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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](mailto:taxcourttrenton2@judiciary.state.nj.us)

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Kevin P. Wigenton, Esq.  
125 Harding Road  
P.O. Box 781  
Red Bank, NJ 07701

Harry Haushalter, Esq.  
Lexington Square Commons  
2119 Route 33, Suite A  
Hamilton Square, NJ 08690

Re: West Side Community Center v. City of Asbury Park  
Block 1004, Lot 2; Block 1005, Lot 1; Block 1101, Lot 6  
Docket No. 008640-2016

Dear Counsel,

This is the court's decision on defendant's motion to bar plaintiff's claim for tax exemptions on grounds they were not specifically pleaded as required by R. 8:3-4(c) and therefore, the complaint is time-barred. Plaintiff opposes the motion contending that its counsel's inadvertent omission to check the box "Exemption/Abatement Claimed," on the Case Information Statement ("CIS") was a purely clerical error because "it is and always has been the intent of the plaintiff to continue its property tax exemption," and in any event, defendant has failed to show harm or prejudice due to this inadvertent omission. The court agrees with plaintiff.

The facts are straightforward. Plaintiff is a non-profit entity and has enjoyed exemption from local property tax for several years.

For tax year 2016, it filed petitions at the Monmouth County Board of Taxation (“County Board”) challenging the defendant’s (“City”) assessor’s denial of exemption/abatement for the above captioned properties (“Subject”). The petitions clearly designated the claim as an “appeal for denial of abatement or exemption” for each of the three properties in question. Although it duly filled in the information of the original assessment on each petition for each Lot, plaintiff left the column titled “Requested Judgment Amount” blank. It was thus clear, and defendant concedes, that only plaintiff’s exemptions would be at issue at the County Board.

After filing the petitions before the County Board, plaintiff’s counsel was retained to represent plaintiff. He then filed a letter asking that each petition be dismissed without prejudice so the same could be litigated in this court. The letter, copied to the City’s instant counsel and dated March 24, 2016, clearly stated that the petitions had “challeng[ed]” the City’s assessor’s “designation of taxable (not exempt) properties.”

Accordingly, the County Board dismissed the petitions. However, it used Judgment Code 2B, “presumption of correctness not overcome,” despite the fact that plaintiff never challenged the assessed valuation of the Subject. Presumably this was because of plaintiff’s request to dismiss the petitions without prejudice.

Plaintiff’s counsel then filed this complaint on June 10, 2016.<sup>1</sup> It used the Tax Court’s form complaint. On the first page, at paragraph 2, plaintiff asserted that it contested the actions of the County Board “with respect to the assessment(s) . . . on the ground that the assessment(s) is/are

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<sup>1</sup> The CIS was filed June 6, 2016. The complaint was initially omitted but later filed on June 10, 2016. As noted earlier, in the block titled “Property” plaintiff stated “No” as to “Abatement/Exemption.”

in excess of the true or assessable value of the property” as to the Subject. The additional allegations allowed in paragraph 5 of the complaint was contained in the attached rider which alleged as follows: “Plaintiff is a New Jersey Non Profit entity. It is contesting the assessment of taxes for the [Subject] it owns. Plaintiff is appealing to the Tax Court for the Assessment of Taxes for this Non Profit Entity.”

Within two months, on August 1, 2016, the City filed the instant motion maintaining that since plaintiff did not specifically plead an exemption claim, it should not be permitted to argue this issue nor should it be permitted to amend its pleading nunc pro tunc since the exemption claim would be a new cause of action requiring different proofs than valuation. Plaintiff opposed the motion with its counsel certifying that he has never practiced tax law issues before the County Board or this court, hence was unfamiliar with the form pleadings, and his omission to write in “Yes” in response to the “Abatement/Exemption” line on the CIS should not be used to penalize the plaintiff.

Rule 8:3-4(c) requires that “[a] claim for exemption shall be specifically pleaded.” The rules applicable to civil proceedings also require certain types of claims be specifically pleaded. See R. 4:5-4. The “spirit” of specific pleading is “to avoid surprise” to the adversary. Jackson v. Hankinson, 94 N.J. Super. 505, 514 (App. Div. 1967), aff’d, 51 N.J. 230 (1968). The rule is therefore not strictly applied and is thus relaxed if there is no prejudice to the other party. Ibid. See also Reale v. Wayne, 132 N.J. Super. 100, 106 (Law Div. 1975) (“While it is clear that an affirmative defense under the act should properly be pleaded under R. 4:5-4, failure to do so may be excused by the court under appropriate circumstances” and when there is neither an allegation of, nor perception of prejudice to the other party); Mathis v. Fantozzi, 105 N.J. Super. 181, 183

(App. Div. 1969) (no “prejudicial error” to allow proof of a claim “even though it had not been specifically pleaded”).

The rules governing practice in the Tax Court generally incorporate the rules controlling practice in civil proceedings unless otherwise specifically provided. See, e.g., R. 8:3-4 (a complaint shall “conform” to R. 4:5-7 (that pleading should be “simple, direct and concise, [with] no technical form”); R. 8:3-6 (an answer must “conform” to R. 4:5-3). See also Pressler & Verniero, Current N.J. Court Rules, comment to R. 8:1 (rules for practice/procedures in the Tax Court intended to “conform . . . as nearly as practicable to that applicable” in civil trial courts, including “implicated rules of general application,” unless specifically noted otherwise). While specificity of pleading is required only for a claim of exemption, the underlying purpose should be no different than its civil counterpart. This is especially true where R. 4:5-7 (which is incorporated into R. 8:3-4) states that “[a]ll pleadings shall be liberally construed in the interest of justice.” Therefore, the court finds that the purpose underlying specificity in pleadings in R. 4:5-4 as interpreted by the higher courts, applies equally as the basis for the specificity of pleading in R. 8:3-4(c).

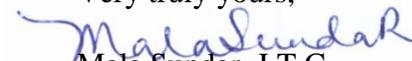
On the facts here, there is simply no prejudice to the City. It cannot claim surprise due to an unknown claim being made late in the day because it participated in the County Board proceedings, wherein it was on clear notice via plaintiff’s petitions filed therein and the letter requesting their dismissal without prejudice, that only the Subject’s exemptions were at issue since plaintiff complained against a denial of tax exemption by the City’s assessor, and sought a reinstatement of that exemption it had enjoyed for allegedly several years. Further, since it was the City which moved to preclude plaintiff from claiming an exemption within two months after

the complaint was filed, any claim of the City being surprised or prejudiced by plaintiff being allowed to challenge the City's assessor's denial of a tax exemption is not credible.

Under all these circumstances, the court finds that the City was always on notice that the Subject was denied exemptions by the City's assessor, that plaintiff appealed such denials to the County Board, and that plaintiff decided this court would be better suited to decide the merits of the exemption denials. Although the face of the complaint asserted that plaintiff contested the assessments as being in excess of the Subject's true value, the rider asserted that plaintiff, as a non-profit entity challenged the assessments. While the language in the rider may not have been articulated with finesse, or lacked the technical term "tax exemption," plaintiff's intention to claim that the Subject should be tax-exempt can be reasonably gleaned from the rider because the result of an exemption denial is the placement of an assessment on the property. Cf. Univ. Cottage Club of Princeton v. Borough of Princeton, 26 N.J. Tax 185, 191 (Tax 2011) (denying an untimely assertion of valuation since there was "nothing" in the complaints "that alludes, indirectly or otherwise, to valuation") (emphasis added).

The court concludes that under the facts herein, the pleading suffices to put the City on notice that plaintiff only sought reinstatement of the tax exemption, not lowered assessments. Therefore, the City's motion is denied. Plaintiff's complaint will be deemed to assert a claim for exemption only, and the court will decide this issue on its merits.

Very truly yours,

  
Mala Sundar, J.T.C.