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THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY

Mala Sundar
JUDGE

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November 4, 2016

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Re: Surfrider Beach Club, L.L.C. v. Borough of Sea Bright
Block 23, Lot 12
Docket No. 001296-2016

Dear Counsel:

This matter comes before the court on defendant's motion to dismiss plaintiff's 2016 local property tax appeal for failure to respond to the tax assessor's request for financial information pursuant to N.J.SA. 54:4-34 (L. 1979, c. 91), commonly known as "Chapter 91," in connection with the above captioned property ("Subject"). Plaintiff opposed the motion on grounds the property is a beach club, with its receipts solely from membership fees, and since members cannot stay overnight at the cabanas or cabinets, i.e., there is no lodging facilities, the Subject is not income producing and does not require a response to the Chapter 91 request.

For the reasons stated below, the court finds the Subject as income-producing. However, since there is an issue of whether plaintiff received the Chapter 91 request, the court will not

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dismiss the complaint. A plenary hearing on the issue of receipt of the Chapter 91 request is scheduled for November 18, 2016 at 9:00 a.m.

FACTS

On June 1, 2015, defendant's ("Borough") assessor sent, by certified mail, a Chapter 91 request to plaintiff. Included in the request was his cover letter, a copy of the statute, and the income and expense ("I&E") form. On the cover letter, the property owner was advised as follows:

> If your property is 100% owner-occupied, (no rental income from any source, including a related entity), please state that on the first page of the enclosed form. You need not fill out the remainder of the form. However, if there is rental income from any source (including cell tower, billboard or parking), please provide that information.

The cover letter also advised the owner that it could "contact" the assessor's office with "any questions concerning" the Chapter 91 request.

Per the assessor's certification, the Chapter 91 request was sent back to his office on June 24, 2015 by the United States Post Office ("USPS"). The mailing envelope was stamped "Return to Sender Insufficient Address Unable to Forward." Included also on the envelope were hand-written notations of "LN" with three dates "6/3, 6/10, 6/18." The electronic delivery tracking information on the USPS' website shows that on June 3, 2015, a notice of the mail was left since "no authorized recipient [was] available." The next entry is dated June 19, 2015 "unclaimed/Max Hold Time Expired." Allegedly upon the assessor's inquiry, the Borough's postmaster confirmed that delivery of the mail was attempted on the three dates in June indicated on the envelope and that plaintiff's owner generally "never signs for his mail."

For tax year 2016, the Subject was assessed at $8,450,000. Plaintiff filed a timely direct appeal. The Borough filed a counterclaim, then the instant timely motion.

Plaintiff's interrogatory responses, certification by plaintiff's managing member, and membership application show the following: Plaintiff is owner of the Subject, which is operated as Surfrider Beach Club ("Beach Club"). The Subject is about 10 acres. It is improved by a part one-story and part two-story building which is broken into (1) space used for office, reception, lobby, with toilet facilities; (2) a 410 square foot ("SF") apartment for employee use; (3) utility and storage rooms; (4) 12,911 SF occupied by 310 lockers and 45 cabanas. Seventeen beach cabanas are "[n]on-permanent" structures. There is surface parking and one in-ground pool.

The Beach Club is open daily and only during the summer (Memorial Day to Labor Day). Members are provided facilities such as a cabinet and/or a cabana; use of the swimming pool; plus access to the beach. The Beach Club also provides entertainment and celebrations such as Monte Carlo Night, Opening Night, Movie Night, Carnival, and swim lessons. Parking tags are also provided (one per family; two per cabana).

A person becomes a Beach Club member by submitting an application form and paying the requisite fee depending on the type of facility selected. Facilities include a house, a cabinet, and/or a cabana. The fee amount varies depending on the type/location; number of users; and sharing between families. Fees are payable in installments, but if not fully paid by March 1, the member cannot have access to the cabinet and/or cabana that year. The "use of [a member's] facility is restricted to the individuals" named on the membership application, and cannot be changed subsequent to the opening of the Beach Club. Guests "must be declared and paid for in advance by a member," for the guest to have access to the member's cabana.

A "Single Family House" is meant for the couple plus two children or less "from the same household," for a charge of $4,100. For more children, there is an additional $500 per child (except no charge if under the age of 2). "Houses" with additional amenities cost more ($4,600 with beach

access; $4,800 with pool and electric; $7,700 "double"). The family rates do not apply for "relatives, nannies, babysitters etc."

Non-family members are charged $1,500 per adult or $1,250 per child. Guests of a member pay $25 and/or $35 (adult weekday and weekend) or$20 and/or $25 (child weekday and weekend) and are limited to "8 visit max for the entire summer." Members are allowed five guests per day.

A cabinet or cabana has differing rates on a per-person basis, with the higher of the per-person rate, or the minimum rate as the fee. Whether a cabinet or a cabana, it includes a shower, electric and a kitchenette. A cabinet (which is for a "double family" and includes shower and "electric") costs $9,500 which is also the minimum rate. A pool cabana costs $1,900 per adult and $1,550 per child, subject to a $12,000 minimum. A "pool deluxe" is $2,250 (per adult) and $1,900 per child subject to a $14,000 minimum. A "beach cabana" is $2,300 (per adult) and $1,950 per child subject to a $14,500 minimum. A "beach luxury" cabana is $2,750 (per adult) and $2,350 per child subject to a $20,000 minimum, and includes an "oceanfront private deck and bathroom."

A member is subject to the rules of the Beach Club. Thus, "painting or alterations of cabanas must be approved by management." Further, "porch furniture must be white with a beige umbrella." No signs, décor or flags can be hung outside cabanas. Any personal items left outside the cabanas at night will be discarded by the management. Large refrigerators (over 10 cubic feet), electric frying pans, and toaster ovens are not permitted. However, other refrigerators are permitted (for which use of the access gates is allowed, but nor for guests or groceries).

The Beach Club "lobby and pool" is open seven days a week, starting at 10 a.m. and ending at 6 p.m. with later closing hours in July and August (8 p.m. week days; 9 p.m. weekends). The access gates close at 10:45 p.m. "No lobby or pool entrance" is allowed after this time. Per the

managing member, everyone must leave at 10:45 p.m., and lodging is not provided. The rules provide that "[a]ny guests on the property after hours must be pre-approved by management."

The Beach Club is operated by another entity, D. Lobi Enterprises, Inc. ("D. Lobi"), which had previously conveyed the Subject to plaintiff on October 16, 2012. D. Lobi was set up for "estate purposes." Its managing member is also the managing member of plaintiff, and its "family" members also own plaintiff. In other words, plaintiff and D. Lobi are related entities, and are the only entities involved in the ownership/operation of the Subject.

Plaintiff asserted that D. Lobi makes "voluntary payments" to plaintiff to "cover" expenses of the "taxes associated" with the Subject. There are apparently no formal agreements, written or oral as to ownership, operation, management, of the Subject, or for the "payment of taxes" by the operator. The 2013-2015 I&E statements of D. Lobi (as opposed to plaintiff) show gross income from "sales" of about $3 million each year before refunds. Among listed expenses were real estate taxes and rent. Taxes were $97,579; $84,209; $107,281; and $106,153 (calendar years 2012-2015 respectively). "Rent" was itemized at $7,200; $79,200; and $120,000 (calendar years 2013-2015 respectively). There is no line item of voluntary payments to plaintiff. There are no I&E statements specific to plaintiff.

Plaintiff opposed the Borough's motion claiming that the Subject is not income-producing. It alternatively posited that it has doubts whether the Borough's assessor actually uses the Chapter 91 information to help set the assessment, and requested that the motion be kept pending until it has completed discovery in this regard. The assessor responded with a supplemental certification explicating that he did use the Chapter 91 information to set assessments, and although the 2016 assessment was a result of revaluation conducted by an outside firm, that firm also used Chapter 91 responses to set assessments for an income-producing similar beach club. Last, although

plaintiff initially conceded non-response to the Chapter 91 request, at oral argument it disputed receipt on grounds the assessor's certification was replete with hearsay on the attempted deliveries, therefore, if the court was unpersuaded that the Subject was not income-producing, it should be granted a plenary hearing on the issue of receipt of the Chapter 91 request.[1]

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) bar the property owner from appealing that assessment. Ibid.

(A) Response Requirement for Non-Income-Producing Properties

It is well-established that a complaint should not be summarily dismissed where a property owner failed to respond to a Chapter 91 request because the property is not income-producing, even if the request had sought an affirmative response that the property is owner-occupied. H.J. Bailey Co. v. Neptune Township, 399 N.J. Super. 381, 384 (App. Div. 2008). The court noted that while the statute "clearly requires that property owners respond to Chapter 91 requests, irrespective of whether their property is income-producing or not," its language on "the sanction for not responding to the request for information . . . refers only to owners of income-producing properties." Id. at 386.

The court was cognizant that owners of non-income-producing properties could have their day in court despite ignoring Chapter 91 requests. It noted that the statute's "clear language

[1] Included in plaintiff's complaint was also Lot 12.01 which was assessed at $852,300. The Borough conceded that the Chapter 91 request addressed only Lot 12, thus, its dismissal motion was restricted only to the Subject.

confers upon owners of non-income-producing properties the unilateral right to ignore Chapter 91 requests with impunity." Id. at 389. While this appeared improper, "it is not the judiciary's role to formulate public policy," but to effectuate the statute's clear intent, which was that the Chapter 91's penalty "does not apply to non-income producing properties." Ibid.[2]

The court however cautioned that "the Legislature may hereafter amend the statute to provide practical consequences to non-responding owners of non-income-producing properties," and further that the property owner could still be denied its appeal rights if the "property will ultimately be found to be income-producing. Ibid. As to the latter it cited cases where a non-responsive owner was subject to the appeal preclusion if it was found (a) that the property used to be income-producing;[3] (b) that the property owner had a "mistaken belief that his property was non-income-producing;"[4] or, (c) that the "property was, in fact, income-producing."[5] Id. at 389-90. The risk of appeal loss would "be particularly great where . . . the nature of the taxpayer's property is such that" an assessor cannot "readily determine whether the property is income-producing or not." Id. at 390 n.3.

In sum, from the above precedent: (1) a non-responsive owner's appeal is not automatically barred if the property is, or is believed to be, non-income-producing or owner-occupied; (2) non-response does not prevent a taxing district from nonetheless moving for a complaint dismissal; (3) in the context of such motion the court must decide whether the property was indeed income-

[2] The court recommended legislative change so that there is a "clear consequence" for non-responsive owners of non-income producing properties. 399 N.J. Super. at 389. The statute remains unaltered.
[3] Citing Alfred Conhagen, Inc. v. Borough of South Plainfield, 16 N.J. Tax 470 (App. Div.) certif. denied, 151 N.J. 74 (1997).
[4] Citing SKG Realty Corp. v. Township of Wall, 8 N.J. Tax 209, 211 (App. Div.1985).
[5] Citing Southland Corp. v. Township of Dover, 21 N.J. Tax 573, 585 (Tax 2004).

producing; and, (4) if the court so finds, then the penalties of non-response to a proper Chapter 91 request will apply.

Here, plaintiff's basis for opposing the Chapter 91 motion is that the Subject is not income-producing. Pursuant to precedent above, its non-response is not a per se reason to grant the Borough's motion.

(B) Is the Subject Income-Producing?

Property is deemed income-producing if the income is related to, or connected with the real estate. ML Plainsboro Ltd. Partnership v. Township of Plainsboro, 16 N.J. Tax 250 (App. Div.) certif. denied, 149 N.J. 408 (1997). In that case, the court ruled that the term "income producing property" as used in the statute is "a term of art" that should be "construed . . . in accordance with the understanding commonly ascribed to it by the business, investment, and real estate community." Id. at 259 (citations and quotations omitted). Since that term "is generally limited to property producing rental income" in the "real estate appraisal field," it has a "restrictive meaning." Ibid. Thus, the term is "commonly understood to refer solely to property which generates rental income." Ibid. It is the anticipated stream of revenue generated from the rental, lease, custody or occupancy of the property which renders a property income-producing. Great Adventure, Inc. v. Township of Jackson, 10 N.J. Tax 230, 232-33 (App. Div. 1988).

In Great Adventure, supra, the court rejected as "specious" the argument that a portion of an amusement park's admission fee was "rental payment for the use of the premises." Id. at 233-34. The court concluded that fee is "not paid by the patron for the use of the property in any tenancy sense but rather for the entertainment package offered." Ibid.

In Rolling Hills of Hunterdon L.P. v. Township of Clinton, 15 N.J. Tax 364, 369 (Tax 1995), the court concluded that a portion of payments by patients to a nursing home is for "use of

real estate." Therefore, the payment is akin to rent, making the nursing home an "income-producing" property for purposes of Chapter 91. Ibid.

In Southland, supra, the court noted that when the issue is whether a property is income-producing, the inquiry is "whether the fee paid to the owner of land by tenants or patrons is for the continuous and exclusive use of a specific portion of the land and buildings, in the traditional sense of a tenancy, or for the brief right to enter the land and buildings with others on a non-exclusive basis, more akin to a license." 21 N.J. Tax at 589 (citing Great Adventure, supra, and Rolling Hills, supra). It concluded that a portion of the royalty paid by the franchisee to plaintiff was "for the continuous and exclusive use of its real estate," as further evidenced by the franchise agreement, therefore, the property was "income producing for purposes of Chapter 91." Ibid. The "fact that [the rent] . . . is aggregated with other obligations of the tenant to the landlord" was of no moment. Id. at 590.

Plaintiff claims that the Subject is not income-producing because the Beach Club members must vacate the premises every night, thus, there is no lodging. Per plaintiff, the members have, at most, a license to use the Subject.

The Borough maintains that (1) the members have an exclusive possessory right to use of real property (the cabanas and/or cabinets plus parking), which they specifically reserve in advance, at fixed rates, for a fixed, albeit, short term (summer months); (2) the occupation and use is no different than at a hotel or motel, which are undisputedly income-producing properties; and, (3) commercial buildings such as offices also do not permit lodging for tenants, yet are unquestionably considered income-producing for valuation, thus, for Chapter 91 purposes.

The court finds the Borough's arguments more persuasive. While both the license and lease of real property includes use, the former does not include exclusive use or possession. See

generally Van Horn v. Harmony Sand & Gravel, Inc., 442 N.J. Super. 333, 341-42 (App. Div. 2015) (in a lease, the property owner provides "exclusive possession of a property" to the lease "for some period of time," during which the "the lessee's rights of possession and use are greater than the landowner's," whereas in a license, the property owner only grants a "permission to use the land at the owner's discretion," so that the user is "not provide[d] protection . . . against interference by the" property owner) (citations omitted)). See also Sandyston v. Angerman, 134 N.J. Super. 448, 451 (App. Div. 1975) ("[a] license is simply a personal privilege to use the land of another in some specific way or for some particular purpose or act," whereas "a lease is a grant of exclusive possession to use the land for any lawful purpose, subject to reservation of a right of possession in the landlord for any purpose or purposes 'not inconsistent with the privileges granted the tenant'") (citations and quotations omitted); Thiokol Chem. Corp. v. Morris Cty. Bd. of Taxation, 41 N.J. 405, 417 (1964) (although difficult to distinguish at times, . . . a lease gives exclusive possession of the premises against all the world, including the owner, while a license confers a privilege to occupy under the owner"). If there is no "rent . . . or other consideration . . . for the transfer of possession," nor a fixed term, but there are "limitations on exclusive possession and control of the premises," plus the owner's ability to "revoke the permit to use at any time," then there is likely no lease type agreement. Ibid.

Here, the only document between members and plaintiff is the membership application which also contains the rules of the Beach Club. There are no catch phrases such as lease, rent, tenant, or landlord. However, lack of titles is not controlling. See Sandyston, supra, 134 N.J. Super. at 451 ("determination of whether a given agreement is a lease or a license depends not upon what the parties to it choose to call it nor the language, but [upon] the legal effect of its provisions") (citations and quotations omitted). The application, and certification by the plaintiff's

managing member evidence that the member is afforded rights to the Subject that are more in quantity and quality than a mere license. A member is undisputedly entitled to exclusive possession and use of the reserved cabana for the entire summer. No one else is permitted to use and/or occupy that member's cabana. It is the member who permits a guest access, and then notifies the Beach Club that the individual is the member's guest. The Beach Club can only require a guest to leave for misbehavior or due to closing hours. Members cannot be evicted, or summarily asked to vacate the cabanas. While they can be subject to "expulsion" only for "misbehavior" (or for the member's guest's misbehavior) without any refund, such rule is similar to a tenant of an apartment or other leased building being subject to removal for failure to comply with certain rules.

Further, the cabanas have amenities such as kitchens, bathrooms and utilities rendering them more than just temporary shelters. Payments must be made in advance for the entire summer, else the cabanas will not be provided. None of the members have any ownership interest in the plaintiff or in plaintiff's operating company (thus, cannot claim to be owner-occupiers). Based on the above factors, the court finds that some portion of the fee is for the exclusive possession, use and occupancy of real property. Cf. Van Ness v. Borough of Deal, 139 N.J. Super. 83, 89 (Ch. Div. 1975) (describing the Deal Casino beach club owned by the taxing district and operated by the board of commissioners, which beach club included cabanas, beach houses and bath houses, as well as restrooms, a restaurant, and swimming pool, and operated very similar to the Beach Club herein in that all facilities were available only to members and their guests, and members had to be prior members, and had to apply in advance. The board was given the power to "lease bathhouses and cabanas" to such members and their guests "at such rates and upon such terms" to

be decided by the board, and "rental" of cabana or bathhouse was limited to one per member family), aff'd, 78 N.J. 174 (1978).[6]

Should the fact that overnight stays are barred render the Beach Club a non-income-producing property? In Rolling Hills, supra, the court decided that the nursing home was income-producing because an aspect of the patients' stay was lodging, which averaged 13 months although for some it was much shorter. 15 N.J. Tax at 367-68. "For this period of time the home constitutes a patient's residence." Id. at 368. The court noted that although the portion paid for services would be larger, it did not detract from the conclusion that "a portion of a nursing home patient's fee is paid for lodging," and thus is "at least partially attributable to a tenancy in real estate." Ibid. The court noted that the fact that there were differing rates charged for a single versus a double room also showed that a portion of the fee charged a patient was "for the use of real estate." Ibid.

This court concludes that the inability to sleep at night at the cabanas is not dispositive of whether the Beach Club is income-producing. For the summer months, members have the full ability to treat the cabinets and cabanas as their alternate residence. While there are some restrictions as to size of the refrigerators and prohibition of fire-hazard appliances, those are no different than such restrictions at an apartment or other leased premises. Cf. State v. Stavola, 103 N.J. 425, 429 (1986) (ruling that luxury cabanas could be considered as structures "equivalent" to dwellings for purposes of the permit laws of the Department of Environment Protection ("DEP") requiring permits for construction of certain structures, although "[t]he rules of each [beach] club, as well as municipal ordinances, prohibit overnight occupancy"), rev'g in part, on other grounds,

[6] The issue in that case was whether the taxing district could limit the Casino beach club access, and beach access to residents.

206 N.J. Super. 213 (App. Div. 1985).[7] Although the Stavola case involved interpretation of a DEP statute, which is not complementary to N.J.S.A. 54:4-34, given that the description, operation, use and occupancy of the cabanas in that case is almost identical in the instant matter, this court finds that the higher courts' reasoning persuasive, and supports this court's conclusion that the Beach Club members' rights to the exclusive use, possession, and occupancy of the cabanas exceed those granted by a license. See also Southland, supra, 21 N.J. Tax at 589 (when the property owner "just as the "property owner in Rolling Hills receives money from its franchisees for the continuous and exclusive use of its real estate . . . [then a] tenancy was created and the money received is, at least in part, rental income and therefore, the subject property is income producing for purposes of Chapter 91").[8]

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[7] The Appellate Division had ruled that that the luxury cabanas were "reasonably susceptible of being considered in the same category as motel or hotel units or their equivalent," and that the lack of "overnight use" was not "determinative" for purposes of applying the DEP laws. 206 N.J. Super. at 223. Rather, "[t]o the extent desired by the occupant, and perhaps limited by the regulations of the respective defendants, they can be essentially lived in during all the daylight hours and the time periods the facilities are open." Ibid. Therefore, the "deluxe cabana facilities are sufficiently equivalent to dwellings, whether or not the cabanas are intended to be used for sleeping, to be considered the type of shelter which can be included within the provisions of the regulation which includes motel and hotel rooms." Ibid

The dissent noted that "a cabana club" could not be considered a dwelling because "[p]eople do not live there, either permanently or for short periods," and in the summer only, spend "daylight hours" at the club just as people do in "offices, stores, stadiums, assembly plants or restaurants," which are also equipped with utilities, "[b]ut, no one calls them housing developments." Stavola, supra, 206 N.J. Super. at 226. (Cohen, J.A.D. dissenting). Since the cabanas had "no heat, air conditioning or insulation;" were not built to construction code; "and overnight occupancy is prohibited;" the dissent opined that the structures could not be considered as dwelling units simply on the notion that the members were provided the exclusive use of an enclosed space. Id. at 226-27.

The Supreme Court reversed that portion of the Appellate Division's holding that the DEP could bar completion of the cabanas' construction without the need for regulations. The Court noted that "[l]uxury cabanas, even conceding that they differ greatly from traditional cabanas, are more akin to recreational structures such as bath houses than to residential structures such as housing developments or dwelling units," however, this did not mean "that recreational uses and residential uses are mutually exclusive." 103 N.J. at 434. It concluded that while the DEP could include beach club cabanas as a dwelling, it must do so by properly promulgated regulations. Id. at 439.

[8] The Borough argues that the Subject is not owner-occupied because D. Lobi is making payments to plaintiff for use of the property, although not styled as rent (relying upon SKG, supra, where the court ruled that "[w]here real property is owned by one entity and occupied by a related entity," a non-response to a Chapter 91 request can be fatal since "[t]here is nothing about . . . the language or purpose of N.J.S.A. 54:4-34 that exempts a real estate taxpayer who owns property rented and occupied by a sister corporation." 8 N.J. Tax at 211). The I&E statements provided to the Borough do not help address this issue because (1) they are the I&E statements of D. Lobi, not of plaintiff; (2) the only income source is "sales" and if D. Lobi was the operator, it should have been receiving management fees; (3) an item of expense is "taxes" and if the related entity was making payments twice a year towards taxes, that line item

Two issues remain: (1) whether plaintiff received the Chapter 91 request as to which plaintiff reserved its right to seek a credibility hearing; and (2) whether plaintiff should be afforded time to establish through discovery that the assessor's request for information is mechanical and not with any intent to assist him in setting the 2016 assessment.

Plaintiff's request for a credibility hearing will be granted. Lack of delivery of a Chapter 91 request implicates basic due process concerns. Because of this, the complaint will not be dismissed pursuant to the holding that the Subject is income-producing.

The second request is denied.[9] It is true that the implied purpose of a Chapter 91 request is that the income/expense information is to assist an assessor in determining the assessment of the property. See N.J.S.A. 54:4-34 (in the absence of a response, or if a false one is provided, then the assessor must "value [the] 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"). See also John Hancock Mut. Life Ins. Co. v. Township of Wayne, 13 N.J. Tax 417, 422 (Tax 1993) ("purpose of N.J.S.A. 54:4-34 is to assist the assessor in making the assessment and to diminish the likelihood of litigation," therefore, "the assessor's request must be timely, so that [when received], the assessor can utilize the information by January 10," consequently, a "taxpayer must show that the information could not have been used by the assessor in completing the assessment by January 10 to defeat a [Chapter 91] motion").

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would be shown as something else (example, a loan or gift); and (4) there is a line item for "Rent" for each calendar years 2013-2015 which is unexplained. Since the court has ruled that the Subject is income-producing, the Borough's argument need not be addressed, but of note is the fact that unlike in SKG, here, the related entity is not using or renting the Subject but is operating plaintiff's business.

[9] As noted above, the assessor provided a reply certification explaining the use of Chapter 91 information in the setting on the assessments. Plaintiff provided absolutely nothing to refute the certification. Of course, this issue may become moot should this court decide that the complaint survives due to lack of delivery of the Chapter 91 request.

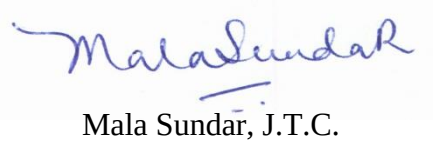
However, this court does not extend the holding in John Hancock, supra, such that property owners are excused from their statutory obligation to respond to a Chapter 91 request on grounds that they are entitled to know whether or not the information that could have been provided, would have been used by the assessor in setting the assessment. Such a reading turns the statute on its head. N.J.S.A. 54:4-34 places two express burdens: one upon the property owner to respond in a timely manner; and one upon the assessor to send a written request by certified mail with a copy of the statute. There is nothing limiting, prescribing, or determining the method or means by which the assessor can or must use such information. See SKG, supra, 8 N.J. Tax at 211 ("it is up to the assessor and not the taxpayer to decide whether to consider the information furnished"). Indeed, requesting the information itself is discretionary.

This court therefore rejects plaintiff's argument that it must conduct discovery on whether the assessor would have used the Chapter 91 information in the assessing process, had the same been provided by plaintiff. Plaintiff is not prejudiced because it would be entitled to a reasonableness hearing should its complaint be dismissed, and in that context, is permitted discovery on the methods employed by the assessor in setting the Subject's assessment.

CONCLUSION

For the aforementioned reasons, the court holds that the Subject is income-producing. A plenary hearing on the issue of receipt of the Chapter 91 request is scheduled for November 18, 2016 at 9:00 a.m.

Very Truly Yours,



Mala Sundar, J.T.C.