

STATE OF MINNESOTA  
COUNTY OF ST. LOUIS

TAX COURT  
REGULAR DIVISION

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Bonstores Realty Two, LLC,

Petitioner,

vs.

County of St. Louis,

Respondent.

**ORDER GRANTING  
CONSOLIDATION AND  
CONTINUANCE AND DENYING  
STAY**

File Nos: 69DU-CV-16-1004  
69DU-CV-17-881

Filed: February 15, 2018

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These matters came before the Honorable Tamar Gronvall, Judge of the Minnesota Tax Court, on petitioner Bonstores Realty Two, LLC's motion for consolidation, to continue the consolidated cases under a modified scheduling order, and its post-hearing request for a stay.

Judy S. Engel and Thomas R. Wilhelmy, Fredrikson & Byron, P.A., represent petitioner Bonstores Realty Two, LLC.

Nora C. Sandstad, Assistant County Attorney, represents respondent St. Louis County.

Based upon the files, records, and proceedings herein, the court makes the following:

**ORDER**

1. Petitioner's motion to consolidate and continue is granted. These matters are consolidated for further pretrial proceedings and for trial.
2. Petitioner's request for a stay pending approval by the U.S. Bankruptcy Court of Fredrikson & Byron, P.A. as petitioner's counsel is denied.
3. The consolidated cases shall proceed under the April 24, 2017 scheduling order in file no. 69DU-CV-16-1004, amended as follows:

a. The 4/23/2018 deadline of paragraph 2 is changed and the cases shall be trial-ready as of **6/25/2018**.

b. The 2/20/2018 deadline of paragraph 5 is changed to **4/24/2018**.

c. The 4/9/2018 deadline of paragraph 6 is changed to **6/11/2018** and the 4/16/2018 deadline is changed to **6/18/2018**.

d. The 4/9/2018 deadline of paragraph 8 is changed to **6/11/2018**.

e. The 4/9/2018 deadlines of paragraph 9 are changed to **6/11/2018** and the 4/16/2018 deadline is changed to **6/18/2018**.

f. The 4/16/2018 deadline of paragraph 10 is changed to **6/18/2018**.

4. This order supersedes paragraphs: 2, 5, 6, 8, 9 and 10 of the April 24, 2017 scheduling order in file no. 69DU-CV-16-1004. All other provisions of that order shall remain in force.

IT IS SO ORDERED.



DATED: February 15, 2018

BY THE COURT,

A handwritten signature in blue ink, reading "Tamar Gronvall", is written over a horizontal line.

Tamar Gronvall, Judge  
MINNESOTA TAX COURT

## MEMORANDUM

In these property tax cases, petitioner Bonstores Realty Two, LLC., challenges the assessed value of the Younker's Department Store at the Miller Hill Mall in Duluth, Minnesota, for taxes (payable) in 2016 and 2017.<sup>1</sup> Bonstores filed a motion requesting consolidation of these two matters and a continuance of the deadlines in the court's April 24, 2017 scheduling order for case number 69DU-CV-16-1004 (the appeal for the 2016 taxes payable year).<sup>2</sup> A scheduling order for case number 69DU-CV-17-881 (the appeal for the 2017 taxes payable year) has yet to be issued by the court.

We held a hearing on this matter on January 31, 2018, during which Bonstores asserted that, in accordance with the April 24, 2017 scheduling order in file no. 69DU-CV-16-1004 (2016 taxes payable year), its expert appraiser planned to complete his appraisal for that matter by February 20, 2018. Bonstores requested a continuance of the February 20, 2018 appraisal disclosure deadline if the cases were to be consolidated, stating that "adding the additional assessment [for the 2017 taxes payable year]...to his report would create some hardship based on his current volume of work."<sup>3</sup>

Although it agreed to the consolidation of the two petitions, St. Louis County partially opposed Bonstores' motion, asserting that the consolidated cases should proceed under the original April 24, 2017 scheduling order in file no. 69DU-CV-16-1004.<sup>4</sup> Furthermore, the County asserted

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<sup>1</sup> Mem. Law Supp. Mot. Consolidate & Continue 1 (filed Jan. 17, 2018).

<sup>2</sup> Mem. Law Supp. Mot. Consolidate & Continue 1.

<sup>3</sup> Mem. Law Supp. Mot. Consolidate & Continue 2; Affidavit of Michael Marous ¶ 7 (filed Jan. 17, 2018).

<sup>4</sup> Affidavit of Nora C. Sandstad ¶ 3 (filed Jan. 29, 2018).

that “consolidating the cases into the as-yet-nonexistent schedule of the 2017 case” would cause an “unnecessary and unfortunately substantial delay” in the proceedings.<sup>5</sup> Lastly, the County contended that the delay would be “inappropriate” because of its potential to lose “thousands of additional dollars in interest payments if an unnecessary delay is implemented.”<sup>6</sup>

The parties agreed that consolidating the 2016 and 2017 petitions promotes judicial economy because the cases “involve the same property, many if not all of the same facts and expert witnesses, similar issues of law and fact,”<sup>7</sup> and it would be a “substantial duplication of effort to try the cases separately.”<sup>8</sup> We agree, and therefore grant Bonstores’ request for consolidation. *See* Minn. R. Civ. P. 42.01 (“When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.”).

As to a continuance, because Bonstores has shown good cause to prevent an undue burden on its appraiser – we grant Bonstores’ motion. *See* Minn. R. Civ. P. 16.02 (“A schedule shall not be modified except by leave of court upon a showing of good cause.”); Minn. R. Civ. P. 16.03(p) (indicating that at pretrial conferences the court may consider and “take appropriate action, with respect to” matters that “may facilitate the just, speedy, and inexpensive disposition of the action”); *See also* Minn. Stat. § 271.06, subd. 7 (2016) (making the tax court subject to the Minnesota Rules of Civil Procedure “where practicable”).

We agree with the County that ordering the consolidated cases to proceed under a not-yet-

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<sup>5</sup> Sandstad Aff. ¶ 3.

<sup>6</sup> Sandstad Aff. ¶ 5.

<sup>7</sup> Mem. Law Supp. Mot. Consolidate & Continue 2.

<sup>8</sup> Sandstad Aff. ¶ 2.

issued scheduling order in file no. 69DU-CV-17-881 (2017 taxes payable year) would cause an unnecessary delay. *See State v. Hart*, 723 N.W.2d 254, 260 (Minn. 2006) (“[W]e have said that ‘the district court has considerable discretion in scheduling matters and in furthering what it has identified as the interest of judicial administration and economy.’ ”) (citation omitted). Therefore, these consolidated cases will proceed under the scheduling order in file no. 69DU-CV-16-1004, (2016 payable year) as amended above.

Subsequent to the January 31, 2018 hearing, on February 6, 2018, counsel for Bonstores notified the court that Bonstores’ parent company (Bon-Ton Stores, Inc.) filed a bankruptcy petition under Chapter 11 of the United States Bankruptcy Code, and that Bonstores had filed for bankruptcy protection in connection with the parent company’s case.<sup>9</sup> In its notification letter counsel stated, “Fredrikson & Byron, P.A. does not have legal authority to act on behalf of the Petitioner in connection with these proceedings...until legal counsel’s employment in these property tax proceedings is approved by the U.S. Bankruptcy Court,”<sup>10</sup> and requested “a short stay.”<sup>11</sup> The County opposed this request, stating “Chapter 278 petitions are not subject to the automatic stay provisions of the bankruptcy code.”<sup>12</sup> On February 13, 2018, counsel for Bonstores notified the court that Bonstores “ha[s] scheduled a hearing in their pending bankruptcy action for March 7, 2018,”<sup>13</sup> in which it will bring a motion before the U.S. Bankruptcy Court to preserve

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<sup>9</sup> Letter from Judy S. Engel to Judge Gronvall (Feb. 6, 2018) (on file with the Minnesota Tax Court).

<sup>10</sup> Letter from Judy S. Engel to Judge Gronvall (Feb. 6, 2018) (on file with the Minnesota Tax Court).

<sup>11</sup> Letter from Judy S. Engel to Judge Gronvall (Feb. 6, 2018) (on file with the Minnesota Tax Court) (emphasis omitted).

<sup>12</sup> Letter from Nora C. Sandstad to Judge Gronvall (Feb. 7, 2018) (on file with the Minnesota Tax Court).

<sup>13</sup> Letter from Judy S. Engel to Judge Gronvall (Feb. 13, 2018) (on file with the

Fredrikson & Byron, P.A. as counsel in this matter.

Bonstores appears to acknowledge, correctly, that the bankruptcy filing “does not work to immediately stay” the property tax court proceedings.<sup>14</sup> The court agrees. In *Eden Prairie Mall, LLC v. County of Hennepin*, the Minnesota Supreme Court stated that because a proceeding under chapter 278 is “initiated by a taxpayer-debtor for the benefit of the taxpayer-debtor,” the petition “is not subject to the automatic stay pursuant to 11 U.S.C. § 362.” *Eden Prairie Mall, LLC v. Cty. of Hennepin*, 797 N.W.2d 186, 191 (Minn. 2001). Petitioner Bonstores (the taxpayer-debtor) brought this action against the County contesting the assessed market value of its Duluth store, and assumed the risk that “the overall value of the property and the amount of taxes due may increase, decrease, or stay the same.” *Id.* In short, the tax court is not obligated to stay these proceedings given the petitioner’s bankruptcy proceedings or pending the bankruptcy court’s approval of petitioner’s counsel. We are extending the dates of the April 24, 2017 scheduling order in file no. 69DU-CV-16-1004 by several weeks in conjunction with the consolidation of the two matters and the related continuance but we deny Bonstores’ request for a stay.

T.G.

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Minnesota Tax Court).

<sup>14</sup> Letter from Judy S. Engel to Judge Gronvall (Feb. 6, 2018) (on file with the Minnesota Tax Court).