

Tax CNOT FOR PUBLICATION WITHOUT APPROVAL OF
THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY



Mala Sundar
JUDGE

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BY FIRST-CLASS MAIL

Gregory T. McGrath, Pro-Se
4 Ocean Avenue, Apt. #20
Ocean Grove, New Jersey 07756

BY ELECTRONIC MAIL

Gene J. Anthony, Esq.
48 South Street
Eatontown, New Jersey 07724

Re: McGrath v. Township of Neptune
Block 106, Lot 8, Unit C320
Docket No. 008782-2015

Dear Mr. McGrath and Counsel:

This letter constitutes the court's decision on plaintiff's motion to compel defendant to provide responses to supplemental interrogatories.

Plaintiff is the owner of the above-captioned property, a residential unit, ("Subject"), located in defendant ("Township"). For tax year 2015, the Subject was assessed at \$664,200 pursuant to a district-wide revaluation. The Monmouth County Board of Taxation reduced the assessment to \$618,400. Plaintiff timely appealed the county board's judgment to this court. The matter is assigned to the small claims (single-family) track.

The Township provided responses to plaintiff's standard interrogatories along with a computer print-out copy of the property record card.

Plaintiff then propounded nine (9) supplemental interrogatories asking the following: the comparable sales the Township intended to use at trial; the data and the methodology used by the revaluation company retained by the Township in setting the Subject's assessment; the experts "contracted" to value the Subject including those at the revaluation company; the data used by the assessor to impose the 2015 assessment, including data and the basis of valuing "quality;" "ocean view" versus "ocean front;" and unit sizes on a per-square-foot basis. Plaintiff also asked if the Township sought application of Chapter 123 and the basis for the same, and why the Subject was not being "discriminated" against when compared to the assessments of certain other units within the same condominium complex. Plaintiff maintains that he is entitled to the supplemental information since he has no knowledge as to how the assessment was derived, or the basis for its reduction by the county board.

The Township opposed the request as being beyond the scope of discovery permitted in small claims matters in addition to being premature with respect to valuation opinions.

Rule 8:6-1(a)(4) provides that discovery in matters such as the present appeal, which are assigned to the small claims track, "shall be limited to the property record card for the subject premises, inspection of the subject premises, a closing statement if there has been a sale of the subject premises within three (3) years of the assessing date, the costs of improvements within three (3) years of the assessing date, and income, expense and lease information for income-producing property . . . The court in its discretion may grant additional discovery for good cause shown."

Plaintiff seeks discovery beyond what is ordinarily permitted in small claims matters. Assessments are presumptively correct. MSGW Real Estate Fund, LLC v. Borough of Mountain Lakes, 18 N.J. Tax 364, 373 (Tax 1998). The presumption remains “in place even if the municipality utilized a flawed valuation methodology, so long as the quantum of the assessment is not so far removed from the true value of the property or the method of assessment itself is so patently defective as to justify removal of the presumption of validity.” Transcontinental Gas Pipe Line Corp. v. Township of Bernards, 111 N.J. 507, 517 (1988).

The question before the court is whether the assessment accurately reflects the fair market value of the Subject on October 1, 2014. The validity of the comparable sales used by the tax assessor or by the revaluation company, in reaching that assessment is not. Plaintiff has the burden of proving the Subject’s fair market value, as of the assessment date, with evidence that is “definite, positive and certain in quality and quantity.” MSGW, supra, 18 N.J. Tax at 373. Evidence that the tax assessor or the revaluation company may have used flawed comparable sales when setting the assessment is not relevant in the trial of this matter. This is especially true since the matter will be tried before this court de novo. See Campbell Soup Co. v. City of Camden, 16 N.J. Tax 219, 225 (Tax 1996) (“on de novo review, the Tax Court may determine a true value different from the original assessment, the County Board’s assessment, or the taxpayer’s valuation”) (citations omitted).

Plaintiff’s remaining questions seeking information on data and valuation opinions used by the assessor and/or revaluation company as to numerous aspects of the Subject such as adjustments for ocean view, unit size, and condition/quality are similarly beyond the scope of small-claims matters for the reasons explained above. Further, the assessment’s presumptive correctness can be rebutted by the plaintiff through a credible expert opinion of the Subject’s fair

market value as of the assessment date. Plaintiff can hire his own real estate appraisal expert who can decide whether it is justifiable to make adjustments in arriving at the Subject's fair market value based on market-derived objective data.

Additionally, if the matter is tried, the Township may choose not to provide expert appraisal testimony. If however, the Township so elects, then it will be required to produce a copy of its expert's valuation opinion to plaintiff prior to trial in accordance with court rules.

Plaintiff's motion to compel the Township to respond to plaintiff's supplemental interrogatories is denied. An Order to this effect will accompany this memorandum 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.