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THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY



Mala Sundar  
JUDGE

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October 5, 2015

**E-FILED**

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Re: R&M Manufacturing v. Township of Monroe  
Block 55, Lot 2.1 (20 Abeel Road)  
Docket No. 001206-2015

Dear Counsel:

This is the court's opinion deciding defendant's motion to dismiss the above-referenced complaint for failure to respond to the defendant's assessor's request for financial information pursuant to N.J.S.A. 54:4-34 (commonly known as "Chapter 91").

Plaintiff ("R&M") claims it never received the Chapter 91 request, and in any event, had it received the sample request attached to the defendant's motion, it would not have responded since the sample request referenced some other property and did not contain any identification of the above captioned property ("Subject").

Defendant ("Township") argues that R&M received the Chapter 91 request as evidenced by the undisputed acknowledgement on the certified mail return receipt card ("green card"),

which actual copy, in addition to the actual copy of the certified mailing receipt correctly identified R&M and the Subject. It further contends that (1) the Chapter 91 request sent to R&M would have contained a label that would have referenced or identified only the Subject, just as in the sample request attached to its instant motion; (2) the Subject is the only property in the Township with a mailing address in Parsippany; and (3) there is no proof that R&M owned (or its property manager managed) several properties in the Township for there to be any confusion as to property identification. Per the Township, the only logical inference from these facts is that R&M received the Chapter 91 request, and its assertions to the contrary lack credibility.

The court finds the Township's assertions more credible, and therefore, grants its motion. R&M is entitled to a reasonableness hearing under Ocean Pines Ltd. v. Borough of Point Pleasant, 112 N.J. 1 (1988).

### **FACTS**

For tax year 2015, the Subject was assessed at \$1,572,400. On February 9, 2015 R&M filed a complaint challenging the assessment as not reflective of the Subject's fair market value. On July 7, 2015, the Township timely filed the instant motion for a dismissal of the complaint.

In support of the motion, the assessor certified that he sent R&M a letter dated November 3, 2014 by certified mail return receipt requested. The letter asked R&M to provide income and expense ("I&E") data on an attached Statement of I&E "for Income producing Properties" and Schedule A to the Statement. Included were instructions to the Schedule, and a copy of N.J.S.A. 54:4-34. The assessor's certification attached a sample copy of the "standard transmittal letter [and enclosures with that letter] sent to Taxpayers."

The sample transmittal letter, I&E Statement, and Schedule A, do not identify either R&M or the Subject. Rather, they have affixed a label copy which identifies some other

property and property owner in the Township. The transmittal letter sought information of “all rents and expenses” (with details of the source of income), and the “operational cost” for the period January 1, 2013 through December 31, 2013.

The copy of the certified mail receipt dated November 3, 2014 and green card correctly identify the Subject, its location and mailing address in Parsippany, New Jersey. The green card shows delivery and receipt of the certified mailing on November 5, 2014.

A representative of the Subject’s property manager (who was named as “care of” on the assessor’s certified mailing) certified that he is responsible for reviewing any and all mail pertaining to the Subject including tax, water, sewer bills and Chapter 91 requests. He averred that his firm manages several properties of all types throughout the State, and as a Certified Property Manager/licensed broker, he is “intimately familiar with, and fully understands the importance” of Chapter 91 requests/I&E forms regularly received by his office, and the time-sensitive nature of responses to the same. He could “unequivocally” state that had he received a Chapter 91 request from the Township, he would have, as he routinely did for every such request, reviewed it before and after its completion by his staff, and returned the duly executed form to the assessor. He stated that if he had however, received the sample forms attached to the instant motion, he would not have responded since the request would not have pertained to a property his firm managed. To ensure accuracy of his certification, the individual certified that he “personally” searched his files and had his staff search the “office files” for a Chapter 91 request (similar to the attached sample) or a response to the same, but did not find them.

The Township opposed the credibility of this certification by a certification from its Office Coordinator who is responsible for labeling and mailing Chapter 91 requests. He stated that he affixes labels to “each and every page of [a] Chapter 91 request” and also to the mailing

envelope and the certified mail return receipt. The label identifies the property's block and lot number, its street address, the taxpayer's name, and the mailing address as contained in the Township's files. He stated that due to the sheer volume of the requests sent each year, the assessor's office did not retain copies of "each and every letter mailed" but does retain the green cards from the post office, as well as "a sample of the" Chapter 91 request. He also averred that a search of the mailing addresses in the assessor's office showed that the Subject is the "only property with a mailing address" in Parsippany.

### ANALYSIS

R&M contends it is not arguing "that [the Township's] motion should be denied because it" contained a sample Chapter 91 request, but is asking the motion be denied "because it never received a request for the [S]ubject." The Township claims this argument is specious because the Subject is the only property in the entire Township with a Parsippany mailing address, therefore, by acknowledging receipt of mail from the Township on the green card, it can be reasonably and readily inferred that R&M must have received the Chapter 91 request.<sup>1</sup>

A green card is generally reliable evidence of actual delivery. See e.g. Green v. City of East Orange, 21 N.J. Tax 324, 335 (Tax 2004) ("[m]ore often than not, the utilization of return receipt service along with certified mail service aids in establishing actual receipt").<sup>2</sup> Where the item number on the certified mail receipt and the green card are the same, the evidence is stronger that the item which was mailed was also the item which was actually received.

Here, the mailing receipt and the green card contain the same post office issued serial item number. R&M does not challenge the signature on the green card as belonging to a stranger

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<sup>1</sup> Both parties filed sur-replies without court permission. See R. 1:6-3(a).

<sup>2</sup> In that case the court found that since the green card had an "x" on the signature line, it was "inconclusive" and "open to varying interpretations," thus, was "insufficient proof" of actual delivery of the Chapter 91 request. 21 N.J. Tax at 336.

or of someone unauthorized to sign mail on its behalf. It is also undisputed that both these documents contain the correct mailing address for, and the identification/location of the Subject. Moreover, the undisputed certification is that R&M owned only the Subject in the Township, and the Subject was the only property having an out-of-town mailing address. While R&M's property manager's employee certified that since 2012 the company's address changed to its "current" location in Parsippany, he also stated that "we have and continue to receive mail" pertaining to the Subject "that comes to" that location. Although the last part of that sentence is ambiguous, the property manager does not aver that the Township was made aware of the new location or was asked to redirect mail to that address, or that mail addressed to the prior location was not being re-directed to it at the new address.

In light of R&M's acknowledgement of receipt on the green card, and its contention that it "does not argue that" the motion should be denied because of the inclusion of a sample request, the court finds the Township's certification more credible as to the mailing of, and receipt by R&M of the assessor's November 3, 2014 Chapter 91 request.<sup>3</sup>

Given the above findings, the court does not need to address the propriety of including a sample request in support of the Township's motion. However, it is not convinced by the Township's assertion that the use of a sample is valid because one was successfully used in a Chapter 91 motion in another case, Waterside Villas Holdings, L.L.C. v. Township of Monroe. The Township provided nothing to show that the plaintiff there had also alleged lack of receipt of the request. The Appellate Division opinion reflects that the plaintiff had claimed the request to

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<sup>3</sup> In the same sur-reply brief, R&M stated that its "argument" is "precisely . . . that the form it received in the mailing was not captioned with the [Subject's] identification or it would have been timely properly answered." However, the property manager's certification stated that his office never received any request, sample or otherwise. To this extent then, the argument that R&M received an incorrect Chapter 91 request is not borne by the certification, and thus, is unsupported.

be confusing as to the period for which income information was sought, and further that the enclosed statute omitted a word and a phrase. 434 N.J. Super. 275, 281 (App. Div.), certif. denied, 217 N.J. 539 (2014). Therefore, the Township's assertion of an alleged acceptance of its prior use of a sample request is not dispositive of this motion (had that issue been considered).

In sum, the court finds that the Township credibly established that R&M received the November 3, 2014 Chapter 91 request on November 5, 2014. In light of R&M's certification that it never received or has any record of receiving the Chapter 91 request, the court does not rule on the collateral arguments. Therefore, the Township's motion is granted in part since R&M is entitled to a reasonable hearing pursuant to Ocean Pines, supra.

**CONCLUSION**

For the aforementioned reasons, the Township's motion is granted in part. An Order reflecting this opinion will be simultaneously entered.

Very Truly Yours



Mala Sundar, J.T.C.