

NOT FOR PUBLICATION WITHOUT APPROVAL OF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

December 29, 2016

James L. Esposito, Esq.
Spiotti & Esposito, P.C.
271 US Highway 46
Suite F105-106
Fairfield, New Jersey 07704-2471

Sandra Belli, Esq.
DiFrancesco Bateman et al.
15 Mountain Boulevard
Warren, New Jersey 07059

Re: Golden Eagle Foundation, Inc. v. Borough of Highland Park
Block 31, Lot 3
Docket No. 010507-2016

Dear Counsel:

This is the court's opinion deciding defendant's motion to dismiss plaintiff's 2016 property tax appeal pursuant to N.J.S.A. 54:4-34 (commonly known as "Chapter 91"). Plaintiff ("Golden Eagle") contends that it timely returned the Chapter 91 request by advising the assessor that it did not own the above-captioned property ("Subject") during calendar year 2014, therefore, returning a blank Chapter 91 request with this notation was neither a failure to respond, nor a provision of false information. Defendant ("Borough") contends that it is undisputed that the Principal of plaintiff was also a Principal of the predecessor entity which had owned the Subject during 2014, that she was the one who made the notation of ownership on the Chapter 91 request, and that she was the one who signed a 2012-2014 lease for the Subject, and its renewal in 2014, on behalf of

the predecessor owner, therefore, plaintiff, through the common Principal, had access to, and could have provided, the income/expense information for 2014 sought in the Chapter 91 request.

The court finds that while plaintiff's timely response was factually true that it was not the title owner of the Subject in 2014, defendant raises sufficient grounds to cast doubt whether "good cause" existed for plaintiff not to provide income/expense information. Therefore, the court will hold a hearing in this regard.

FACTS

The facts are undisputed. The Subject is income-producing. On November 2, 2015, the Borough's assessor sent a Chapter 91 request to plaintiff asking for income and expense ("I&E") data "for the year ending December 31, 2014." The request was sent certified mail to plaintiff's correct address at 45 Blackburne Terrace, West Orange, NJ. Included was a copy of the Chapter 91 statute, and an I&E statement. On the I&E statement was plaintiff's name and the Subject's address.

On November 6, 2015 the assessor's cover letter was faxed back to him with the following handwritten notation: "Sorry, we did not own this property on 1/1/14 to 12/31/14 yet!" below this were the initials "K.L." and the date "11/6/15."

For tax year 2016, the assessor imposed an assessment of \$261,500. Plaintiff petitioned the Middlesex County Board ("County Board") challenging the assessment. The petition was dismissed under judgment code 5D ("failure to respond to income request N.J.S.A. 54:4-34") by judgment dated May 23, 2016, mailed to plaintiff's counsel on June 2, 2016. Plaintiff appealed the judgment to this court on July 18, 2016. The Borough then filed the instant motion.

Katherine Lai is a Principal of plaintiff and the author of the faxed note to defendant. The trail of the Subject's ownership changes shows that Katherine Lai was a signatory on all of the

sale documents and deeds, and the sale consideration for each transfer was \$10. On January 2, 2004 she purchased the Subject from Fantastic Realty Co., Inc. (“Fantastic Realty”) for \$10. The entity’s address was P.O. Box 771, Livingston, NJ, and Ms. Lai’s address was the same as plaintiff’s (45 Blackburne Terrace). The return address for the deed was to Fantastic Realty but at plaintiff’s address. Katherine Lai and Frank Lai (her son), as corporate officers of Fantastic Realty, signed the sale deed. On the signature page, Frank Lai was noted as the “secretary” of the grantor corporation. The “Seller’s Residency Certification/Exemption” for purposes of the realty transfer fee noted Fantastic Realty’s address as plaintiff’s address, and was signed by Katherine Lai on behalf of Fantastic Realty. The deed was recorded February 1, 2005, and on the cover sheet asked the deed be returned to Fantastic Realty at plaintiff’s address.

On October 25, 2007, Katherine Lai sold the Subject to Fantastic Realty for \$10. This time, Fantastic Realty’s address was noted as P.O. Box 171, Verona, NJ. Ms. Lai’s address was the same as plaintiff’s address. The deed was recorded November 1, 2007, and on the cover sheet asked the deed be returned to Katherine Lai at plaintiff’s address.

On January 30, 2015, Fantastic Realty sold the Subject to plaintiff for \$10. On the sale deed, both entities had the same address as plaintiff (45 Blackburne Terrace). The return address on the deed was to Katherine Lai at plaintiff’s address. The sale deed was signed by Katherine Lai, who was also a witness as an officer of Fantastic Realty. The “Seller’s Residency Certification/Exemption” for purposes of the realty transfer fee and the Affidavit of Consideration noted Fantastic Realty’s address as plaintiff’s address, and was signed by Katherine Lai as corporate officer on behalf of Fantastic Realty. The deed was recorded February 10, 2015, and on the cover sheet asked the deed be returned to Katherine Lai at plaintiff’s address.

In response to discovery in the 2016 appeal, plaintiff stated that Katherine Lai is President of plaintiff and her son Frank Lai is the “V.C.” The son was also owner of Fantastic Realty, and Nai-Peng Wang a President. In opposition to the current Chapter 91 motion, Katherine Lai certified that she is the Principal of plaintiff, and was also a Principal of Fantastic Realty.

Discovery for rental information showed that Fantastic Realty entered into a two-year lease dated July 2, 2012 for a portion of the Subject, and the lease was signed by Katherine Lai on behalf of Fantastic Realty. The broker for the lease was Katherine Lai Realty and Redstone Realty, to whom Fantastic Realty agreed to pay commission. The lease was renewed for a 5-year period (08/01/2014 to 07/31/2017), and was signed by Ms. Lai.

As to the discovery request for I&E information for the year of appeal and the preceding two years, plaintiff filled in the I&E Statement attached to the November 2015 Chapter 91 request form in July 2016. Noting that “should be for Fantastic Realty Co., Inc. only,” relevant information was filled in, and the form was signed by Nai Peng Wang as President.¹

Also included was an Initial Statement for property tax exemption purposes, which plaintiff filed on August 11, 2015 (and re-filed on November 1, 2015). The form noted that plaintiff was a domestic entity incorporated June 3, 1999, was registered with the New Jersey Secretary of State on December 15, 1995,² and sought exemption from local property tax under N.J.S.A. 54:4-3.6. The Borough’s assessor denied the exemption since the Subject was not occupied and used by

¹ Also included was the cover letter of the Chapter 91 request with the same notation but with a fax date of July 28, 2016, the same date the responses to the Borough’s interrogatories were signed, but this time with an additional sentence: “Why you failed to answer me, failed to mail a correct form to correct owner? 07/19/16 K. Lai.” And at the bottom of the cover letter, was the inclusion of a handwritten fax and telephone number.

² The Certificate of Incorporation filed with the New Jersey Division of Commercial Recording in 1995 showed Katherine Lai as the registered agent, with plaintiff’s address (45 Blackburne Terrace). Of the three trustees, one was Katherine Lai with an address on Springfield Avenue, Maplewood, NJ; and the other was Frank Lai with an address on Springfield Avenue, Maplewood, NJ.

plaintiff, if plaintiff were to even qualify as a charitable organization. The assessor sent another letter as to the amended application noting that an exemption could be not be granted for 2015 since plaintiff did not own the Subject as of October 1, 2014.

In connection with the instant motion, the assessor certified that he was unaware of Ms. Lai's status as Principal in both the predecessor and successor entities, until plaintiff filed its 2016 petition to the County Board. He noted that during the several discussions with her in connection with the exemption application, she never once alerted him to this fact, nor asked if she was obligated to provide I&E information for the predecessor.

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.” If the owner fails or refuses to respond, or “render[s] a false or fraudulent account,” then it loses the right to challenge the valuation and assessment imposed by the assessor on the “income-producing property.” Ibid.

The issue here is whether shared officers between the predecessor-successor entities requires the successor to provide income information for a period the property was owned by the predecessor, or whether advising the assessor that the successor was not an owner of the income-producing property for the period for which the information is sought, suffices as a “full and true” response to a Chapter 91 request.

Cases involving Chapter 91 requests vis-à-vis successor owners have held that a non-response by a predecessor can penalize the successor owner. Thus, in Ocean Pines, Ltd. v. Borough of Point Pleasant, 112 N.J. 1, 4 (1988), the Court ruled that a non-response from the successor on grounds it was a “recent purchaser,” merited dismissal of the complaint. In ADP of

New Jersey, Inc. v. Township of Parsippany-Troy Hills, 14 N.J. Tax 372, 377-78 (Tax 1994), the court ruled that “[t]he intention of the statute is to provide a mechanism for the assessor to obtain income information concerning income-producing property from the owner of the property. If the owner fails to respond, the sanction of loss of the right to contest the assessment for the ensuing year (except for the reasonableness hearing . . .) applies to the owner and all those who stand in the shoes of the owner. This includes . . . subsequent purchasers.” See also Carriage Four Assocs. v Township of Teaneck, 13 N.J. Tax 172 (Tax 1993) (a receiver is barred under Chapter 91 if a prior owner failed to comply with a Chapter 91 request); Yeshivat v. Borough of Paramus, 26 N.J. Tax 335, 345 (Tax 2012) (successor owner unable to challenge assessment except through a reasonableness hearing where prior owner failed to respond, and assessor not bound to re-send request to successor even if assessor was aware of transfer prior to sending the Chapter 91 request).

Plaintiff is correct that the above cases are factually distinguishable since they involved a request sent to a predecessor and a non-response by that entity, whereas here, the request was sent to the plaintiff, the successor owner, which timely responded to the assessor.³ Plaintiff is also correct that its response (non-ownership of the Subject in 2014) is not false since its 2015 purchase is undisputed. The court is therefore not persuaded by the Borough’s insistence that plaintiff’s advice of its non-ownership in 2014 is a non-response, or a false or fraudulent response.

The court is however unpersuaded that this ends the inquiry, and that as long as some response is provided, the Chapter 91 consequences must not, and cannot follow. Rather, if a response is provided, the court is not barred from considering whether good cause existed for

³ Plaintiff contends that the assessor “intentionally” sent the Chapter 91 request to the “wrong property owner” because plaintiff had sought property tax exemption in August 2015 and November 2015. The court is unpersuaded. As of November 2015, it is undisputed that plaintiff was the Subject’s owner, therefore, the assessor properly addressed the request to plaintiff.

plaintiff not to provide the requested financial information for the Subject for 2014. In Ocean Pines, supra, the Court rejected the owner's arguments that "as a recent purchaser" it lacked possession to and of the I&E "records for the time period that preceded its purchase" and therefore, "good cause" existed for its failure to respond to the Chapter 91 request. 112 N.J. at 8. Due to a complete non-response, the Court declined to "express" its "view on the merits of plaintiff's position that the absence of information justified non-compliance with the assessor's demand." Id. at 9. However, the court left "the question of what constitutes 'good cause' to the county boards for a case-by-case determination." Ibid.; see also Waterside Villas Holdings, L.L.C. v. Township of Monroe, 434 N.J. Super. 275, 284 (App. Div.), certif. denied, 217 N.J. 589 (2014) (since owner failed to respond to the assessor in any manner whatsoever, its complaint should be dismissed and it was unnecessary to decide whether there was "good cause" for the owner's non-response).

The ruling in Ocean Pines, supra, provided for a "two step analytical framework" in a Chapter 91 context. TMC Properties v. Borough of Wharton, 15 N.J. Tax 455, 463 (Tax 1996). The first step is "a determination . . . whether the taxpayer made a sufficient 'response' to the assessor's request within" 45 days. Ibid. The "second step" is to decide whether the "failure to furnish, or delay in furnishing, the requested information resulted from 'good cause.'" Ibid. In this analysis, the prevailing concern for the court (and county board) should be "the purpose of Chapter 91" which is helping the assessor set an assessment with minimal "expense, time and effort in litigation," and this "significant" public interest "clearly outweighs the private interest" of "the amount of the property tax assessment and the actual tax bill to the taxpayer." Ibid. (citations and quotations omitted). Thus, a "sufficient response" is one made timely, and which tells "the assessor, in reasonable detail, a plausible basis for the taxpayer's inability to furnish the requested information within such time period." Ibid. Further, to show "good cause" the property

owner must show that “it ‘could not’ answer the” Chapter 91 request in time. Ibid.; see also Southland Corp. v. Township of Dover, 21 N.J. Tax 573, 585 (Tax 2004) (if a property is not income-producing, the “taxpayer must so inform the assessor at the time of the initial” Chapter 91 request, and “[o]nly if such a timely response is made will the court inquire into whether, in fact, the property is owner-occupied.”).

Here, the court finds that the following facts raise questions whether good cause existed for plaintiff’s failure to provide the requested financial information for 2014. Plaintiff’s Principal never, at any time, suggested, asserted, or certified that she had no access to, was prohibited access to, was unable to provide, or was not authorized to provide the 2014 I&E information pertaining to the Subject. Ms. Lai signed the answers to the interrogatories and document production for plaintiff in connection with the 2016 appeal (subject of the instant motion). In response to the I&E information request, she provided the 2014 information using the Chapter 91 request form, which was signed by Fantastic Realty’s president on July 2016. Further, Ms. Lai had signed the two-year 2012 lease agreement, as well as its 5-year renewal, of the Subject, on behalf of Fantastic Realty. Both these leases included rental income information of the Subject for 2014, thus, what was sought in the Chapter 91 request. She also was the broker, operating under the name “Katherine Lai Realty,” and obtained a commission for the lease.

These undisputed facts then raise the issue of whether plaintiff had good cause not to provide the Subject’s I&E information for 2014. The court will schedule a hearing in this regard on January 13, 2017 at the Tax Court in Trenton at 9:00 a.m.⁴ The Township’s motion is stayed pending the plenary hearing.

⁴ It should be noted that even in the successor-predecessor line of cases which were dismissed for a lack of any response, the courts rejected arguments from a successor owner that it should not be penalized if it never even knew of the request, or that its non-response was because it never had access to the predecessor’s books and records to

Very Truly Yours

A handwritten signature in blue ink that reads "Mala Sundar". The signature is fluid and cursive, with a horizontal line underlining the name.

Mala Sundar, J.T.C.

provide income information. See Ocean Pines, *supra*, 112 N.J. at 8; ADP, *supra*, 14 N.J. Tax at 378-79 (rejecting the owner’s contention of due process violations since it was unaware a request was made, because the successor “stands in the shoes of the prior owner,” thus notice to one is notice to the other, and further, since “[p]roperty taxes are . . . a lien on the property,” a buyer must “ascertain the facts” about the property tax and assessment to “protect itself”); Yeshivat, *supra*, 26 N.J. Tax at 346-47 (rejecting the successor’s argument that “it was impossible to comply with the Chapter 91 request” since it did not “possess financial information” of the predecessor, and the “law does not impose a duty upon one owner to provide income and expense information not in its dominion and control”).