

NOT FOR PUBLICATION WITHOUT APPROVAL OF  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

TAX COURT OF NEW JERSEY

Mala Sundar  
JUDGE



R.J. Hughes Justice Complex  
P.O. Box 975  
25 Market Street  
Trenton, New Jersey 08625  
Telephone (609) 943-4761  
TeleFax: (609) 984-0805  
[taxcourttrenton2@judiciary.state.nj.us](mailto:taxcourttrenton2@judiciary.state.nj.us)

November 19, 2013

**BY ELECTRONIC MAIL**

Margaret A. Steffen, Esq.  
Horn Law Group, L.L.C.  
801A Main Street  
Toms River, New Jersey 08753

Lani M. Lombardi, Esq.  
Cleary Giacobbe Alfieri Jacobs, L.L.C.  
169 Ramapo Valley Road, Upper Level 105  
Oakland, New Jersey 07436

Re: Triplet Square, L.L.C. v. Township of Manalapan  
Block 27, Lot 26.01  
Docket No. 010992-2012

Dear Counsel:

This is the court's opinion with respect to defendant's motion to dismiss the above-captioned complaint for failure to respond to the assessor's request under N.J.S.A. 54:4-34 ("Chapter 91"). Plaintiff ("Taxpayer") concedes it failed to respond, but opposes the motion because it is untimely. Defendant ("Township") concedes the motion is untimely but avers that its counsel was notified of the complaint filing only in June of 2013 when the Tax Court Management Office ("TCMO") sent a Case Management Plan. The court denies the motion because it was untimely filed. No just cause exists for extension of time because it is undisputed

\*

that the Township's Clerk and assessor were served a copy of the complaint in June of 2012.

### **FACTS AND PROCEDURAL HISTORY**

Taxpayer is the owner of property located at Block 27, Lot 26.01 commonly known as 153 Freehold Road ("Subject").

By letter of October 27, 2011, the Township's assessor sent a Chapter 91 request as to the income and expense information of the Subject for the period January 1, 2010 to December 31, 2010. The information was to aid the setting of the 2012 assessment. The request included a copy of the statute, the explanation of the request, and a form for filing in the information. It was sent certified mail to the Taxpayer's address of record. Taxpayer received the Chapter 91 request on November 3, 2011. It did not respond.

Thereafter, Taxpayer then filed a petition to the Monmouth County Board of Taxation ("County Board") appealing the 2012 assessment of \$563,500. On April 26, 2012, the County Board affirmed the assessment. The County Board judgment in this regard noted that the complaint was dismissed for "failure to respond to inc[ome] req[uest]." The judgment was mailed to plaintiff on May 3, 2012.

Taxpayer then filed a timely complaint to the Tax Court on June 18, 2012.<sup>1</sup> The certification of service attached to the complaint stated that the Clerk and assessor of the Township, as well as the Administrator of the County Board were served with the copy of the Tax Court complaint on June 15, 2012.

A year later, the Township filed this motion to dismiss the complaint for failure to respond to the Chapter 91 request.

---

<sup>1</sup> In August of 2013, the Township had filed a motion to dismiss the complaint on grounds it was filed untimely based upon the TCMO's Case Management Plan indicating a filed date of July 2, 2012. By letter opinion dated September 19, 2013, the court found that based upon the evidence, the complaint was timely filed June 18, 2012.

Taxpayer filed a late opposition.<sup>2</sup> It contended that while it did not dispute its failure to respond to the assessor's Chapter 91 request, the Township's motion should nonetheless be denied because it was filed beyond the time limits set forth in R. 8:7-(e).

The Township replied that since its first notification of the complaint was in June of 2013 when its counsel received a Case Management Plan from the TCMO, and since its counsel promptly thereafter filed the motion, the court should relax the time requirements especially because there has been no prejudice to the Taxpayer.

### **ANALYSIS**

Rule 8:7(e) provides that any motion to dismiss a complaint under Chapter 91 should be "filed no later than . . . 180 days after the filing of the complaint" or "30 days before the trial date" whichever is earlier. The rule though one of procedure, has a "substantive effect" since it allows the court to hear an appeal that would be dismissed for non-compliance with the Chapter 91 statute. Paulison Ave. Assoc. v. City of Passaic, 18 N.J. Tax 101, 109 (Tax 1999). The rule "imposes on the municipality time limitations for enforcing the statute," and if complied with "the legal impact of Chapter 91 is exactly that contemplated by the Legislature." Ibid.

Here, no trial date was set, therefore, the 180-day time limit applies. It is undisputed that the Township's motion of 2013 is not timely because the complaint was filed in June of 2012. The only issue is therefore whether this court can relax the 180-day time limits.

The City contends relaxation is proper because neither party has invested any time or cost on prosecuting the appeal because there has been no discovery or appraisal exchange. The Township also notes that the Taxpayer has not alleged any prejudice due to the delay in the

---

<sup>2</sup> Taxpayer had also untimely opposed the Township's first motion to dismiss the complaint. The court accepted the same but does not condone repeated untimely oppositions since they display disregard for the court rules, especially, as here, where the Taxpayer is relying upon the court rules to have the Township's motion dismissed.

Township's motion. Per the Township, the fact that the Taxpayer conceded that it failed to respond to the Chapter 91 request shows that it expected its complaint to be dismissed absent the untimeliness of the Township's motion. Thus, there is a complete absence of prejudice to the Taxpayer.

“Relaxation of a rule is appropriate under R. 1:1-2 if adherence to the rule ‘would result in an injustice.’” Paulison, supra, 18 N.J. Tax at 114. Here, the court is hard-pressed to find grounds for a relaxation. First, whether or not the present counsel was involved in the County Board proceedings, there is no question that the Taxpayer's petition was dismissed for failure to comply with the Chapter 91 request. Someone, whether the assessor or counsel for the Township, must have moved to dismiss the petition pursuant to Chapter 91 before the County Board. As such, the Township was on notice of a Chapter 91 issue with the Taxpayer. Second, the copy of the County Board's judgment clearly indicates that the assessment was affirmed because the petition was dismissed for failure to comply with the Chapter 91 request. Therefore, the Township should have been aware of the Chapter 91 issue with the Taxpayer. Third, a copy of the June 2012 complaint was served upon the Township (Clerk and assessor). This also put the Township on notice that Taxpayer's had appealed the County Board judgment, and the assessment.

The Township maintains that a served complaint does not assist because it is an “unfiled” copy and thus does not provide information as to the actual date of the filing of the complaint. Whereas the Case Management Plan issued by the TCMO shows the actual filing date, which here was received only in June of 2013, and which enabled the Township to promptly file the instant motion.

The Township's argument while creative, is nonetheless, not persuasive. The argument would essentially put the burden upon the TCMO to notify the Township that a complaint was filed on a particular date, and it is only after this notification that the 180-day time limit of R. 8:7(e) applies. There is nothing in the rule that remotely supports this argument. Whether filed or unfiled at the time of service, the notion of the service of the complaint is to put the adverse party or parties on notice that litigation has been instituted. Since the rules also require that a certification of service accompany a complaint at the time the complaint is filed, see R. 8:5-5, it is reasonable for the adverse party to infer that the complaint has been filed when it is served with the copy of the complaint, and that its obligation to respond cannot be delayed until it is formally notified that a complaint was filed because the court rules do not condition the start of the time limits upon formal notification of the filing of a complaint by the court.

The court is cognizant that the Township is a defendant in numerous petitions challenging assessments for one tax year, and that it cannot reasonably keep track of which petitions were dismissed for Chapter 91 issues. However, once it receives a copy of the complaint, the Township or its assessor has 6 months "to identify the property owners who failed to respond" to a Chapter 91 request and provide that "information to the municipal attorney, and . . . for the municipal attorney to prepare and file motions seeking relief under Chapter 91," since "the[se] procedures do not appear to be complicated or unduly time-consuming." Paulison, supra, 18 N.J. Tax at 114. Since it is undisputed that the Township was served a copy of the complaint, there are no convincing circumstances that persuades this court to relax the time limits of R. 8:7(e).

**CONCLUSION**

For the foregoing reasons, the Township's motion to dismiss the above-captioned complaint for failure to comply with the Chapter 91 request is denied.

An Order reflecting this memorandum opinion will be entered by the court and accompany this opinion.

Very truly yours,

A handwritten signature in blue ink that reads "Mala Sundar". The signature is written in a cursive style with a horizontal line under the name.

Mala Sundar, J.T.C.