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THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY

Patrick DeAlmeida
Presiding Judge

R.J. Hughes Justice Complex
P.O. Box 975
Trenton, New Jersey 08625-0975
(609) 292-8108 Fax: (609) 984-0805

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Daniel R. Kanoff, Esq.
Blau & Blau
223 Mountain Avenue
P.O. Box 50
Springfield, New Jersey 07081

Katrina L. Campbell, Esq.
Lavery, Selvaggi, Abromitis & Cohen, P.C.
1500 Route 517
Hackettstown, New Jersey 07840

Re: First Growth Plaza, LLC v. Borough of Raritan
Docket No. 001282-2015

Dear counsel:

This letter constitutes the court's opinion with respect to defendant's motion to dismiss the Complaint because of plaintiff's failure to respond to a request for income and expense information 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, 11 (1988).

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I. Findings of Fact

This letter opinion sets forth the court's findings of fact and conclusions of law on defendant's motion to dismiss. R. 1:6-2(f). The findings of fact are based on the certifications and exhibits submitted by the parties on the motion.

Plaintiff First Growth Plaza, LLC is the owner of real property in Raritan Borough, Somerset County. The property, which is income producing, is designated in the records of the municipality as Block 87, Lot 9 and is commonly known as 33 Second Street.

On July 23, 2014, the municipal tax assessor mailed a request for income and expense information to plaintiff pursuant to N.J.S.A. 54:4-34 by regular mail. The assessor addressed the envelope to 33 Second Street, Suite G, Raritan, NJ 08869, the address on the tax duplicate for plaintiff at the time of the mailing. The request was returned by the United States Postal Service marked "RETURN TO SENDER INSUFFICIENT ADDRESS UNABLE TO FORWARD."

On September 10, 2014, the assessor sent a second request for income and expense information to plaintiff. The second request was sent by certified mail, return receipt requested and was addressed to 33 Second Street, Suite G, Raritan, NJ 08869, the address on the tax duplicate for plaintiff at the time of the mailing. The certified mailing was returned by the United States Postal Service marked "UNCLAIMED." In addition, the certified mailing envelope contained handwritten notations of "9/11 9-19 9-28," which the court concludes are notations of the dates on which delivery of the letter was attempted.

In the absence of a response from plaintiff to his information requests, the assessor determined that the assessment on the property for tax year 2015 would be a total of $1,181,000.

On March 6, 2015, plaintiff filed a Complaint challenging the tax year 2015 assessment on the property.

On April 13, 2015, the municipality moved to dismiss the Complaint pursuant to N.J.S.A. 54:4-34, based on plaintiff's failure to respond to the assessor's information requests.

Plaintiff opposed the motion. The sole argument raised by the taxpayer is that dismissal is not warranted because the municipality has not proven delivery of the assessor's information requests to plaintiff.

The parties waived oral argument on the motion.

The court is not persuaded by plaintiff's argument.

II. Conclusions of Law

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

> 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 fail or refuse to respond to the written request of the assessor within 45 days of such request . . . 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 has failed or refused to respond to such written request for information within 45 days of such request . . . . In making such written request for information pursuant to this section the assessor shall enclose therewith a copy of this section.

The courts have consistently held that municipal tax assessors must strictly comply with N.J.S.A. 54:4-34 if dismissal of a Complaint is to be granted under the statute. Southland Corp. v. Township of Dover, 21 N.J. Tax 573, 578 (Tax 2004); Cassini v. City of Orange, 16 N.J. Tax 438, 453 (Tax 1997); John Hancock Mut. Life Ins. Co. v. Township of Wayne, 13 N.J. Tax 417, 422 (Tax 1993). In light of the extent of the relief sought, to prevail defendant must establish that the property owner was adequately notified of its statutory obligations. See Great

Adventure, Inc. v. Township of Jackson, 10 N.J. Tax 230, 233 (App. Div. 1988) (noting that "the severity of the penalty for noncompliance provided by N.J.S.A. 54:4-34, namely, the taxpayer's loss of his right to appeal the assessment, requires a strict construction of the statute."). "The defendant municipality cannot seek to close the door of tax appeals until it has given property owners fair notice of their obligations in the Chapter 91 request . . . ." Cassini, supra, 16 N.J. Tax at 450.

The court concludes that the tax assessor fulfilled his statutory obligations under N.J.S.A. 54:4-34. There is no dispute between the parties with respect to the form, content, and timing of the assessor's information requests. The sole issue is whether plaintiff can defeat the assessor's motion because the information request sent by certified mail to the address in the assessor's records for the taxpayer was unclaimed.

The Legislature established an orderly process through which municipal tax assessors are provided the names and addresses of the owners of real property. N.J.S.A. 54:4-29 provides that a purchaser of real property may provide to the tax assessor a deed or other evidence of title. In such circumstances, the assessor is charged with noting and recording the change in ownership in the books and records of the assessor, and certifying on the deed that the assessor has done so. N.J.S.A. 54:4-29. If no assessor's certification appears on the deed, the register of deeds and mortgages or the county clerk with whom the deed is filed shall ascertain from the person filing the deed the post office address of the grantee and shall mark that address on the face of the deed. N.J.S.A. 54:4-30. According to that statute, where the grantee "is a firm, partnership, association or corporation, the address shall include the location of the firm or partnership or the principal office of the association or corporation in this State, or if it be a corporation of a foreign State, then the principal office of the corporation in that State." N.J.S.A. 54:4-30. The official

with whom the deed is recorded within one week "shall mail an abstract therefore, together with the address of the grantee, to such assessor . . . who shall properly note the facts therein contained." N.J.S.A. 54:4-31. Pursuant to N.J.S.A. 54:4-32, "[t]he county clerk or register of deeds and mortgages shall refuse to record any such deed or other evidence of title unless the post-office address . . . as required by section 54:4-30, [is] contained in or marked upon the face of such instrument . . . ." N.J.S.A. 54:4-34, or Chapter 91, which immediately follows the statutory provisions cited above, allows the tax assessor to send a written request by certified mail to any real property owner for income and expense information relating to income-producing property. It is clear that the Legislature intended for the assessor to send information requests to the addresses obtained from the deed recording process.

In this case, the municipal tax assessor sent his certified mail information request to plaintiff at the address in the assessor's records, which presumably was obtained from the deed recording plaintiff's purchase of the property. Plaintiff's opposition papers do not argue that the address used by the assessor was incorrect. Nor does plaintiff contest that the address on the envelope containing the assessor's certified mail request was obscured or unclear. In the absence of any evidence to the contrary, the court concludes that the assessor sent his certified mail request to the correct address.

Although the request sent by regular mail was returned marked "RETURN TO SENDER INSUFFICIENT ADDRESS UNABLE TO FORWARD," the request sent by certified mail did not contain that notation. Instead, the certified mail request was returned to the assessor marked "UNCLAIMED" with three handwritten dates, suggesting failed attempts at delivery. Noticeably absent from plaintiff's opposition papers is any evidence: (1) explaining whether plaintiff, in fact, received mail at the Second Street address at the time that the requests were

sent; (2) detailing the practices and responsibilities of plaintiff's agents with respect to receiving, sorting and processing mail at that address; (3) denying that delivery of the information request by certified mail was attempted at the Second Street address; or (4) explaining why, if the Second Street address is not a correct mailing address, plaintiff made no effort to file a change of address with the tax assessor. Plaintiff merely relies on the fact that the request sent by certified mail went unclaimed to support its contention that the municipality has not proven delivery of the request. A taxpayer's failure to claim an assessor's request for income and expense information cannot defeat the statutory remedy for the taxpayer's failure to respond. To hold otherwise would neutralize the statute's appeal-preclusion provision and negate the statute's intended purpose of providing the assessor with valuable information to use in the assessing process. It is evident that the Legislature, by requiring certified mailing of the assessor's information request, did not intend to empower taxpayers to circumvent the statute merely by not claiming the mailing when notified of its existence by postal officials.

Nor is the court convinced that the return of the information request sent by regular mail placed on the tax assessor the burden of investigating whether the Second Street address was the correct mailing address for plaintiff. Because the Legislature did not require that tax assessors inquire whether the addresses in the assessor's files remain valid each tax year, it is incumbent on the property owner to ensure that any change in the owner's address is properly recorded with the assessor. Thus, if the Second Street address was not the correct mailing address for plaintiff at the time of the mailings (an argument not made by plaintiff in its opposition papers), it was incumbent on plaintiff to provide the tax assessor with the correct address. Having had his original information request returned by the postal service, the assessor had no obligation to track down plaintiff to determine whether it had changed its mailing address. Moreover, the

assessor's information request sent by certified mail to the Second Street address was not returned because of an insufficient address, but was returned marked "UNCLAIMED" with a handwritten notation of three dates, suggesting that plaintiff did not retrieve the letter after notification by the postal service.

Moreover, requiring tax assessors to peruse taxpayer addresses for potential inaccuracies would be impractical and burdensome. As the Appellate Division noted, "the correctness of owners' addresses is not ascertainable on mere inspection. The addresses may be those of accountants, attorneys, trustees, banks or others entrusted with bill-paying functions." Brick Township v. Block 48-7, Lots 34, 35 and 36, 202 N.J. Super. 246, 251 (App. Div. 1985). "Due process does not require tax collectors, municipalities and their staffs to examine the tax rolls to search for outdated or incorrect addresses supplied by property owners, or to communicate with property owners to ascertain whether their addresses remain correct. A local professional or business person can not expect more." Id. at 252. Thus, a tax assessor "had no duty to investigate" the taxpayers' "address on the tax rolls, either initially or after return of the undelivered mailing . . . ." Id. at 254.

Notably, the court examined its file in First Growth Plaza, LLC v. Borough of Raritan, Docket No. 004431-2014, in which the taxpayer challenged the tax year 2014 assessment on the subject property. The file includes an Order dismissing plaintiff's Complaint pursuant to N.J.S.A. 54:4-34. The evidence in support of the motion to dismiss in that case included a request for income and expense information sent by the tax assessor to plaintiff by certified mail at the Second Street address. The motion papers also include a return receipt card signed by an agent for the taxpayer. Plaintiff did not dispute the assessor's certification that despite delivery of his information request, plaintiff did not respond to the request. It is clear that the Second

Street address was at one point a correct mailing address for plaintiff. If plaintiff's address subsequently changed, it was incumbent on the taxpayer to so notify the tax assessor.[1]

The court, therefore, concludes that defendant is entitled to relief under N.J.S.A. 54:4-34. In Ocean Pines, supra, our Supreme Court held that a taxpayer who fails to comply with N.J.S.A. 54:4-34 may nevertheless seek a "sharply limited," and likely summary, review of the reasonableness of the assessor's valuation based upon the data available to the assessor when the valuation was made. Such an inquiry would be limited to "(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.

An Order effectuating the court's decision and scheduling a reasonableness hearing will be filed today.

Very truly yours,

/s/Hon. Patrick DeAlmeida, P.J.T.C.

[1] The court notes that the envelope containing the assessor's information request attached to the moving papers in the 2014 appeal references a forwarding address in Basking Ridge and states that the time to forward mail had expired. It is not clear if the request was forwarded to the Basking Ridge address or was accepted for delivery at the Second Street address. In either case, plaintiff did not dispute that the information request was delivered to the taxpayer.