

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIREUnited States of America

v.

Civil No. 12-cv-114-JD

Charles Limanni, et al.O R D E R

The United States brought suit against Charles Limanni, pursuant to 26 U.S.C. §§ 7402 and 7403, to enforce federal tax liens on his property in Barrington, New Hampshire. The Town of Barrington, Linda Limanni, and Artella E. Chase are also named in the suit as potentially interested parties. Charles Limanni is proceeding pro se and filed a "motion for discovery." The government objects to the motion.

Discussion

Charles Limanni filed a "motion for discovery," requesting that the court order the government to produce any documents in its possession relating to the case and to furnish him with all information that it intends to introduce at trial. The government objects, arguing that the discovery period as set forth in the parties' case management plan and extended by the court has passed, and that Limanni did not seek any discovery during that period. The government further argues that if it is

forced to respond to Limanni's document requests then the response date would be close to the deadline for the submission of final pretrial statements, which would place an undue burden on the government.

"[D]iscovery [requests] must be served upon a party so that the receiving party has enough time to respond, as provided for in the Federal Rules, otherwise, the discovery requests are untimely." Drahuse v. Fed. Home Loan. Mortg. Corp., 2011 WL 4088170, at *2 (E.D. Mich. Sept. 14, 2011). In other words, "when a scheduling order establishes a deadline for 'completion of discovery,' it requires more than simply filing discovery requests prior to the deadline. Rather, it requires that parties seeking discovery file their requests sufficiently in advance of the deadline, such that the responses are due by the deadline for completion of discovery." Bailey v. Komatsu Forklift U.S.A., Inc., 2008 WL 2674886, at *3 (N.D. Iowa July 7, 2008); see also Gargano v. Vigilant Ins. Co., 494 Fed. Appx. 98, 101 (1st Cir. 2012) (affirming grant of summary judgment where interrogatories and deposition notices "called for action after the discovery deadline").

The case management plan agreed to by the parties and approved by the court provided a discovery deadline of April 30, 2013. The court subsequently granted the government's motion to

extend the discovery deadline until July 2, 2013. Limanni did not serve the government with document requests and instead filed the motion which is the subject of this order on July 2, 2013.

If Limanni's motion were considered a request for production of documents under Federal Rule of Civil Procedure 34, it would be untimely because the government's response would not be due until thirty days from the date the motion was served, which is after the discovery deadline.¹ The government notes, however, that "the motion could be viewed as a request for an enlargement of time to serve document requests seeking the materials identified in the motion." The government does not appear to object to that request, but asks that if the court grants such relief, the September 6, 2013, final pretrial conference should be rescheduled. The government suggests an extension of the discovery deadline until August 31, 2013.

In light of Limanni's pro se status and the government's position, Limanni's motion is construed as a request for an enlargement of time to serve document requests seeking the

¹As the government notes, Limanni's motion cannot be considered a motion to compel under Federal Rule of Civil Procedure 37 because "[a] plaintiff need to first serve his discovery demands before he can move to compel their answer." Fox v. Poole, 2007 WL 837117, at *2 (W.D.N.Y. Mar. 15, 2007); see also Fed. R. Civ. P. 37(a)(3)(B).

materials identified in the motion. The discovery deadline is extended as proposed by the government. The final pretrial conference scheduled for September 6, 2013, the related deadlines, and the trial will be rescheduled.

Conclusion

For the foregoing reasons, Limanni's motion for an enlargement of time to serve document requests (document no. 20) is granted. The discovery deadline is extended until **August 31, 2013**. The final pretrial conference scheduled for September 6, 2013, the related deadlines, and the trial will be rescheduled.

SO ORDERED.


Joseph A. DiClerico, Jr.
United States District Judge

July 30, 2013

cc: Thomas P. Cole, Esquire
Charles Limanni, pro se
Linda Limanni, pro se
Steven M. Whitley, Esquire