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THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY

MARK CIMINO, J.T.C.



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March 16, 2016

Richard Cetlin, *pro se*
658 Tremont Avenue
Westfield, NJ 07090

Hank N. Rovillard, Esquire
31 North Brighton Avenue
Atlantic City, NJ 08401

RE: RICHARD CETLIN v. VENTNOR CITY
PROPERTY: 6204 Atlantic Avenue, Ventnor, NJ
DOCKET NO: 013937-2015

Dear Mr. Cetlin and Mr. Rovillard:

This letter constitutes the court's decision on a motion by plaintiff/taxpayer Richard Cetlin to compel defendant to provide responses to supplemental interrogatories. Taxpayer is the owner of the above captioned property, a residential unit located in the defendant City of Ventnor. For the tax year of 2015 under appeal, the property is assessed at \$750,000.

The taxpayer appealed the assessment to the Atlantic County Board of Taxation. The Board of Taxation hearing was held on July 22, 2015. Taxpayer alleges that while at the hearing the municipal tax assessor offered a settlement assessment based upon three comparable properties. It is unclear whether this

conversation is alleged to have occurred before or after the actual Board of Taxation hearing. Nevertheless, the taxpayer was dissatisfied with the decision of the Board of Taxation and appealed to this court.

The taxpayer propounded a discovery request November 13, 2015. The city objected to the scope of the taxpayer's request and the taxpayer subsequently filed a motion to compel.

In Tax Court, if the complaint is for a Class 2 (1 - 4 family residence) or Class 3 (farm residence) property, the matter is assigned to the small claims division. R. 8:3-4(d)(2), 8:11(a)(2), see also, N.J.S.A. 2B:13-14. Hearings in the Small Claims Division shall be informal, and the judge may receive evidence as the judge deems appropriate for a determination of the case, except that all testimony shall be given under oath. N.J.S.A. 2B:13-15, R. 8:11(b). Thus, the rules provide for a simplified procedure to litigate a matter in the small claims division.

There are a number of distinctive benefits conferred to the small claims filer. First, the filing fee is only \$50.00 for the small claims division instead of the usual \$250.00. R. 8:12(a), (b). Second, there is a small claims track in which discovery is to be completed within 75 days instead of the standard 150 days, R. 8:6-1(a)(6). The exchange of expert reports is to occur 20 days prior to the trial date instead of 30 days prior to the trial date, R. 8:6-1(b)(1).

Specifically as to discovery, for the small claims division it is limited to: 1) the property record card for the subject premises, 2) inspection of the subject premises, 3) a closing statement if there has been a sale of the subject premises within three years of the assessing date, 4) the cost of improvements within three years of the assessing date, 5) income, expense and lease information if the subject property is income producing, and, 6) information relating to a claim of damage to the property occurring between October 1 of the pre-tax year and January 1 of the tax year. R. 8:6-1(a)(4). Responses to requests for the above referenced discovery must be provided in 30 days. R. 8:6-1(a)(6)(i). The Court in its discretion may grant additional discovery for good cause shown. R. 8:6-1(a)(4). These abbreviated discovery rules have the salutary effect of preventing a municipality from over-burdening a taxpayer with onerous interrogatories and requests for production, as well as depositions. Conversely, the small claims discovery rules attempt to focus the taxpayer, who is often unrepresented, to focus upon evidence which is relevant to the dispute at hand.

The general purpose of discovery rules are to advance "the public policies of expeditious handling of cases, avoiding stale evidence, and providing uniformity, predictability and security in the conduct of litigation." Zaccardi v. Becker, 88 N.J. 245, 252 (1982). The discovery process is part and parcel of ensuring that litigants receive adequate due process. Garrow v. Elizabeth General Hospital and Dispensary, 79 N.J. 549, 568 (1978). However, due process is a flexible concept which varies upon the right that is at stake. In re Freshwater Wetlands

Statewide Gen. Permits, 185 N.J. 452, 466-467 (2006). Moreover, the rules provide the flexibility to allow additional discovery if good cause is shown. R. 8:6-1(a)(4).

The taxpayer propounded a discovery request upon the city consisting of three parts. Each part will be addressed in turn. The taxpayer's first request is directed to the tax assessor as to the rationale for the alleged offer to reduce the assessment to \$712,000.00 based on three comparable properties. "Although discovery in a small claims matter is limited by R. 8:6-1(a)(4),

this rule does not limit a party's offers of proof at trial". Schumar v. Bernardsville, 347 N.J. Super. 325, 336 (App. Div. 2001). Here, to be clear, the taxpayer is not seeking documents, but rather testimonial evidence in written form of the Tax Assessor. Just as the municipality is not allowed to depose the taxpayer's expert causing the taxpayer to expend additional time and cost in a small claims case and thereby frustrating taxpayers from pursuing such an appeal, the taxpayer is not permitted to compel the municipality to undergo the time and expense of answering interrogatories which essentially consist of testimonial evidence.

Certainly, if this matter is not resolved, the taxpayer will have his day in court and be able to ask questions of witnesses. Thus, the request to compel the city to respond to this request is denied. Notably, the court is not making a ruling at this time as to the admissibility or relevancy of any testimonial evidence that the taxpayer may offer.

As to the second request, the taxpayer is seeking information and documents as to why the comparable property sale which he offered at the Tax Board hearing was rendered "non-usable." The taxpayer also wants the assessor to define what is meant by the term "quick sale" which was entered into the city's records rendering the sale not usable. The request for what was meant by the data entry of "quick sale" once again seeks what is essentially testimonial evidence and is denied for the reasons set forth as to the previous request.

However, the taxpayer's request for documents that the municipality relied upon to conclude that the sale of the comparable property was a "quick sale" is a somewhat different request. As noted in Schumer, the requested documents appear to be either public records or related to the subject property, at least to the extent that these documents refute or bolster the comparable offered by taxpayer. See, id. at 336. The city opposes this application in part because it claims that the assessor did not render the sale not usable. Rather, the city asserts it was the State Division of Taxation which rendered the property sale not usable. While it is true that the state ultimately determines whether a property is considered not usable for comparable sales purposes, the investigation and recommendation for such determination is made by the municipal assessor. N.J.A.C. 18:12A-1.17.

The court in Schumer noted that the records sought by the taxpayer in that case were public records under common law. The court also noted that the municipality should have provided the

records. It is not clear in Schumer as to whether the taxpayer should have been able to obtain these records through a public records request, the discovery process or both methods. The events giving rise to Schumer occurred prior to the enactment of the Open Public Records Act (OPRA) which streamlines records requests and generally provides a seven business day turnaround for public record requests. See, N.J.S.A. 47:1A-1, et seq.

This court has to balance the request to expand the small claims discovery parameters against a citizens' right to public records. This court is reluctant to expand the streamlined procedures for a small claims matter when OPRA may provide an alternative route for the taxpayer to obtain the information he is seeking.

While OPRA is a public disclosure statute and not intended to replace or supplement discovery of private litigants, the private needs of a requesting party for information in connection with collateral proceedings play no part in whether the request is proper or whether the disclosure is warranted. Mag Entertainment, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 545-546 (App. Div. 2005). "There is no blanket exception carved out to the requirement of disclosure when the public records sought are germane to pending litigation between the requestor and the public entity." Id., at 545. "Simply put, the right to inspect and copy governmental records under OPRA is without limitation as to the reasons for which the access is undertaken." Id. However, OPRA only reaches identifiable records not otherwise exempt. Wholesale requests for general information to be analyzed, collated and compiled by

the responding government entity are not encompassed therein. Id., at 549.

In light of the foregoing, this Court does not see the need to expand the scope of the discovery allowed under the small claims jurisdiction when the taxpayer is within his rights to make the request for documents pursuant to the Open Public Records Act after tendering the applicable fee, generally 5 or 7 cents per copy. N.J.S.A. 47:1A-5(b)(1). The fee is quite modest and balances the public right of disclosure against the fact that public resources are being utilized to make this disclosure. Thus, considering: 1) the documents sought seem to be available pursuant to an Open Public Records Act request, 2) the limitations of the small claims discovery process, and 3) the taxpayer has not shown good cause that he cannot obtain the documents by an alternate means such as an OPRA request, the taxpayer's request to compel production is denied.

The taxpayer is left to decide if he really needs to pursue these documents through OPRA and what steps he needs to take to effectuate that pursuit. Moreover, this court makes no ruling as to whether any of the documents sought are disclosable under OPRA since that issue is beyond the jurisdiction of this court. However, if the city refuses to provide documents in contravention of OPRA forcing the taxpayer to make a good cause application to this court for the documents, the court may entertain an application for an award of expenses under R. 4:23-1(c) in the event a motion to compel is granted.

As to the taxpayer's third request, the property record card for the subject property, it appears that this document has already been provided.

In conclusion, this court is reluctant to expand the scope of discovery that is allowed in small claims local property cases. However, the small claims rules do not limit a party's offer of proof at trial, nor the ability to obtain evidence for trial by other means. The court makes no ruling at this point as to the admissibility of any of the evidence (testimonial, documentary or otherwise) being sought by taxpayer. That determination shall be made at the time of trial.

Sincerely,

/s/**Mark Cimino, J.T.C.**

MC:rb