

TAX COURT OF NEW JERSEY

CHRISTINE M. NUGENT  
JUDGE



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Re: Villager Realty Associates v. Irvington Township  
Docket No. 001098-2015

Dear Counsel:

This is the court's opinion on defendant township's motion to dismiss the complaint for failure to comply with the assessor's request for financial information pursuant to N.J.S.A. 54:4-34, commonly known as a Chapter 91 request. The statute requires that the owner of income producing property served with a Chapter 91 request respond within 45 days of the request with information intended to assist in setting the property tax assessment, or, risk dismissal of a complaint if one is later filed challenging the assessment.

In this case, the assessor for defendant Irvington Township properly served a request for information on plaintiff Villager Realty Associates but received no response. In that event, a party must seek dismissal by motion filed with the court, pursuant to R. 8:7(e). As set forth by the rule, "all motions to dismiss for refusal or failure to comply with N.J.S.A. 54:4-34 shall be filed no later than the earlier of (1) 180 days after the filing of the complaint, or (2) 30 days

before the trial date.” Under the facts presented it is undisputed that the 180-day period governs defendant’s motion. However, the motion was not filed until 184 days after the complaint was filed. Moreover, in a supplemental certification, defendant conceded that in fact plaintiff had responded to the assessor’s request. Plaintiff’s response included a completed form, a rent roll and a detailed list of the property’s income and expenses mailed via certified mail, however, it was not received by the assessor within the 45-day period. Specifically, the response was sent by taxpayer on the 44<sup>th</sup> day, Thursday, October 16, 2014, and it was not received by the assessor until Monday, October 20, 2014.

Neither party disputes the validity of the dates. Instead defendant asks that the court deem the motion as timely filed, arguing that the intention of the rule is to provide a municipality with 180 days to file a dismissal motion. To that end the court should calculate the 180 days from the date of service of the complaint, thereby requiring completion of service before a complaint is treated as filed, for purposes of R. 8:7(e). In defendant’s view, to do otherwise would be unfair. This court is not persuaded, finding the plain language of the rule governs and precludes the interpretation suggested by defendant. Thereby, the motion is dismissed as untimely filed.

The court’s findings are based on the certifications of both counsel and defendant’s assessor and supporting certifications filed by plaintiff, as well as legal argument presented to the court.

### **Analysis**

The purpose of the Chapter 91 request is to assist the assessor’s collection of information for use in establishing value for an income producing property, which value is generally

determined by the capitalization approach. Delran Holding Corp. v. Delran Township, 8 N.J. Tax 80, 83 (Tax 1985). The governing statute, N.J.S.A. 54:4-34, reads 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.

The financial information which the assessor seeks by way of a Chapter 91 request is designed "to assist the assessor in the first instance, to make the assessment and thereby . . . to avoid unnecessary expense, time and effort in litigation." Ocean Pines, Ltd. v. Point Pleasant, 112 N.J. 1, 7 (1988) (quoting Terrace View Gardens v. Township of Dover, 5 N.J. Tax 469, 474-75 (Tax 1982), aff'd, 5 N.J. Tax 475 (App. Div.), certif. denied, 94 N.J. 559 (1983)). In Ocean Pines Ltd. v. Point Pleasant Bor., the New Jersey Supreme Court held that "in the absence of 'good cause,' a taxpayer's failure to submit the requested information to the assessor when requested bars an appeal based on those data" but allows a taxpayer limited review regarding the reasonableness of the assessment. Ocean Pines, supra, 112 N.J. at 8.

The New Jersey Supreme Court adopted R. 8:7(e) as the "enforcement mechanism" for N.J.S.A. 54:4-34 "to serve as the mechanism through which the municipality effectuates the relief that the [Chapter 91] statute affords." Lucent Technologies, Inc. v. Township of Berkeley Heights, 201 N.J. 237, 247 (2010). In urging against the clear language of court rule R. 8:7(e), and in an effort to support its position that the "filed" date for a complaint does not occur until a

complaint is served, defendant's argument is twofold. First, the procedure established by the court rule fails to provide notice of the litigation until service of the complaint, denying defendant the full benefit of the 180-day time period. Second, allowing the time period to begin "upon the mere filing with the Tax Court" but before service of the complaint on the entities set forth in the relevant statutes and rules "thereby distinguishing between the filing and service of the complaint" essentially grants to a plaintiff permission to delay service of the complaint, further eroding the filing period. Failure to adopt defendant's interpretation would be to ignore the spirit, if not the letter, of the related court rules and statutes, in its view. As specific examples of its position, defendant cites R. 8:4-2(a)(calculates the filing of pleadings based on the date of service of a decision or action); R. 8:4-3(a)(counterclaim may be filed within 20 days of service of complaint); R. 8:6(discovery deadlines run from date request is served). Here, the defendant's township clerk was served on March 9, 2015. If the court were to accept defendant's interpretation of the rule, the 180-day period would not expire until September 8, 2015. Because the motion was filed on September 4, 2015 the filing would thereby be timely.<sup>1</sup>

The court finds defendant's position runs contrary to the principles governing interpretation of the court rules. As the Court explained in Wiese v. Dedhia, in interpreting the court rules the canons of statutory construction generally apply. 188 N.J. 587 (2006). The analysis then begins with "plain language of the rule," where the court must "ascibe to the [words of the rule] their ordinary meaning and significance . . . and read them in context with related provisions so as to give sense to the [court rules] as a whole . . . ." Id. at 592 (citing DiProspero v. Penn, 183 N.J. 477, 492 (2005)). Moreover, "[i]f the language of the rule is

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<sup>1</sup> In its initial papers, defendant also claimed that plaintiff failed to assert service of the complaint on the Essex County Board of Taxation. Plaintiff subsequently submitted proof of service to the court.

ambiguous such that it leads to more than one plausible interpretation, the Court may turn to extrinsic evidence.” Id. See also Mortgage Grader, Inc. v. Ward & Olivo, LLP, 438 N.J. Super. 202 (App. Div. 2014).<sup>2</sup>

The court finds no basis, in law or in equity, to support defendant’s position. The mere fact that some court rules require that litigants adhere to the date of service makes R. 8:7(e)’s language no less plain. Here, the court is bound by R. 8:7(e), which explicitly governs motions to dismiss for failure to provide a Chapter 91 response, and uses the date of the “filing of the complaint,” not service, as the deadline. In Lucent Technologies, Inc. v. Township of Berkeley Heights, the court found that R. 8:7(e) contains “clear language,” in the context of a motion filed due to a false and fraudulent response. Lucent Technologies, supra, 201 N.J. at 250. The court’s finding here is likewise consistent with the rulings of the Tax Court in cases where the filing deadline under the rule has been considered. In Town of Phillipsburg v. ME Realty, LLC, 26 N.J. Tax 57 (Tax 2011), the municipality filed a Chapter 91 motion to dismiss a counterclaim by the taxpayer and the Tax Court held the 180-day time period under R. 8:7(e) was triggered by the municipality’s initial complaint not the taxpayer’s counterclaim. Judge Bianco held the unusual circumstances of a Chapter 91 motion filed against a counterclaim to be “of no consequence” as the “plain language of R. 8:7(e) affords no distinction, exception or tolling of the 180-day time period in which to move for dismissal . . . . “ Id. at 72. The 180-day deadline left the municipality with 164 days to bring its motion, constituting “more than ample time” to determine whether the taxpayer responded to a Chapter 91 request and to prepare a motion. Id. at 73.

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<sup>2</sup> In its argument, defendant provided no basis for ambiguity in the language of the rule. Moreover, at oral argument counsel conceded that the basis for relief would be equitable rather than legal. It was further conceded that while defendant suffered no prejudice, it would be unfair to deprive it of the full 180-day filing period.

The rule was also at issue in Paulison Ave. Assoc. v. Passaic City, 18 N.J. Tax 101 (Tax 1999), where R. 8:7(e) had been amended to include the 180-day filing deadline. The amendment became effective during the pendency of the appeal. The city filed a motion to dismiss when no response to the assessor's Chapter 91 request was received. On a challenge by plaintiff the court upheld the validity of the rule as one of procedure, and applied it retroactively, denying the city's motion to dismiss. There, the city was left with only 27 days to file the motion after the effective date of the rule amendment. The court nonetheless failed to relax the rule under R. 1:1-2. Finding that refusal to relax the rule would not result in an "injustice," and that the time to file was reasonable, the court noted "[o]n its face the procedures [for filing the motion] do not appear to be complicated or unduly time-consuming." Id. at 114.

The outcome of this motion also comports with the well settled policy that "[s]trict adherence to statutory time limitations is essential in tax matters, borne of the exigencies of taxation and the administration of local government." F.M.C. Stores Co. v. Borough of Morris Plains, 100 N.J. 418, 424 (1985). Moreover, R. 8:7(e) "permits early disposition of the appeal thereby enabling both parties to avoid unnecessary investments of time and expense, including the expense of appraisal reports, and enabling the court to avoid unnecessary expenditures" as it relates to the "orderly and expeditious processing of litigation." Paulison Ave. Assoc., supra, at 111. In ME Realty, LLC the court found that use of the complaint filing date is consistent with the court rule's purpose to facilitate early disposition of appeals, adding that "[n]othing in the legislative history of R. 8:7(e) compels a contrary finding." ME Realty, LLC, supra, 26 N.J. Tax at 71.

Under R. 8:7(e), a municipality is granted roughly six months to file a Chapter 91 motion, a considerable time frame to undertake the necessary investigation and determination whether to

seek dismissal of the complaint under the statute. Further, notice of plaintiff's complaint served on defendant indicated the date of the complaint to be March 4, 2015, effective notice that the clock started ticking. Here, defendant was served on March 9, five days after the complaint was filed with the Tax Court on March 4, 2015, ostensibly adding, defendant argues, an extra five days to make a Chapter 91 motion. Defendant does not offer any reason why extra time was necessary to file a Chapter 91 motion. Attributing the ordinary meaning to R. 8:7(e) this court finds that the operative date for the 180-day time period is the date the complaint is filed.

Based on the operative date, 180 days after filing, or August 31, 2015, defendant's motion is untimely as it violates the deadline imposed by R. 8:7(e). Due to the defendant's non-compliance with the rule, the court has no authority to grant relief to defendant under the argument that plaintiff's response was untimely.

For the foregoing reasons, the motion is denied.

Very truly yours,

A handwritten signature in cursive script, appearing to read "C. Nugent".

Christine Nugent, J.T.C.