

12-5-11 New York, NY
UNITED STATES TAX COURT
Washington, D.C. 20217

Chc

GEORGE & LEILA GORRA,

Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent

Docket No. 15336-10

ORDER

On July 1, 2011, petitioners filed a motion for continuance of trial (petitioners' motion). On July 28, 2011, respondent filed a response to petitioners' motion.

Petitioners indicate in petitioners' motion that respondent objects to the granting of that motion because:

respondent would like to commence discovery and depose a person or persons from Jerome Haims Realty, Inc., the company that employed the appraiser who prepared the appraisal that substantiated petitioners' conservation easement contribution.

In respondent's response to petitioners' motion, respondent indicates that "Respondent opposes a continuance unless respondent is allowed to conduct the * * * deposition of [Jerome] Haims Realty [, Inc.]."

On July 28, 2011, respondent also filed a motion to enforce deposition of Jerome Haims Realty, Inc. (respondent's motion). In that motion, respondent seeks to enforce the deposition of a person or persons from Jerome Haims Realty, Inc., Real Estate Appraisers & Consultants, Inc. (Haims Realty). Respondent indicates in respondent's motion that on July 1, 2011, respondent served a notice of deposition for the deposition of Haims Realty. Respondent further indicates in respondent's motion that petitioners did not serve on respondent an objection to that deposition, but that Haims Realty served an objection to its deposition by letter dated July 21, 2011, from counsel for Haims Realty.

On August 16, 2011, respondent filed a supplement to respondent's motion. On September 1, 2011, petitioners filed a response to respondent's motion, as supplemented, and a memorandum of law in support of that response (collectively,

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petitioners' response). In that response, petitioners indicate that they do not consent to the deposition of Haims Realty. On September 16, 2011, respondent filed a reply to petitioners' response. A principal objection of petitioners and Haims Realty to the deposition of Haims Realty is that respondent intends to pay any witness or witnesses from Haims Realty whose deposition is taken the same fees and mileage as witnesses in the U.S. District Courts. Neither respondent nor petitioners intend to call any person from Haims Realty as an expert witness. The fees and mileage to be paid to any witness whose deposition is taken is thus controlled by Rule 148, Tax Court Rules of Practice and Procedure.

In support of petitioners' motion, petitioners assert:

29. In light of the Hon. Judge Cohen's Order [dated May 10, 2011, denying petitioners' motion for partial summary judgment], a trial on the issues pertaining to petitioners' conservation easement donation and cash contribution deductions would be premature and ineffective because of the pending appeals in Scheidelman and 1982 LLC.

30. The final outcomes of Scheidelman and 1982 LLC may influence the outcome of the present case, facilitating settlement and obviating the need for a trial.

31. A continuance pending the final outcome of Scheidelman and 1982 LLC would conserve judicial resources and may facilitate settlement.

We note initially that petitioners correctly point out in petitioners' motion that Scheidelman v. Commissioner, T.C. Memo. 2010-151, is on appeal in the U.S. Court of Appeals for the Second Circuit, the Court to which an appeal in this case would normally lie. However, petitioners are wrong in asserting in petitioners' motion that 1982 East, LLC, Solomon D. Asser, Tax Matters Partner v. Commissioner, T.C. Memo. 2011-84, is on appeal in that Court of Appeals.

Petitioners represent in petitioners' motion that the issues in Scheidelman v. Commissioner, supra, "are substantially similar to the issues presented" in this case. Based upon that representation, the Court concludes that it would be appropriate to wait until the appeal in Scheidelman is resolved.

As for respondent's position that it objects to the granting of petitioners' motion unless respondent is allowed to depose a person or persons from Haims Realty, if a trial in the instant case were necessary after the appeal in the Scheidelman case is resolved, respondent would have the opportunity after this case is calendared again for trial to renew, if necessary, respondent's motion to enforce the deposition of Haims Realty.

After due consideration and for cause, it is

ORDERED that petitioners' motion is granted and this case is stricken for trial from the December 5, 2011 trial session in New York, New York, and is continued generally. It is further

ORDERED that respondent's motion, as supplemented, is denied without prejudice.

(Signed) Carolyn P. Chiechi
Judge

Dated: Washington, D.C.
October 6, 2011