

**Quad Graphics Inc. v Assessor for the City of  
Saratoga Springs**

2013 NY Slip Op 34133(U)

May 22, 2013

Supreme Court, Saratoga County

Docket Number: 2011-2702

Judge: Robert J. Chauvin

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This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK  
SUPREME COURT COUNTY OF SARATOGA

QUAD GRAPHICS INC.,

Petitioner,

**DECISION AND ORDER**

-against-

**Index No: 2011-2702  
RJI No: 45-1-2011-1128**

ASSESSOR FOR THE CITY OF SARATOGA SPRINGS,  
NEW YORK, BOARD OF ASSESSMENT REVIEW FOR  
THE CITY OF SARATOGA SPRINGS, NEW YORK AND  
THE CITY OF SARATOGA SPRINGS, NEW YORK

**ORIGINAL**

Respondents.

**Appearances:**

For Petitioner:

Bruce S. Zeftel, Esq.  
4043 Maple Road, Suite 104B  
Buffalo, NY 14226-1057

For Respondent City of Saratoga Springs:

Martin A. Cohen, Esq.  
Fitzgerald Morris Baker Firth P.C.  
16 Pearl Street - P.O. Box 2017  
Glens Falls, NY 12801

For Respondent Saratoga Springs Enlarged School District:

Richard F. Mullaney, Esq.  
480 Broadway, Suite 332  
Saratoga Springs, NY 12866

**Before: Hon. Robert J. Chauvin, J.S.C.**

By notice of motion dated, March 6, 2013, the respondent, City of Saratoga Springs Enlarged School District, seeks an order dismissing the petitioner's proceeding brought pursuant to Article 7 of the Real Property Tax Law for the tax year 2011, because of an incorrect or defective verification, pursuant to RPTL § 706. The motion is supported by the affidavit of Richard F. Mullaney, Esq., dated March 6, 2013, with attached exhibit "A", a copy of the notice of petition and petition, dated July 22, 2011, (containing the verification by Paul E. Steimle an employee of MJI Consulting Group LLC and a letter of authorization signed by Tony Levatino,

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BALLSTON SPA, NY

FILED

Director US Indirect Tax for Quad Graphics, Inc., authorizing MJI Consulting Group LLC to present the verified petition).

By notice of cross motion, dated March 19, 2013, petitioner opposes such motion and, in turn, seeks an order pursuant to Court Rules § 130-1.1, granting costs in the form of reimbursement for expenses reasonably incurred and attorney's fee in the amount of \$1,667.50, upon the contention that the initial motion is frivolous in nature. Such opposition and cross motion are supported by the affirmation of Bruce S. Zefitel, Esq., dated March 19, 2013; the affidavit of Anthony Levatino, dated March 6, 2013; the affidavit of Paul E. Steimle, dated March 19, 2013, with attached exhibits "A", copy of email correspondence and "B", copy of verified answer; and memorandum of law, dated March 19, 2013

Thereafter, a reply affidavit was submitted by Richard F. Mullaney, Esq., dated March 25, 2013.

The motion by respondent mirrors a motion made in regard to a 2012 tax petition by the same petitioner. Both motions were returnable on April 5, 2013

As indicated above the underlying proceeding herein is a petition brought in regard to a real property tax assessment of property owned by the petitioner, pursuant to Article 7 of the RPTL for the year 2011. Such was initiated by a notice of petition and petition, both dated July 22, 2011 and verified by Paul E. Steimle of MJI Consulting Group, LLC as agent for the petitioner. Such is supported by a letter of authorization signed by Tony Levatino, Director US Indirect Tax, for Quad Graphics, Inc., dated May 9, 2011, expressly providing MJI the authority to verify petitions brought pursuant to RPTL § 706 on behalf of Quad Graphics, Inc. The respondent school district appeared by verified answer, dated August 15, 2011. At no time prior to the making of the initial motion did the respondent reject the petition as defective or improperly verified, nor did respondent set such forth as an affirmative defense or objection in point of law in its answer.

The gravamen of the motion is to dismiss the petition based upon an alleged defective verification. The respondent, City of Saratoga Springs Enlarged School District, asserts that the verification and supporting authorization do not comply with the provisions of RPTL § 706. Specifically, the respondent school district asserts that the authorization letter signed by Tony

Levatino, Director Indirect Tax, for petitioner, Quad Graphics Inc. does not give any basis for his authority to authorize the verification of the underlying petition by MJI Consulting Group LLC. Respondent contends that such defect is jurisdictional in nature, requiring dismissal of the petition.

Petitioner opposes such motion upon the basis that the verification and authorization are sufficient and, even if they are not, that such defect is not jurisdictional in nature. Furthermore the petitioner contends that the respondent waived any such objection in not having timely rejected such pleading and/or presenting any such defense or objection in point of law in its answer. Based upon such petitioner submits that the respondent's motion must be denied and the cross-motion granted.

RPTL § 706 sets forth the requirements of the proper verification of a petition brought pursuant thereto. In this regard RPTL § 706 does not specify how the verification or authorization is to be worded, only that such petition be verified by an agent authorized in writing to verify and file such petition and whose authorization has been made a part of the petition.

In this particular instance, the petition is properly verified. The letter of Mr. Levatino authorizing the verification of the petition indicates that he is the Director of Indirect Tax for Quad Graphics Inc. and expressly authorizes MJI Consulting, LLC to verify petitions brought pursuant to RPTL § 706 on behalf of petitioner.

Furthermore, even if the verification were not proper, it would be treated as an unverified petition, at worst, and would proceed forward. Such a defect is not jurisdictional and does not give grounds for a dismissal (*Matter of Miller v Board of Assessors*, 91 NY2d 82 [1997]).

Finally CPLR § 3022 dictates a remedy for a party rejecting a pleading based upon a defective verification. It requires and the Court quotes:

“.....he may treat it as a nullity, provided he gives notice with due diligence to the attorney of the adverse party that he elects so to do”.

There is no affirmative defense nor objection in point of law alleging the defective nature of the petition contained in the respondent school district's verified answer, dated August 15,

2011. Likewise at no time prior to the making of the instant motion did respondent reject such pleading and/or otherwise provide any such notification to the petitioner. Thus, even if there were some defect in the verification and authorization herein, it has been waived.

As such, the respondent's motion is in all respects denied, with costs awarded petitioner.

In regard to the petitioner's cross motion, the court notes that the petitioner did advise respondent concerning the adequacy of the verification and authorization, as well as, the non-jurisdictional nature of any claimed defect, prior to the making of the initial motion and that the respondent school district filed the motion despite having that information. Although the court finds the filing of the motion by respondent was improvident, it does not find that it rises to the level that would require or permit the imposition of sanctions or award of attorney's fees. As such, petitioner's request for such relief is denied.

This memorandum shall constitute the decision and order of the court. The original decision and order and the underlying papers are being delivered directly to the Saratoga County Clerk for filing. The signing of this decision and order and the delivery of this decision and order to the Saratoga County Clerk shall not constitute notice of entry under CPLR § 2220, and the parties are not relieved from the applicable provisions of that rule regarding service of notice of entry.

DATED: May 22, 2013  
Ballston Spa, NY



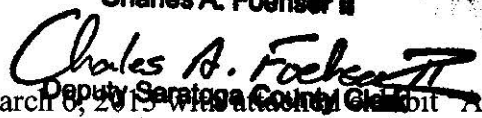
HON. ROBERT J. CHAUVIN  
SUPREME COURT JUSTICE

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BALLSTON SPA, NY

ENTERED

The following papers were read and considered:

1. Notice of Motion dated March 6, 2013;
2. Affidavit of Richard F. Mullaney, Esq. dated March 6, 2013 with attached exhibits "A" and "B";
3. Notice of Cross Motion dated March 19, 2013;
4. Affirmation of Bruce S. ZefTel, Esq. dated March 19, 2013;
5. Affidavit of Anthony Levatino dated March 6, 2013;
6. Affidavit of Paul E. Steimle dated March 19, 2013 with attached exhibits "A" and "B";
7. Petitioner's Memorandum of Law dated March 19, 2013; and
7. Reply Affidavit of Richard F. Mullaney, Esq. dated March 25, 2013.

ENTERED  
Charles A. Foehner II  
  
Deputy Saratoga County Clerk