

NOT FOR PUBLICATION WITHOUT APPROVAL OF
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

April 22, 2013

Robert M. Jacobs, Esq.
Winne, Banta, Hetherington, Basralian & Kahn, P.C.
Court Plaza South
21 Main Street, Suite 101
Hackensack, New Jersey 07601-0647

Martin Allen, Esq.
DiFrancesco, Bateman, Coley, Yospin,
Kunzman, Davis, Lehrer & Flaum, P.C.
15 Mountain Boulevard
Warren, New Jersey 07059-6327

Re: Rasht, Inc. c/o Gasgo v. Township of Raritan
Docket No. 011096-2011

Dear Counsel:

This letter constitutes the court's opinion with respect to defendant's motion to dismiss the Complaint because of plaintiff's false response 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).

*

I. Findings of Fact and Procedural History

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

Plaintiff Rasht, Inc. is the owner of real property located in defendant Raritan Township. The property is designated in the records of the municipality as Block 41, Lot 57 and is commonly known as 491 Highway 12.

In July 2010, the municipal tax assessor sent to plaintiff a written request for income and expense information associated with the subject property. The request, issued pursuant to N.J.S.A. 54:4-34, was intended to assist the assessor in determining the assessment to place on the property for tax year 2011.

On July 12, 2010, plaintiff responded to the request. Plaintiff's response unequivocally indicated that the property was owner occupied. In response to the question "Is this property 100% OWNER OCCUPIED" plaintiff checked the response "Yes." In addition, on the remainder of the response form plaintiff indicated that the property did not generate income. The assessor thereafter determined the assessment for the subject property for tax year 2011.

Plaintiff challenged the tax year 2011 assessment before the Hunterdon County Board of Taxation. The board affirmed the assessment through issuance of a Judgment.

On June 22, 2011, plaintiff filed a Complaint in this court challenging the Judgment of the county board.

During the course of discovery the court entered an Order compelling more specific answers to Interrogatories. In compliance with that Order, plaintiff produced certified answers to

Interrogatories indicating that plaintiff rents the subject property to Gasgo, for which plaintiff receives \$3,000 per month in rent.

On March 4, 2013, defendant moved to dismiss the Complaint pursuant to Chapter 91, alleging that plaintiff provided a false response to the tax assessor when responding to her request for income and expenses information.

Plaintiff opposed the motion. According to plaintiff, Rasht, Inc. and Gasgo are related companies. Plaintiff argues that the person completing the response form, who is identified on the form as an accountant, failed to appreciate the legal significance of the separate corporate identities of the two entities. She considered the subject property to be owner occupied despite the existence of a rental agreement and the payment of monthly rent.

The parties waived oral argument. The court, therefore, decides the motion on the papers. R. 1:6-2(d).

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 fail or refuse to respond to the written request of the assessor within 45 days of such request . . . or 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 has failed or refused to respond to such written request for information within 45 days of such request . . . or shall have rendered a false or fraudulent account.

The taxpayer does not dispute that the assessor's request for income and expense information comports with Chapter 91. Nor is there any question that the taxpayer received the request and responded with a statement that the subject property was owner occupied. The

question before the court is whether plaintiff's response to the request was a false or fraudulent account of the income and expenses associated with the subject property.

“[I]ncome producing property is generally limited to property producing rental income.” ML Plainsboro, Ltd v. Township of Plainsboro, 16 N.J. Tax 250, 259 (App. Div.) (citation omitted), certif. denied, 149 N.J. 408 (1997). For purposes of Chapter 91, a property is income producing if a fee is paid to the owner of land for “the continuous and exclusive use of a specific portion of the land and buildings, in the traditional sense of a tenancy” Southland Corp. v. Township of Dover, 21 N.J. Tax 573, 589 (Tax 2004). See also Great Adventure, Inc. v. Township of Jackson, 10 N.J. Tax 230 (App. Div. 1988).

The court finds that a tenancy existed at the subject property. Gasgo, a separate corporate entity from plaintiff, paid to Rasht, Inc. \$3,000 a month in rent. Plaintiff failed to reveal this income in its response to the assessor's information request. In fact, plaintiff affirmatively indicated that the property was owner occupied.

The fact that plaintiff and its tenant may be related companies is not material to the court's analysis. The holding in SKG Realty Corp. v. Township of Wall, 8 N.J. Tax 209 (App. Div. 1985), is instructive on this point. In that case, the property owner was the wholly-owned subsidiary of a parent corporation. A division of another subsidiary of the parent corporation was the sole tenant at the subject property. Id. at 211. The parties made no effort to set economic rents. Rental payments and responsibility for expenses were established in such a way as to meet the inter-subsidiary accounting needs of the various entities that comprised the corporate structure of which the property owner and tenant were a part. Ibid. The property owner did not respond to a Chapter 91 request on the theory that the property was effectively owner occupied and did not produce income. Ibid.

This court granted the municipality's motion to dismiss pursuant to Chapter 91. The Appellate Division affirmed. The appellate court held that the taxpayer's opinion that the property was effectively owner occupied did not erase the statutory obligation to provide a full account of the income produced by the subject property. As the court explained:

Where real property is owned by one entity and occupied by a related entity, the manner in which they order their fiscal relationship may reduce the usefulness of the income accounting required by the statute. But, some or all of it may have utility, and it is up to the assessor and not the taxpayer to decide whether to consider the information furnished.

[Ibid.]

See also Lucent Technologies, Inc. v. Township of Berkeley Heights, 24 N.J. Tax 406 (App. Div. 2009)(noting that trial court held that failure to reveal income from leases of less than three percent of subject property subjected taxpayer to Chapter 91 appeal-preclusion provision), aff'd in part, rev'd in part on other grounds, 201 N.J. 237 (2010).

The court has found that a landlord-tenant relationship exists at the subject property. Plaintiff very well may be of the view that the corporate relationship between the landlord and tenant rendered the property effectively owner occupied. A property owner, however, is not relieved of its obligation to provide a true account of the landlord-tenant relationship present at the subject property based on the owner's view of value of the information to the assessing function. As the Appellate Division held in SKG Properties, whether information regarding the relationship between a tenant and a landlord is relevant to determining fair market value is a decision to be made by the tax assessor, not the property owner.

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.

The court, therefore, shall set a date for a reasonableness hearing and afford the parties sufficient time to conduct discovery related thereto. An Order effectuating the court's decision is enclosed.

Very truly yours,

A handwritten signature in cursive script that reads "Patrick DeAlmeida". The signature is written in black ink and is centered on the page.

Patrick DeAlmeida, P.J.T.C.