

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

GAIL A. HERTZ and
SUSAN M. HERTZ,

Plaintiffs/Counter-Defendants,

vs.

Case No. 2015-798-CB

ABLE TOWING, LLC,
WAYNE'S SERVICE, INC.,
EDWARD D. HERTZ, DENNIS
HERTZ, and BRUCE HERTZ,

Defendants,

and

SERVICE TOWING, INC.,

Defendant/Counter-Plaintiff.

OPINION AND ORDER

Plaintiffs/Counter-Defendants ("Plaintiffs") seek to compel the personal tax returns of the individual defendants for the last five years. Defendants have filed a response as well as a motion to quash and/or a protective order.

I. Standard of Review

A motion to compel discovery is a matter within the trial court's discretion, and the court's decision to grant or deny a discovery motion will be reversed only if there has been an abuse of that discretion. *Linebaugh v Sheraton Michigan Corp*, 198 Mich App 335, 343-346; 497 NW2d 585 (1993). Generally, parties may obtain discovery regarding any matter not privileged that is relevant to the subject matter involved in the pending action. *Id.*; MCR 2.302(B)(1). Although

broad discovery is encouraged, a party opposing discovery must not be subject to “excessive, abusive, irrelevant or unduly burdensome discovery requests.” *Hamed v Wayne County*, 271 Mich App 106, 110; 719 NW2d 612 (2006) (internal citation omitted). As such, a court may issue “any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” MCR 2.302(C). Furthermore, discovery should not be extended merely to allow a “fishing expedition.” *VanVorous v Burmeister*, 262 Mich App 467, 477; 687 NW2d 132 (2004).

II. Arguments and Analysis

In their motion to quash and/or for protective order, Defendants contends that the individual defendants' tax returns are not relevant.

In response, Plaintiffs aver that the tax returns are relevant as the individual defendants are shareholders in Defendants Service Towing, Inc. and Wayne Service, Inc., that those entities are s-corporations, and that as a result the gains or losses of the entities flow to/from the individual defendants. Further, Plaintiffs assert that the individual defendants' income is relevant to the issues as to the value of entities in question, as well as to whether Defendants' allegedly oppressive actions damaged Plaintiffs.

In their motion, Defendants have not provided any support for their position that the request for tax returns is irrelevant, and Plaintiffs has identified multiple reasons as to why the returns are needed. Tax returns are generally subject to discovery. *Fassihi v St. Mary Hosp.*, 121 Mich App 11, 15; 328 NW2d 132 (1982). Moreover, the party opposing discovery of a certain matter generally

has the burden of showing why the request for discovery should be denied. *Wilson v. Saginaw Circuit Judge*, 370 Mich. 404, 413, 122 N.W.2d 57 (1963). In this case, Defendants have not shown that the request in question should be denied, and Plaintiffs have demonstrated multiple reasons as to why the returns are needed. Consequently, the Court is convinced that Plaintiffs' motion to compel the production of the individual defendants' tax returns for the last 5 years must be granted.

III. Conclusion

Based upon the reasons set forth above, Plaintiffs' request to compel the production of the personal tax returns and related schedules for all of the individual shareholders of Service Towing, Inc., Wayne's Service, Inc. and Able Towing, LLC for the last five years is GRANTED. Defendants' motion to quash and/or for a protective order as to that request is DENIED.

In compliance with MCR 2.602(A)(3), the Court states this Opinion and Order does not resolve the last claim and does not close the case.

IT IS SO ORDERED.

Date: MAR 28 2016

Kathryn A. Viviano
Hon. Kathryn A. Viviano, Circuit Court Judge