

OHIO BOARD OF TAX APPEALS

Orange City School District Board of)
Education, Chagrin Retail, LLC, and)
Eton Square, an Ohio Ltd.,) CASE NOS. 2009-T-469,
) 2009-T-470, 2009-T-471,
Appellants/Appellees,) 2009-T-472, 2009-T-473
)
vs.) (REAL PROPERTY TAX)
)
Cuyahoga County Board of Revision and) ORDER
Cuyahoga County Auditor,)
) (Granting Motion to
Appellees.) Compel Discovery)

APPEARANCES:

For the Bd. of Edn. - Kadish, Hinkel & Weibel
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Cleveland, Ohio 44114

For the Property Owners - Sleggs, Danzinger & Gill Co., LPA
Todd W. Sleggs
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Cleveland, Ohio 44113

For the County Appellees - William D. Mason
Cuyahoga County Prosecuting Attorney
Timothy J. Kollin
Assistant Prosecuting Attorney
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Entered August 25, 2009

This cause and matter came on to be considered by the Board of Tax Appeals upon a motion for extension of time to complete discovery or, in the alternative, motion to compel discovery filed by the board of education (hereinafter

“BOE”). The matter was submitted to the Board of Tax Appeals upon the motion and brief in support of said motion. No response from the property owner was received.

Specifically, said motion provides, in pertinent part:

“Now comes Appellant Board of Education for the Orange City School District by and through undersigned counsel who herein requests an extension of time of thirty (30) days until August 24, 2009 for the parties to complete discovery in the above-captioned matter. The reason for this request is that the Board of Education has not received Appellee Chagrin Retail’s documents in response to the Board of Education’s request for production of documents. In addition, this request is made because counsel for Chagrin Retail requested that the deposition of the owner’s representative, scheduled for July 22, 2009, be continued.

“In the alternative, the Board of Education requests an order compelling Chagrin Retail to respond to outstanding discovery requests that were served upon such party on or about April 14, 2009 and the production of a witness pursuant to the subpoena for a deposition.”

In its memorandum in support of its motion, the BOE goes on to state

that:

“The above-captioned appeals were filed by the Board of Education and the property owner on or about March 25, 2009, with a discovery deadline on or about July 25, 2009. On April 14, 2009, the Board of Education served Chagrin Retail with Interrogatories and a Request for Production of Documents. *** These discovery requests seek information that is relevant to the value of the subject property for tax valuation purposes, with specific reference to tax year 2006. To date, the property owner has failed to produce one document in response to this request.

“On July 7, 2009, the Board of Education then served notice of a deposition duces tecum. *** The deposition was scheduled for July 22, 2009. On July 20, 2009,

counsel for Chagrin Retail asked that the deposition be postponed for a period of two weeks. Consequently, additional time is necessary to complete discovery in this matter.

“***

“The Board of Education has made a reasonable effort to procure the information requested in its discovery requests. *** While counsel for Chagrin Retail inquired if the discovery could be narrowed, he has not indicated which request he would like to have narrowed nor has he filed a protective order. The property owner’s failure to provide the requested information has left Appellant Board of Education with no choice but to seek this Board’s assistance through the issuance of an Order Compelling Discovery. Appellant is entitled to the information requested as such information is relevant to a determination of value as of the tax lien date.” Motion at 3-4.

Ohio Adm. Code 5717-1-11 (A)(1) provides:

“Discovery should be commenced by all parties promptly after the filing of a notice of appeal and should be completed as expeditiously as possible. Discovery should be completed not more than one hundred twenty days after the filing of the notice of appeal, which shall also be the last day for a party to seek involvement of the board in discovery matters. Upon motion and for good cause, the board may establish other specific times for completion of discovery or consideration of discovery motions.”

The BOE seeks an extension of the discovery period for 30 days, or, in the alternative, an order compelling discovery. In *Spalding Leasing Co. v. Cuyahoga Cty. Bd. of Revision* (Interim Order, Jan. 14, 2000), BTA No. 1999-K- 1460, 1475, unreported, a case in which a similar motion to extend discovery was filed, the board concluded:

“Although Ohio Adm. Code 5717-1-11(A)(1) contemplates that there may exist *extraordinary* circumstances wherein the deadline for completing discovery and seeking this Board’s intervention in discovery matters may be extended, it requires the movant under such circumstances to demonstrate good cause. In this instance, good cause is found lacking. Merely because a party upon whom discovery has been served has not responded, does (sic) not justify an extension of discovery until some uncertain period in the future. *** If this Board were to routinely grant such motions, the exception to the general deadlines set forth in Ohio Adm. Code 5717-1-11 would consume the rule. Accordingly, the BOE’s motion to extend discovery is not well-taken and it is hereby denied.” Id. at 3. (Emphasis in original)

This board has ordered extensions of discovery periods when the parties to the appeal communicate a willingness to comply with discovery requests; in the present appeal there has been no suggestion that opposing counsel has responded to the BOE’s request for further information by objection, or otherwise, or sought additional time in which to respond. Further, the property owner’s counsel never responded to the instant motion. Because the BOE’s motion was made at the end of the period during which intervention of the board could be sought, the board will construe the motion filed to be in the nature of a motion to compel discovery. The board hereby provides the property owner a period of 14 days in which to respond to the BOE’s requests.

On behalf of the Board of Tax Appeals,
pursuant to Ohio Adm. Code Section
5717-1-10

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Rebecca R. Luck
Attorney Examiner

