

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TRAVELERS CASUALTY AND
SURETY COMPANY OF AMERICA,
a Connecticut corporation,

NO. CIV. S-07-2493 LKK/DAD

Plaintiff,

v.

O R D E R

SIDNEY B. DUNMORE, an
individual; SID DUNMORE
TRUST DATED FEBRUARY 28,
2003, a California trust;
SIDNEY B. DUNMORE, Trustee
for Sid Dunmore Trust Dated
February 28, 2003; DHI
DEVELOPMENT, a California
corporation,

Defendants.

_____ /

Pending before the court is defendant Sidney Dunmore's Request for Reconsideration of the Magistrate Judge's ruling on plaintiff's motion to compel production of defendant Dunmore's tax returns.

I. Procedural Background

In this action, plaintiff seeks to be indemnified against loss related to bonds issued to Dunmore Homes and related entities,

1 pursuant to applicable indemnity agreements. On January 15, 2010,
2 plaintiff served a Request for Production of Documents on defendant
3 Dunmore, requesting federal income tax documents for the years
4 2003-2008. Defendant Dunmore's response to the request for
5 production stated that the tax documents were privileged and
6 irrelevant. Plaintiff filed a motion to compel production of the
7 tax documents on September 24, 2010, and a hearing was held before
8 Magistrate Judge Drozd on October 22, 2010.

9 On October 25, 2010, the magistrate judge granted a motion by
10 plaintiffs to compel production of defendant's tax returns. ECF No.
11 191. The magistrate judge stated that the motion was granted "for
12 the reasons stated on the record." Id. Defendant timely filed a
13 motion to reconsider the magistrate's order on November 4, 2010,
14 but did not file a transcript of the hearing until March 24, 2011.
15 Plaintiff Travelers Casualty and Surety Company have filed an
16 opposition to the Motion to Reconsider, ECF No. 202. For the
17 reasons discussed below, defendant's motion to reconsider is
18 DENIED.

19 **I. Standard for a Motion to Reconsider a**
20 **Magistrate Judge's Nondispositive Ruling**

21 Local Rule 303 provides that a party may seek reconsideration
22 by a district judge of a magistrate judge's rulings on discovery
23 matters. "The standard that the assigned judge shall use in all
24 such requests is the 'clearly erroneous or contrary to law'
25 standard." Local Rule 303 (f). See also Fed. R. Civ. P. 72(a) (for
26 nondispositive matters decided by a magistrate judge, the district

1 judge must "modify or set aside any part of the order that is
2 clearly erroneous or contrary to law.")

3 **II. Analysis**

4 California courts have "interpreted state taxation statutes
5 as creating a statutory privilege against disclosing tax returns."
6 Weingarten v. Superior Court, 102 Cal. App. 4th 268, 274 (2002).
7 This privilege is waived when "circumstances indicate an
8 intentional waiver of the privilege." Id.

9 At the hearing on plaintiff's motion to compel production of
10 defendant's tax returns, the Magistrate Judge stated that an
11 indemnity agreement between the parties that states that defendant
12 Dunmore "shall furnish, upon demand, and [Travelers] shall have the
13 right of free access to, at reasonable times, the records of
14 indemnitors including, but not limited to books, papers, records,
15 documents, contracts, reports, financial information, accounts and
16 electronically stored information, for the purposes of examining
17 and copying them" constitutes a waiver of the state-law privilege
18 against disclosing tax returns. See Transcript of October 22, 2010
19 Hearing ("hearing transcript") 2:19-3:2, ECF No. 231. Magistrate
20 Judge Drozd stated ". . . it's a very broad disclosure provision.
21 . . . I can't fathom any interpretation of that clause that would not
22 require him to turn over his tax returns under the agreement." Id.

23 The court finds no clear error in Magistrate Judge Drozd's
24 conclusion that defendant had waived the California law privilege
25 against disclosing tax returns. The indemnity agreement between the
26 parties requires defendant to turn over "records, documents, . .


1 financial information" and other documents listed. The court finds
2 no clear error in Magistrate Judge Drozd's conclusion that this
3 broad provision constitutes circumstances that indicate an
4 intentional waiver of the privilege.

5 **IV. Conclusion**

6 Defendant's Motion for Reconsideration, ECF No. 197 is DENIED.

7 IT IS SO ORDERED.

8 DATED: September 29, 2011.

9
10
11 
12 LAWRENCE K. KARLTON
13 SENIOR JUDGE
14 UNITED STATES DISTRICT COURT
15
16
17
18
19
20
21
22
23
24
25
26