

NOT FOR PUBLICATION WITHOUT APPROVAL OF  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)

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**E-FILED**

William Sitar, Esq.  
Sitar Law Offices, L.L.C.  
1481 Oak Tree Road  
Iselin, New Jersey 08830

Martin Allen, Esq.  
Jorge A. Sanchez, Esq.  
DiFrancesco Bateman et al.  
15 Mountain Boulevard  
Warren, New Jersey 07059

Re: Moderntrend L.L.C. v. Borough of Highland Park  
Block 122, Lot 7  
Docket No. 009501-2015

Dear Counsel:

This matter comes before the court on defendant's motion to dismiss plaintiff's 2015 local property tax appeal for failure to respond to the tax assessor's request for financial information pursuant to N.J.S.A. 54:4-34 (L. 1979, c. 91), commonly known as "Chapter 91." For the reasons explained more fully below, defendant's motion is denied.

**FACTS**

Plaintiff ("Moderntrend") purchased the above captioned property ("Subject") by sale deed dated August 12, 2014.<sup>1</sup> The deed was recorded on September 5, 2014 in the Middlesex County Clerk's office. The first page of the deed shows the seller (grantor) as 231 Woodbridge

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<sup>1</sup> The recorded sale deed also lists Lots 8, 9, 11-13.1, 13.2.

Avenue Associates, L.L.C. (“231 Woodbridge”) with a street address of 61 Pearl Street, Metuchen, New Jersey. The buyer (grantee) is shown as “Moderntrend, L.L.C.” with a street address of 18 Banner Court, East Brunswick, New Jersey.

Two months later, by letter dated November 5, 2014, the assessor for the defendant (“Borough”) sought income and expense information for the Subject for the “tax year ending December 2013” for consideration in setting the Subject’s 2015 assessment.<sup>2</sup> The letter correctly identified the Subject (and included only Lot 7), but was addressed to the former property owner 231 Woodbridge, at its street address of 61 Pearl Street. Attached to the letter was a copy of the Chapter 91 statute and a form Annual Statement of Income and Expenses for the period January 1, 2013 to December 31, 2013.

In support of the Borough’s instant motion, the assessor certified that on or about November 5, 2014, he sent the November 5, 2014 cover letter with attachments, by certified mail return receipt requested “to the property owner of record at that time, 231 Woodbridge . . . at the address on record of 61 Pearl Street, Metuchen . . .” The attached certified mailing receipt shows that the request was actually mailed November 3, 2014 and its receipt was acknowledged on November 4, 2014 by Joseph L. Bernheimer (the same individual who signed the sale deed for the Subject as representative of the seller). There was no response to the request.

On June 18, 2015, Moderntrend filed a complaint in the Tax Court appealing the judgment of the Middlesex County Board of Taxation, which affirmed the Subject’s 2015 assessment of \$400,000. The Borough then timely filed the instant motion, which Moderntrend

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<sup>2</sup> The letter was signed by the assessor (who provided the certification in support of the instant motion that he is assessor of the Borough), but his title was noted as the assessor of the Township of Plainsboro. The court does not regard this as a fatal flaw since the Chapter 91 request correctly identified the Subject, was on the Borough’s letterhead and the last sentence of the letter (as did the heading of the page where the Chapter 91 statute was reproduced) contained the contact information for the assessor’s office at the Borough, not at Plainsboro.

opposed. Its representative certified that Moderntrend never received the Chapter 91 request from either the assessor or the predecessor. He also certified that had he received the request, he would have timely provided a response.

### **ANALYSIS**

N.J.S.A. 54:4-34 requires a property owner to “render a full and true account of” the property owner’s “name and real property and income therefrom,” if the property is “income-producing.” Failure or refusal to respond within 45 days of the Chapter 91 request (i) allows the assessor to reasonably determine the property’s “full and fair value” based upon from any information he or she has; and (ii) bars the property owner from appealing that assessment. Ibid.

The only issue here is whether Moderntrend’s complaint should be dismissed because 231 Woodbridge failed to respond to the Chapter 91 request even though it was not the property owner when the request was sent, and the Subject had been sold two months prior to the request. Moderntrend asserts that it should not be so sanctioned. In so arguing, it makes careful effort to distinguish its facts from the two cases which have held that a successor owner’s complaints could be dismissed if the Chapter 91 requests sent to the predecessor were not responded to. See ADP of New Jersey, Inc. v. Township of Parsippany-Troy Hills, 14 N.J. Tax 372 (Tax 1994); Yeshivat v. Borough of Paramus, 26 N.J. Tax 335 (Tax 2012).

Apart from the fact that the above two cases are factually distinct, see infra, the court finds that this matter is controlled by a different line of reasoning. N.J.S.A. 54:4-29 states that a purchaser of real property may provide a deed or other evidence of title to a tax assessor. If so done, then the assessor must note and record the change in ownership in his or her books and records, and must certify on the deed that the change was effectuated. Ibid. If there is no such certification on the sale deed, then the register of deeds and mortgages or the county clerk with

whom the deed is filed must ascertain from the person filing the deed the postal address of the grantee, and must mark that address on the face of the deed. N.J.S.A. 54:4-30. 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 in a foreign State, then the principal office of the corporation in that State.” Ibid. If such postal address is missing from the deed, the county clerk will not record the same. N.J.S.A. 54:4-32. The official with whom the deed is recorded shall “[w]ithin one week thereafter . . . 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.

These statutes evidence a mandatory language, the end result of which is that the duty to inform the assessor of an ownership change is with the register or county clerk, where the deed does not evidence a certification from the assessor that he or she already received and noted the change of ownership. The statutory provisions that follow make plain that the property owner’s address as stated on the recorded deed will be forwarded by the register or county clerk to the tax assessor within one week for recordation and use, including for purposes of Chapter 91 (N.J.S.A. 54:4-34), which immediately follows the statutory provisions noted above.

It is undisputed that Moderntrend recorded the deed on September 5, 2014. The deed plainly stated its address. It was therefore incumbent on the Middlesex County register or the county clerk to forward a deed abstract with Moderntrend’s address to the assessor within a week of September 5, 2014. There is no evidence or assertion from the Borough that it did not receive such an abstract. Even if it is inferred that the county clerk or register failed to notify the assessor based on the assessor’s certification that on November 5, 2014, when he mailed the Chapter 91 request, the “record” owner of the Subject was 231 Woodbridge, Moderntrend should

not be penalized for the government's failure to comply with the mandate in N.J.S.A. 54:4-31. N.J.S.A. 54:4-31 contains a statutory directive to a public official which was not fulfilled. The consequences of that failure should not be visited on the taxpayer. This is particularly true given the drastic remedy sought by the Borough, *i.e.*, depriving the owner of the ability to challenge the merits of the assessment, with the limited relief of a reasonableness hearing under Ocean Pines, Ltd., v. Borough of Point Pleasant, 112 N.J. 1, 11 (1988).

While not necessary to decide this motion, the court also agrees with Moderntrend that the rulings in ADP, supra, and Yeshivat, supra, do not apply because those cases are factually distinct.<sup>3</sup> In both cases, the Chapter 91 requests were sent to the predecessor before the sale deeds were recorded. In ADP, supra, the Chapter 91 request sent three months before the sale deed was recorded, which deed was received by the assessor after the January 10 deadline for submitting the tax lists. 14 N.J. Tax at 375. Thus, "it was the obligation of the purchaser to make inquiry of the assessment status if it intended to protect its right to contest the 1994 assessment." Id. at 378.

Similarly, in Yeshivat, supra, the Chapter 91 request was sent six days before the property was transferred to a new owner. 26 N.J. Tax at 339. The sale deed was recorded and abstract sent to the assessor approximately 45 days later. Id. at 340. The new owner "acknowledged that it had notice of the Chapter 91 request sent to" to the predecessor owner. Ibid. and n.2. In rejecting the taxpayer's argument that the assessor must re-send Chapter 91 notices to new owners, the court observed that "by the time" the assessor's office had received

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<sup>3</sup> The Borough did not file a legal brief in support of its Chapter 91 motion. Thus, Moderntrend addressed these cases on its own, in opposition to the motion. In its reply to Moderntrend's opposition, the Borough, in one sentence, baldly stated that the court should enter a judgment dismissing the complaint based on ADP and Yeshivat. The sentence was void of legal reasoning or any analysis why the factual distinctions as asserted by Moderntrend merit no attention.

notice of the sale, the time to respond to the Chapter 91 request had expired, even using the date of receipt of the request (which was 12 days after the date of the request). Id. at 348. The court noted that not only would it “have been impossible for the assessor to re-send the request” but requiring an assessor to do so would allow “[n]oncompliant property owners . . . to ‘resurrect’ tax appeal rights by simply transferring ownership of the property.” Ibid. See also Carriage Four Associates v. Township of Teaneck, 13 N.J. Tax 172, 175, 180 (Tax 1993) (receiver who was appointed “well past the due date for the” Chapter 91 response, could not contest the assessment where property owner failed to timely respond).

Further, unlike in Yeshivat, Moderntrend had no notice whatsoever of the Chapter 91 request sent to its predecessor. Moreover, the concern in Yeshivat that the assessor must not be burdened with the additional duty of re-sending Chapter 91 requests is not applicable here because the Chapter 91 request was sent two months after the sale deed was recorded, and notice of the sale deed to the assessor was the statutory obligation of a government official, not the buyer.

Thus, the holdings in ADP and Yeshivat do not apply to the facts here. Those cases did not discuss N.J.S.A. 54:4-29; 4-30; 4-31, obviously, because the Chapter 91 requests were served well before the sale deeds were recorded.

In sum, the court finds that consequences of a failure, if any, to comply with the statutory mandates of the county clerk or register providing notice of a sale to the assessor, should not fall upon Moderntrend. This is particularly so because the Subject was sold two months before the Chapter 91 request was sent.

## CONCLUSION

For the aforementioned reasons, the Borough's motion is denied. An Order effectuating the court's decision will be simultaneously entered.

Very Truly Yours,

A handwritten signature in blue ink that reads "Mala Sundar". The signature is written in a cursive style with a prominent flourish at the end.

Mala Sundar, J.T.C.