

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS SPRINGFIELD DIVISION**

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

No. 14-cv-3132

JEROLD W. BARRINGER,)

Individually and as trustee of)

the KELBAR ASSOCIATES)

TRUST, LINDA M.)

BARRINGER, JANET E.)

CHOTT-BEASELY, MERLE)

WERNLE, STATE OF ILLINOIS)

DEPARTMENT OF REVENUE,)

and RON JENKINS as)

MONTGOMERY COUNTY,)

ILLINOIS, TREASURER,)

Defendants.)

OPINION AND ORDER

THOMAS P. SCHANZLE-HASKINS, U.S. MAGISTRATE JUDGE:

Before the Court is the Motion to Reconsider (d/e 36) of pro se Defendants Jerold W. Barringer and Linda M. Barringer.

Background

On May 2, 2014, the United States filed a Complaint seeking to reduce to judgment the outstanding liability for Internal Revenue taxes of Jerold W. Barringer and Linda M. Barringer, and to enforce the associated tax liens against

specific real estate located in Nokomis, Illinois. (Complaint, d/e 1) The Court entered a Scheduling Order (d/e 26) on November 20, 2014. Under the Scheduling Order, initial disclosures under Rule 26 were to be made by January 9, 2015.

On April 28, 2015, the Plaintiff United States (United States) filed a Motion to Compel Discovery and Disclosures (d/e 33). The Motion to Compel had attached the declaration of Plaintiff's counsel who indicated that no initial disclosures on behalf of the Barringers had been received and the United States on January 30, 2015 sent a set of requests for production and a set of interrogatories to Jerold W. Barringer via U.S. Mail. Counsel indicated that he had not received responses to the requests for production or the interrogatories. Counsel related that on March 18, 2015, Jerold Barringer had informed counsel he should have discovery completed by April 1, 2015. Plaintiff's counsel indicated he had made numerous attempts to contact Jerold W. Barringer by both e-mail and telephone and had not received return correspondence. (d/e 32, pg. 2) The Certificate of Service attached to the Motion indicated that the Motion to Compel was served on Jerold W. Barringer and Linda M. Barringer by depositing a copy in the U.S. Mail sent to 200 West Front Street, P.O. Box 213, Nokomis, IL 62075.

No response was made to the Motion to Compel Discovery and Disclosures (d/e 33) and the Court granted the Motion in part. The Barringers

were ordered to make disclosures to the Plaintiff by June 12, 2015. The Court reserved ruling on the request made by United States for attorney's fees. The Court set the fee request for hearing on June 25, 2015 at 10:30 a.m. in Courtroom III in Springfield, Illinois.

On June 4, 2015, the United States withdrew its request for attorney's fees with regard to the Motion to Compel Discovery and Disclosures. (d/e 35) On the same date, pro se Defendants Barringer filed a Motion to Reconsider (d/e 36). The Motion to Reconsider indicated the Motion to Compel Discovery and Disclosures was not received by the Barringers, although the United States had indicated to the Barringers that it would be filed. The Barringers stated that the mail is not always reliable for delivery of letters and the Motion was not sent certified mail. Defendant Jerold W. Barringer indicated he had been sick and was in the hospital, which prevented filing a response to the Motion. Defendant Barringers requested that the Court deny the request for attorney's fees and allow discovery to proceed at the normal pace.

Order

Defendants Barringer indicated that they did not receive the Motion to Compel Discovery and Disclosures (d/e 33) filed by Plaintiff. The Plaintiff, as required by law, mailed the Motion to Compel Discovery and Disclosures to Defendants. The address of the Defendants on their Motion to Reconsider

(d/e 36) is identical to the address on the Certificate of Service on the Motion to Compel Discovery and Disclosures. There is no requirement that the notice of the motion be sent via certified mail. It is the responsibility of the Defendants to check their mail and ensure that the parties are provided with proper mailing addresses. In any event, Defendant Jerold W. Barringer indicates he had talked with counsel for Plaintiff and knew the motion was to be filed. Counsel for Plaintiff has attempted to contact Barringers, but received no response. Jerold W. Barringer had assured counsel for Plaintiff that the discovery would be responded to on or before April 1, 2015. That was not done.

The Court denies the Motion to Reconsider (d/e 36).

Based upon the representation of the Defendants regarding Defendant Jerold W. Barringer's medical problems, the date Defendants Barringer are ordered to make disclosures is extended from June 12, 2015 to June 24, 2015.

In its Opinion (d/e 34) entered on May 22, 2015, the Court indicated it cancelled the telephonic status conference regarding settlement / mediation set in the Scheduling Order (d/e 26) for June 22, 2015 and would address that issue at the June 25, 2015 hearing. Since the United States has withdrawn its request for attorney's fees, the in person hearing on June 25, 2015 is cancelled and substituted in lieu thereof is a telephone conference between the remaining parties to discuss whether a settlement conference or mediation would help resolve this matter and to determine discovery compliance by the Defendants.

THEREFORE, IT IS ORDERED AS FOLLOWS:

- 1) Defendants' Motion to Reconsider (d/e 36) is denied.
- 2) Defendants Jerold W. Barringer and Linda M. Barringer are given until and including June 24, 2015 to make disclosures and comply with the discovery previously propounded by Plaintiff.
- 3) The in person hearing before the Court scheduled for June 25, 2015 at 10:30 a.m. is cancelled and converted to a telephone status conference on the same date and at the same time. The Court will place the call. The parties are to be available and ensure that the Court has telephone numbers where the parties can be reached if the number is different from the telephone number previously provided to the Court.

ENTER: June 11, 2015

s/ Tom Schanzle-Haskins
UNITED STATES MAGISTRATE JUDGE