., 34 F.R.D. 482, 484 (1964)).

DISCUSSION

Rockaway’s Motion to Compel Discovery is barely adequate in its request of action from the court. The Motion simply states that “[M]ore specific discovery was demanded of plaintiff” and “plaintiff has not provided such discovery.” Although the Motion goes no further, the court gleans from Rockaway’s attached exhibits that the more specific discovery was requested because “the income and expense statements [were] handwritten.” Without even a mere assertion from Rockaway that the information Robmar provided was insufficient, the court would have no basis upon which to grant Rockaway’s Motion.

However, Rockaway did allege in its Reply Brief, albeit improperly, that the documents Robmar provided were “incomplete,” “incomprehensible,” and “illegible.” In support, Rockaway relied on the Certification of Robert J. Edgar, the Township Appraiser for Rockaway. Mr. Edgar made two claims: First, the documents provided “were handwritten, some incomprehensible and illegible,” and second, there were apparent “discrepancies as to the potential and actual income reported.” In support of his claims, Mr. Edgar references three exhibits generally without pointing to specific examples. Upon a review of the documents, the court cannot come to the same conclusions. The samples of the rent rolls provided to the court are clear (aside from one entry in the rent rolls for one month for one apartment) and appear to provide nothing less than the income generated every month by every apartment. The income and expense statements appear equally responsive to the necessary information. Without a clearer directive from Rockaway, we will not try to intuit the deficiencies of Robmar’s responses.

Rockaway further asserts in its Reply Brief that “[g]ood cause exists for disclosure of these financial materials because Plaintiff has filed an appeal of Plaintiff’s property tax burden.” By this logic, every taxpayer who appeals an assessment could be forced to turn over tax returns and similar otherwise confidential financial information. However, the law is clear there must be

a “compelling need” because the information is not “readily attainable.” Rockaway has not demonstrated what more information it hopes to gather from Robmar’s accountant’s statements or tax returns that is not readily attainable from the information already provided.

CONCLUSION

The mere convenience of type-written or computer-generated information is not sufficient to access Robmar’s potentially confidential financial information. Once less intrusive avenues of discovery have been exhausted, and it can be demonstrated that there is a compelling need for information not otherwise readily attainable, Rockaway may renew its request to compel production of Robmar’s accountant’s statements or tax returns. Accordingly, Rockaway’s Motion to Compel Discovery is denied without prejudice. The court’s order to that effect is enclosed.

Very truly yours,

Hon. Vito L. Bianco, J.T.C.

VLB/WIO:tms

Encl.