

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION-CIVIL**

CAROLE THACKRAY-TADLEY and	:	May Term 2020
WALTER THACKRAY,	:	
	:	
Plaintiffs,	:	No. 722
	:	
v.	:	
WTA REAL ESTATE MANAGEMENT	:	COMMERCE PROGRAM
COMPANY, ET. AL.,	:	
	:	
Defendants.	:	Control Number 22035191
	:	
	:	1664 EDA 2022

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CAROLE THACKRAY- TADLEY and	:	February Term 2021
WALTER THACKRAY,	:	
	:	
Plaintiffs,	:	No. 2061
	:	
v.	:	
JAMES THACKRAY, ET. AL.,	:	COMMERCE PROGRAM
	:	
Defendants.	:	

**OPINION**

**Padilla, S.J.**

**August 15, 2022**

This opinion is submitted relative to the appeal filed by Plaintiffs Carole Thackray-Tadley and Walter Thackray ("Plaintiffs") of a discovery order dated and docketed on April 26, 2022 granting Defendants WTA Real Estate Management Company, Orthodox Street Properties, LLC, 777 Brewster, LLC, Charter Road Realty, LLC, Charter Entity LLC, Thackray, Inc., Woodhaven Investment Trust Company, South Jersey Equipment Rental and Repair Inc., Buena Business Park, LLC, Comly Street, LLC, James Thackray, Linda Thackray-Schmuesser, Robert Thackray and Benjamin Mark Thackray's (collectively referred to as "Defendants") Motion to Compel production of Plaintiffs' personal tax returns for the years 2012, 2015, and 2018. For the reasons discussed below, this appeal should be quashed. Alternatively, this court's order dated and docketed on April 26, 2022 should be affirmed.

OPFLD-Thackray-Tadley Etal Vs Wta Real Estate Management



Thackray Crane Rental (“TCR”) is a family-owned business that operates a crane rental company.<sup>1</sup> TCR made investments in commercial properties for the purposes of storing its equipment and created single purpose entities to hold title to the properties with TCR as the tenant.<sup>2</sup> Plaintiffs Carole Thackray-Tadley and Walter Thackray, percentage owners of the TCR and the single purpose entities, bring case captioned *Thackray et. al. WTA Real Estate Management, et. al.*, 2005-722 to dissolve Defendants WTA Real Estate Management Realty, LLC (“WTA”) and Orthodox Street Properties, LLC (“OSP”) alleging breaches of fiduciary duty, oppression, illegality, mismanagement, incompetence, disregard for affairs and corporate formalities, failing to act in the best interests of the companies and owners and failing to fulfill the entities stated purpose.<sup>3</sup> Additionally, Plaintiffs bring case captioned *Thackray et. al. v. Thackray, et. al.*, 2102-2061 against their four siblings and entities alleging breach of contract, breach of fiduciary duty, shareholder oppression, illegality, mismanagement, and disregard for corporate form.<sup>4</sup>

In these actions, Plaintiffs alleged that a 1033 Exchange<sup>5</sup> made in connection with a condemnation of property owned by OSP by the City of Philadelphia in 2012 is flawed.<sup>6</sup> In discovery, Defendants propounded discovery on Plaintiffs seeking copies of their personal income tax returns for the years 2012, 2015 and 2018, and any other year in which Plaintiffs

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<sup>1</sup> *Thackray et. al. v. WTA Real Estate Management Company, et. al.*, 2005-722 ¶ 1.

<sup>2</sup> *Id.* ¶ 2.

<sup>3</sup> ¶ 5.

<sup>4</sup> *Thackray et. al. v. Thackray, et. al.*, 2102-2061 ¶ 1.

<sup>5</sup> Section 1033 of the Internal Revenue Code permits conversion of property without recognition of a capital gain if the property in question is under threat of eminent domain. See, 26 U.S.C.A. § 1033.

<sup>6</sup> See, case number 2005-722 ¶¶ 89-105 and case number 2102-2061 ¶¶ 137-141.

made any reports relating to the condemnation and/or 1033 Exchange. The production of Plaintiffs 2012, 2015 and 2018 tax returns was the subject of prior discovery practice as evidenced by this court's orders dated April 14, 2021, July 21, 2021, and November 16, 2021.

On December 21, 2021, Plaintiffs served supplemental responses and objections to Defendants First Set of Requests for Production of Documents and objected to producing the tax returns for Plaintiffs for the years 2012, 2015 and 2018 on the grounds that the requests sought "confidential, personal, financial information." On March 25, 2022, Defendants filed a motion to compel the production of the tax returns and requested sanctions. Defendants filed a response in opposition and on April 26, 2022, the court heard oral argument. After hearing the parties arguments and reviewing the parties papers, the court on April 26, 2022 granted Defendants' motion to compel and ordered Plaintiffs to provide their income tax returns for the years 2012, 2015 and 2018 within ten days of docketing the order. Additionally, the court ordered that Plaintiffs provide all tax information related to reporting to the IRS and ordered that all production was confidential and for attorneys' eyes only. No sanctions were ordered. On May 20, 2022, Plaintiffs filed this timely appeal.

## **DISCUSSION**

### **I. The order appealed from is not a collateral order and therefore the appeal should be quashed.**

Generally, discovery orders are not final, and are therefore unappealable.<sup>7</sup> However, Pa. R. A. P. 313 (b) provides that an appeal may be taken from collateral orders. A collateral order is separable and collateral to the main cause of action where the right involved is too important to be denied review and the question presented is such that if review is postponed until final

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<sup>7</sup> *Melvin W. Smith Building Systems, LLC v. Bedford County Humane Society*, 2022 WL 1594552 (Pa. Super. 2022) citing *Jones v. Faust*, 852 A.2d 1201, 1203 (Pa. Super. 2004).

judgment in the case, the claim will be irreparably lost.<sup>8</sup> This court's order dated and docketed on April 26, 2022 is not a collateral order.

First, the April 26, 2022 order is not separable and collateral to the main cause of action. Separability occurs when the court can address the issue surrounding the disputed order without analyzing the ultimate issue in the underlying case.<sup>9</sup> Here, Plaintiffs allege that the 1033 Exchange utilized by OSP for the monies received for the condemned property is flawed and therefore calls into question the legitimacy of the 1033 Exchange for OSP and the members of OSP that received tax benefits because of the exchange. Plaintiffs, as members of OSP, also received benefits as a result of the exchange that is now being questioned by the complaints filed in these actions. Since Plaintiffs may have received a benefit from the 1033 Exchange, the production of their tax returns for the years in which the benefits may have been realized is not severable from the main cause of action. The Plaintiffs have placed the legitimacy and the resultant benefits of the 1033 Exchange at issue in the complaints and therefore the court's order compelling production of the tax returns for the alleged benefit years is not a collateral order.

As for the second prong, importance, it is not sufficient that the issue be important to the particular parties, the issue must involve rights deeply rooted in public policy going beyond the particular litigation at hand.<sup>10</sup> Here, Plaintiffs do have a statutory privacy interest in the information contained in their tax returns.<sup>11</sup> However, the privacy interest is not absolute and must be weighed against the efficiency interests sought to be advanced by adherence to the final

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<sup>8</sup> *Id. citing Meyer-Chatfield Corp., v. Bank Fin. Servs. Grp.*, 143 A.3d 930, 936 (Pa. Super. 2016).

<sup>9</sup> *Cabot Oil & Gas Corp. v. Speer*, 241 A.3d 1191, 1196-97 (Pa. Super. 2020).

<sup>10</sup> *Id.*

<sup>11</sup> *Dougherty v. Heller*, 138 A.3d 611, 628 (Pa. 2016) (noting the statutory privacy interest in federal tax returns).

judgment rule. Here, any benefit received by Plaintiffs from the 1033 Exchange is intertwined with the legitimacy of the exchange and the tax returns are the best evidence of whether Plaintiffs received any benefits from the exchange. Recognizing the privacy interest at stake, the court limited the production of the tax returns to the years in questions, 2012, 2015 and 2018 and ordered that the returns be “CONFIDENTIAL and for ATTORNEY EYES ONLY.” These limitations are sufficient to protect Plaintiffs’ privacy interest while ensuring that this matter proceeds to final judgment. Hence, when weighed against the cost of piecemeal litigation, the importance element also mitigates against collateral order review. Lastly, the April 26, 2022 order does not present a question that if postponed until final judgment will cause a claim to be lost, the returns are necessary in reviewing the 1033 Exchange and limitations have been placed to ensure that the returns production is protected.

Based on the foregoing, Plaintiffs’ appeal of this court’s order dated and docketed on April 26, 2022 should be quashed.

**II. Alternatively, this court’s order dated April 26, 2022 should be affirmed.**

The Rules of Civil Procedure permit discovery that is broad and liberal. Pa. R. Civ. P. 4003.1 states, in relevant part: “[A] party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking a discovery or to the claim or defense of any other party ....”<sup>12</sup> As it relates to tax returns, public policy considers tax returns as confidential communications between the taxpayer and the government and thus favors their nondisclosure.<sup>13</sup>

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<sup>12</sup> Pa.R.C.P. 4003.1.

<sup>13</sup> *R.R. Recovery Inc. v. Mast*, 2016 WL 3553152, at \*7 (Pa.Com.Pl., Philadelphia County May 13, 2016).

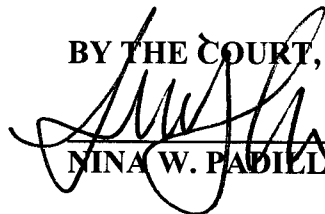
Pennsylvania courts have outlined a two-part test to determine the discoverability of tax returns.<sup>14</sup> The tax returns must be (1) relevant; and (2) a compelling need for such documentation must exist because the information is not available elsewhere.<sup>15</sup> Here, Plaintiffs 2012, 2015 and 2018 tax returns are relevant and are not available elsewhere except from Plaintiffs.

The tax returns ordered to be produced are Plaintiffs' tax returns for the years 2012, 2015, and 2018, the relevant years associated with the 1033 Exchange as alleged in the complaints in this consolidated action. As stated *supra.*, Plaintiffs allege that the transaction is flawed and by inference any benefits received by the members of OSP, Plaintiffs and Defendants, because of the 1033 Exchange are improper. While Plaintiffs claim Defendants are already in possession of whether Plaintiffs received a benefit from the 1033 Exchange since Defendants prepared the K1's for Plaintiffs, Defendants do not know what Plaintiffs reported to the IRS. In fact, Plaintiffs deny they received any benefit from the 1033 Exchange.<sup>16</sup> Whether Plaintiffs received a benefit from the 1033 Exchange is relevant and the information is only available in Plaintiffs 2012, 2015 and 2018 tax returns.

### CONCLUSION

Based on the foregoing, Plaintiff's appeal of this court's order dated April 26, 2022 should be quashed. In the alternative, this court's order date April 26, 2022 should be affirmed.

DATE: August 15, 2022

BY THE COURT,  
  
NINA W. PADILLA, S.J.

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<sup>14</sup> *R.R. Recovery Inc. v. Mast*, *supra.* citing *See id.*; *Horwath v. Brownmiller*, 51 Pa. D. & C.4th 33, 42-45 (2001).

<sup>15</sup> *Id.* See also, *Hubbard v. Gee*, 68 Pa. D. & C. 5<sup>th</sup> 422, 2017 WL 11657202 (2017).

<sup>16</sup> See, N.T. April 26, 2022 hearing p. 6 L7-10.