

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

STANFORD CHEMICAL CORP.,)
)
 Plaintiff,) No. 020053C
)
 v.)
)
 MORROW COUNTY ASSESSOR,)
)
 Defendant.) **DECISION OF DISMISSAL**

Defendant has moved to dismiss as untimely Plaintiff's Complaint, which challenges Defendant's farm use disqualification. The case management conference scheduled for March 25, 2002, was converted to a hearing on the motion. Mr. Richard Ligon, Secretary, Stanford Chemical Corp., argued the cause for Plaintiff. Mr. Greg Sweek, Morrow County Assessor, and Ms. Cyde Estes, Morrow County Appraiser, argued the cause for Defendant.

FACTS

Plaintiff's predecessor in title, Stanford Chemical LLC (Stanford LLC), purchased the subject property, a 90-acre parcel, from the Port of Morrow (the Port), on April 28, 2000. The sale is evidenced by a Warranty Deed, which Plaintiff submitted into evidence on the morning of the hearing. (Ptf's Ex 2.) Consideration for the sale on the part of Stanford LLC was the construction and operation, within a designated period of time, of a nitrogen fertilizer manufacturing facility with a specified daily capacity. (*Id* at 1.) Stanford LLC had one year to obtain financing and three years from that date to complete the project and be fully operational. (Ptf's Ex 1 at 2; Ptf's Ex 2 at 1.) Also, Stanford LLC was to permit a third party (Portview Ranches) "to continue farming on Property until August 31, 2000," with rents from farming to be paid to the Port. (Ptf's Ex 1 at 1.) Stanford LLC later

became Stanford Chemical Corp., and, according to the testimony, the Port “reaffirmed” the sale agreement in favor of the new entity (Stanford Chemical Corp.). The Agreement provides in relevant part:

“In the event Stanford is unable to obtain a commitment for financing for Project within one (1) year following the recording date of the warranty deed, then Port shall have the right, upon first providing thirty (30) days written notice of right to cure to Stanford, to require Stanford immediately thereafter to reconvey the Property to Port.” (*Id.* at 2.)

Finally, reconveyance could also occur if the project was to be fully operational “within three years from the date of receipt of the financing commitment.” (*Id.*) Plaintiff did not obtain the necessary financing within one-year period. Plaintiff claims title to the property reverted to the Port on April 28, 2001, which was the end of the one-year financing period. Defendant responded that there is no recorded deed reflecting reconveyance, as provided in the contract, and that the court must presume no reconveyance occurred.

Meanwhile, by letter dated March 23, 2001, Defendant disqualified the subject property from farm use special assessment. The notice provides in part as follows:

“This letter constitutes notice of disqualification from special assessment pursuant to ORS 308A.718¹. The above named account is being disqualified from special assessment for the 2001-2002 tax year, due to the following reason:

“ * * * * *

“X Change of Use (ORS 308A.116(6)(a))

“This disqualification requires calculation of an additional tax and valuation of the property at real market value. * * *

“The additional tax of \$1,275.90 will be extended to the 2001-2002 tax rolls for collection.

“You have the right to appeal this disqualification to the Oregon Tax Court in the Magistrate Division within 90 days of receipt of this notice, in

¹ All references to the Oregon Revised Statutes are to 1999.

accordance with ORS 305.275 and ORS 305.280. * * *” (Ptf’s Compl at 4.)

The notice was mailed to “Stanford Chemical” at its address on Broadway in Vancouver, Washington. Mr. Ligon acknowledged the address is correct. That address is the physical location for Plaintiff’s accounting department. Mr. Ligon has an office elsewhere in the building on the same floor. There was no response by Plaintiff to the notice. Thereafter, Defendant timely transmitted a property tax statement to Plaintiff on October 19, 2001. The tax statement reflected both an increase in value and tax. Neither the notice of disqualification nor the property tax statement was returned to Defendant as undeliverable. The taxes on the subject property were not paid by the November 15, 2001, due date. Plaintiff timely paid its taxes for the prior year (2000-01).

Mr. Ligon testified he was unaware of the farm use disqualification until he was advised by someone in the assessor’s office when he phoned that office in early December 2001 to inquire about the increase in value. According to the testimony, Mr. Ligon had not seen the tax statement until sometime shortly before he contacted the assessor’s office and did not see the notice of disqualification until provided a copy by the assessor. The Defendant transmitted a copy of the disqualification notice along with a brief cover letter dated December 12, 2001, directly to Richard Ligon, in response to Mr. Ligon’s call. Mr. Ligon filed the appeal in this matter with the court on or about February 1, 2002.²

Plaintiff seeks continuation of the special farm assessment for tax year 2001-02

² The “file” date is the date of mailing, governed generally by the postmark date. Plaintiff’s Complaint was stamped received by the court on February 4, 2002. The court cannot read the postmark cancellation date on the envelope. However, the cover letter submitted with the Complaint is dated February 1, 2002. Court personnel determined the Complaint was mailed on February 1, 2002. Allowing three days for transmittal, the court concludes the Complaint was filed February 1, 2002.

and cancellation of the additional tax imposed upon disqualification. Defendant has moved to dismiss Plaintiff's Complaint as untimely under ORS 305.275 and ORS 305.280. Plaintiff responds it was unaware of the disqualification until Mr. Ligon phoned the assessor's office in early December and that the appeal was filed within 90 days of that date.

ANALYSIS OF THE COURT

A farm use disqualification is an act of the assessor and is appealed to the Tax Court under the provisions of ORS 305.275(1)(a)(C) and ORS 305.280(1). ORS 305.280(1) provides in relevant part:

“Except as otherwise provided in this section, an appeal under ORS 305.275 (1) or (2) shall be filed within 90 days after the act, omission, order or determination becomes actually known to the person, but in no event later than one year after the act or omission has occurred, or the order or determination has been made.”

As can be seen in the statutory language quoted above, the 90-day appeal period begins to run when the act being appealed “*becomes actually known to the person.*” *Id.* (Emphasis added.) Mr. Ligon argues the appeal was filed within 90 days from the date he became aware of the disqualification. Mr. Ligon's knowledge was allegedly acquired when he telephoned Defendant in early December 2001. Based on the date Defendant responded to Mr. Ligon's call, by mailing a copy of the disqualification notice on December 12, 2001, it appears Plaintiff phoned Defendant on or about December 12. The Complaint was then filed approximately 59 days later. For the reasons set forth below, the court concludes the appeal was not timely filed.

Both the disqualification notice and the subsequent tax statement informed Plaintiff of the disqualification and resulting increase in value and taxes. Of course, the statute requires an official notice, which was mailed March 23, 2001. Considering that document

first, the notice was mailed to the correct address and not returned as undeliverable. Even accepting Mr. Ligon's testimony that *he* never saw the original notice, there is still no explanation for the fate of that document. Mr. Ligon simply was unable to explain what happened to it. The notice was mailed to the address of the corporation. It is knowledge by the corporation that starts the appeal clock. It is not necessary that Mr. Ligon be personally aware of the disqualification. Moreover, the statute requires mailing, but not receipt. The court presumes the notice was received, absent some evidence or explanation to the contrary. There is no evidence in this case that the disqualification notice was not received by the corporation. Typically, mail arrives within a few days from the date it is placed in the control of the postal service. On the evidence before it, the court finds that the notice was received within five days from the March 23, 2001, mailing date. Receipt put Plaintiff on notice and Plaintiff then had 90 days in which to appeal. Plaintiff missed that deadline by approximately seven months.

Assuming, arguendo, that the corporation did not receive the notice of disqualification, it did receive the tax statement in late October. This is known because it was that document that ultimately prompted Mr. Ligon to phone the assessor. As best as he could recall, or at least surmise, Mr. Ligon was given the tax statement by the corporation's accounting department. Mr. Ligon may have acted promptly once he saw the statement, but the tax statement was mailed October 19, 2001, and the call was not made until approximately December 11. The Plaintiff corporation presumably received the statement within a few days of the mailing date, which would be

///

approximately October 24, 2001. The appeal was filed more than 90 days later, on February 1, 2002.

The appeal was not filed within 90 days from the receipt of the disqualification notice. In addition it was not filed within 90 days from receipt of the tax statement. It is not a defense that corporate employees fail to follow the appropriate steps in delivering tax-related notices and bills to someone in the organization that would handle them properly. The court is unwilling to accept Plaintiff's claim the appeal was timely because it was filed within 90 days from the date Mr. Ligon actually spoke to someone in the assessor's office.

As an alternative argument, Plaintiff asserts the property reverted to the Port on April 28, 2001, because of Plaintiff's failure to satisfy the one-year funding requirement specified in the contract. Plaintiff argues that as Port property, the land is exempt from taxation. This argument is unpersuasive because there is no evidence the Port exercised its contractual right to reconveyance. The contract did not provide for automatic reverter, but rather notice and an opportunity to cure, followed by the right of the Port to require reconveyance. The pertinent portion of the contract reads: "Port shall have the right, upon first providing thirty (30) days written notice of right to cure to Stanford, to require Stanford immediately thereafter to reconvey the Property to Port." (Ptf's Ex 1 at 2.) Defendant notes there is no recorded deed of reconveyance. Plaintiff did not testify to any demand to cure notice or that the Port actually required reconveyance. Had reconveyance been demanded, there would no doubt be a paper trail to that effect. Given the mutually beneficial nature of the intended contractual relationship surrounding the sale, it is understandable that the Port would be reluctant

///

to insist on enforcing the contract. In fact, Mr. Ligon testified the contract was ultimately reaffirmed in favor of the new corporation.

CONCLUSION

After considering the written evidence and the sworn testimony, the court concludes that Plaintiff did not appeal within 90 days from the date it became aware of Defendant's act of disqualifying the subject property from farm use special assessment for the 2001-02 tax year. Additionally, the court concludes title was not transferred back to the Port. As the appeal is untimely, the act of disqualification stands. Now, therefore,

IT IS THE DECISION OF THIS COURT that Defendant's motion to dismiss is granted.

Dated this _____ day of May, 2002.

DAN ROBINSON
MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, FOURTH FLOOR, 1241 STATE ST., SALEM, OR 97301-2563. YOUR COMPLAINT MUST BE SUBMITTED WITHIN 60 DAYS AFTER THE DATE OF THE DECISION OR THIS DECISION BECOMES FINAL AND CANNOT BE CHANGED.

THIS DOCUMENT WAS SIGNED BY MAGISTRATE DAN ROBINSON ON MAY 16, 2002. THE COURT FILED THIS DOCUMENT ON MAY 16, 2002.