

NOT FOR PUBLICATION

For Upload

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

In re: Tax Litigation

)
)
) Civ. No. 2000-141
) Civ. No. 2000-167
) Civ. No. 2001-151
) Civ. No. 2001-155
) Civ. No. 2001-181
) Civ. No. 2001-196
) Civ. No. 2001-197
) Civ. No. 2001-228
) Civ. No. 2001-240
) Civ. No. 2002-057

ATTORNEYS :

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For plaintiff Sugar Bay Club and Resort,

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For the defendants,

MEMORANDUM

On August 27, 2002, this Court admonished the government for its rather cavalier attitude to discovery requests by plaintiff Equivest Corporation in Civil No. 2001-155 and ordered the government to comply with said requests. Plaintiff Equivest again comes before me to note the government's continuing obfuscation of the discovery process and its failure to comply with my August 27th order. Based on the papers and argument of the parties at the hearing held on October 16, 2002, I address these concerns in turn.¹

Interrogatory No. 9

Equivest's interrogatory No. 9 seeks to compel the government to answer whether the replacement cost approach was used by the defendant in assessing Equivest's real property for tax year 2000 and, if so, to provide "the per square foot

¹ Both Equivest and plaintiff Lindon Corporation moved to amend their respective complaints. Having considered the premises of their motions and the government's opposition to Equivest's motion to amend, I have granted both plaintiffs' motions to amend their complaints in separate orders.

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reproduction cost used by defendant(s) for rebuilding the improvements, broken down by building, and the depreciation factor used." In its original response to this interrogatory, the government simply referred to 230 discovery exhibits as containing the requested information. After I found this answer to be unacceptable and ordered the government to "completely respond" to interrogatory No. 9, the government submitted a revised document list identifying some of the 230 documents as relating to plaintiff's particular properties. The government's response to interrogatory No. 9 is still unresponsive. In fact, I find that the government has still never even bothered to answer the question(s) posed by the interrogatory. Merely providing Equivest with a list of documents and expecting it to isolate the necessary data and calculate the costs, etc., is not what rules require. Rule 33(b)(1) specifies that "[e]ach interrogatory shall be answered . . . "fully." FED. R. CIV. P. 33(b)(1) ("The answers are to be signed by the person making them, and the objections signed by the attorney making them."); see also *Hansel v. Shell Oil Corp.*, 169 F.R.D. 303, 305 (E.D. Pa. 1996) ("Parties must provide true, explicit, responsive, complete, and candid answers to interrogatories."). Therefore, I will order the government to fully and specifically answer

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Interrogatory No. 9 no later than November 4, 2002. If the government fails to comply with the rules and this order, it will be precluded from attempting to establish at trial the per square foot reproduction cost or depreciation factor it used in its replacement cost assessment of Equivest's properties.

Interrogatory No. 23

Equivest's interrogatory No. 23 seeks information pertaining to the Virgin Islands Board of Tax Review. In particular, Equivest wants data on appeals to the Tax Review Board since 1997, such as, when the appeals were filed and when they were decided. This data is essential for plaintiffs' claim that administrative review of tax appeals is inadequate and to respond to the government's defense that local law provides an adequate process for appealing property taxes. The government originally objected to this interrogatory as overboard and unduly burdensome, and interposed as well its blunderbuss objection that the information sought was confidential, irrelevant, inadmissible and privileged. Again finding the government's conduct unacceptable, I ordered it to completely respond to this interrogatory. In response, the government has again noted the same objections to this question, but has provided Equivest with

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several exhibits that may contain the answers to some of the questions posed. Its answer thus is still woefully inadequate.

The government claimed at the hearing that it lacks the manpower to provide the data for the years requested. This is no excuse for not providing this essential information.

Accordingly, I will order the government to fully and specifically answer Interrogatory No. 23. The answers providing data for 1999 will be served on plaintiffs no later than November 4, 2002, the answers providing data for 1998 will be served on plaintiffs no later than November 22, 2002, and the answers providing data for 1997 will be served on plaintiffs no later than December 20, 2002. If the government fails to comply with the rules and this order, it will be precluded from challenging the plaintiffs' claim that local law provides an adequate process for appealing property taxes.

Document Production Request No. 19

Document production request No. 19 requests documents related to the work of Joseph Hunt, the special master appointed in connection with the Berne Settlement. After having its blunderbuss objection overruled, the government provided the government with seven (7) pages of documents relating to Special

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Master Hunt and refers plaintiffs to the court file for his reports. Since Special Master Hunt was appointed by the Court, his reports are public and readily available in the Court's Berne file for Equivest to review and copy. Accordingly, I find that the defendants have complied with Document production request No. 19.

Document Production Request No. 21

Document production request No. 21 requests documents "tending to support or refute the contention that [the government has] revised the assessed value of commercial property not owned by Plaintiff downward based upon income or other financial information (or an appraisal which uses such income or financial information) whether provided by the owner . . . of the assessed commercial property or by a third party." Even though I previously overruled the government's blunderbuss objection to this request, the government again argues privilege and work product. Regardless of whether these privileges apply, Equivest is entitled to this information because plaintiff has a substantial need for the information and cannot obtain its substantial equivalent by any other means. See FED. R. CIV. P.

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26(b) (3). Therefore, I will order the government to provide all documents relating to this request by November 4, 2002.

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Document Production Request No. 24

Document production request No. 24 requests documents identifying the members of the Virgin Islands Tax Review Board along with the minutes, notes, records and other documents pertaining to meetings, hearings and the decisions reached at these meetings and hearings. After previously rejected the government's blunderbuss objection, the government now offers a two-page document with the names and addresses of the Board's members. Like Equivest, I cannot believe that this two-page document is the only document in the entire Virgin Islands Government that would satisfy this request.² Without some credible explanation, which has not been forthcoming, I can only conclude one of two things: (1) someone in the government is deliberately withholding documents and obstructing the progress of this case and the processes of this Court or (2) the government agents charged with complying with these discovery requests are not taking them and the discovery process seriously. I hope it is the latter, which conclusion would be supported by the failure to include discovery exhibits 237-241 (which appear on their faces to pertain to the Tax Review Board) in answer to Document production request No. 24, even though they were

²
22 and 23.

I have the same concerns with the government's responses to document production requests Nos.

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attached to the government's response to interrogatory No. 23. Unless the government supplies a credible explanation for the paucity of its response to this document production request and certifies that these are all the documents that satisfy the request or otherwise adequately responds to Document production request No. 24, by November 4, 2002, I will entertain a motion from plaintiffs with suggestions for the proper relief to be awarded to plaintiffs or sanctions to be imposed on defendants.

Document Production Request No. 26 and Disclosure of Voss Reports

Document production request No. 26 requests all correspondence between consultant Kenneth Voss and the defendants. On a related issue, all plaintiffs have requested copies of Voss's reappraisal reports of their respective properties. In each instance, the government asserts that these documents are privileged as work product prepared specifically for this litigation. For example, the government alleges that Voss's reappraisal reports were created for the purpose of litigation and thus protected. Without more information, I cannot at this time make an informed decision whether Voss's reports and other related documents are privileged. For example, other documents seem to establish that the government hired Voss

on or about August 21, 2001, to help out with the *Berne* settlement and the subsequent task of overhauling the Territory's system for appraising commercial property. Accordingly, I need to examine whatever contract or engagement letters Mr. Voss has entered into with the government, which the government shall provide to the Court for *in camera* review no later than the close of business on Thursday, October 23, 2002. The government will also serve on the plaintiffs and the Court no later than November 4, 2002, a schedule of when Voss will complete the appraisals for each of the properties being litigated herein. Finally, the parties, both plaintiffs and defendants, shall designate their experts no later than November 1, 2002, and otherwise comply with any revised discovery schedule the magistrate judge may set.

Privilege Log

Finally, Equivest argues that the privilege log provided by the government is "woefully deficient" as it fails to provide the necessary specificity to determine whether the privilege asserted applies. See FED. R. CIV. P. 26(b)(5) (stating that party making a privilege claim must do so "expressly and . . . describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information

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itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.") Having reviewed the government's so-called privilege log, I would have to agree with plaintiffs. Therefore, I will order the government to submit these documents to the Court for an *in camera* review to determine whether any privilege applies no later than the close of business on Thursday, October 23, 2002.

An appropriate order follows.

ENTERED this 21st day of October, 2002.

For the Court

Thomas K. Moore
District Judge

ATTEST:
WILFREDO MORALES
Clerk of the Court

By: _____
Deputy Clerk

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ORDER

For the reasons set forth in the foregoing Memorandum of even date, it is hereby

ORDERED that the plaintiffs' motion for discovery sanctions (Docket No. 104) is **GRANTED** in part and **DENIED** in part; it is further

ORDERED that defendants' objections to plaintiff's interrogatory No. 9 are **OVERRULED** and defendants shall fully and completely respond to this interrogatory by no later than November 4, 2002; it is further

ORDERED that defendants' objections to plaintiff's interrogatory No. 23 are **OVERRULED** and defendants shall fully and completely respond to this interrogatory by providing the requested data for 1999 no later than November 4, 2002, the requested data for 1998 by no later than November 22, 2002, and

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the requested data answers for 1997 by no later than December 20, 2002; it is further

ORDERED that defendants' objections to plaintiff's document production requests 21, 24, and 26 are **OVERRULED** and defendants shall produce all documents responsive to those requests by no later than November 4, 2002; it is further

ORDERED that the government shall provide the Court with a schedule of projected completion dates for Voss's reappraisal dates for each property in litigation by November 4, 2002; it is further

ORDERED that the government shall provide the Court by October 23, 2002, with copies of all documents relating to Voss to which the government objects on grounds of privilege, along with Voss's contracts and engagement letters, to aid this Court in determining whether these documents are in fact privileged; and it is further

ORDERED that the parties shall designate their experts by November 1, 2002.

ENTERED this 21st day of October, 2002.

For the Court

Thomas K. Moore

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District Judge

ATTEST:

WILFREDO MORALES
Clerk of the Court

By: _____
Deputy Clerk

cc: Hon. G.W. Barnard
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