

STATE OF MINNESOTA

TAX COURT

COUNTY OF DAKOTA

REGULAR DIVISION

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T.S. Real Estate, LLC,

**ORDER AWARDING  
ATTORNEY FEES AND COSTS**

Petitioner,

vs.

File Nos: 19HA-CV-16-735  
19HA-CV-17-1420

County of Dakota,

Respondent.

Filed: April 30, 2018

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This matter came before The Honorable Joanne H. Turner, Judge of the Minnesota Tax Court, on respondent Dakota County's request for an award of attorney fees and costs in connection with the County's earlier motion to compel discovery.

Douglas Altman, Attorney at Law, represents petitioner T.S. Real Estate, LLC.

Suzanne Schrader, Assistant Dakota County Attorney, represents respondent Dakota County.

On January 4, 2018, we granted respondent Dakota County's motion to compel discovery and allowed the County to move for an award of attorney fees and costs incurred in bringing that motion. We now award the County \$1,800 in fees and costs.

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

**ORDER**

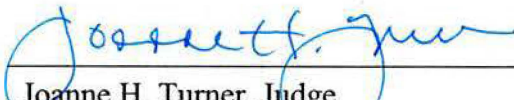
1. Respondent Dakota County's request for fees and costs is granted in the amount of \$1,800.

2. Petitioner T.S. Real Estate shall pay the ordered fees and costs to Dakota County within 30 days of this order.

IT IS SO ORDERED.

BY THE COURT,



  
Joanne H. Turner, Judge  
MINNESOTA TAX COURT

DATED: April 30, 2018

#### MEMORANDUM

This is a property tax case. On October 13, 2017, respondent Dakota County served petitioner T.S. Real Estate with written discovery requests.<sup>1</sup> T.S. Real Estate did not respond to these requests.<sup>2</sup> On November 14, 2017, the County granted T.S. Real Estate a one-week extension to provide the previously requested discovery.<sup>3</sup> T.S. Real Estate did not provide responses by the extended deadline.<sup>4</sup> By Friday, December 1, 2017, the County still had not received responses from T.S. Real Estate, despite repeated requests by the Dakota County Assessor's Office and

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<sup>1</sup> Affidavit of Suzanne W. Schrader in Support of Respondent's Motion to Compel and for Additional Remedies ¶ 2 (Dec. 1, 2017) (Ex. A to Mem. Supp. Resp't's Mot. Compel) & Schrader Aff. Attach. 1 (Resp't's First Set Interrogatories Request Production Documents).

<sup>2</sup> Schrader Aff. ¶ 3 (Dec. 1, 2017) & Schrader Aff. Attach. 2 (Nov. 14, 2017 letter from Suzanne W. Schrader to Douglas Altman).

<sup>3</sup> Schrader Aff. ¶ 4 (Dec. 1, 2017).

<sup>4</sup> Schrader Aff. ¶ 4 (Dec. 1, 2017).

promises from T.S. Real Estate's counsel.<sup>5</sup> The same day, the County filed a motion to compel discovery under Minn. R. Civ. P. 33.01 and 34.<sup>6</sup> This motion included a request under Minn. R. Civ. P. 37.01(d)(1) for an award of costs and expenses, including attorney fees, incurred in connection with the motion.<sup>7</sup>

On Tuesday, December 5, and again on Friday, December 8, 2017, T.S. Real Estate provided the County with "a portion" of the requested discovery.<sup>8</sup> T.S. Real Estate's answers to Interrogatories 11, 12j, 13, and 14 were not sufficient.<sup>9</sup> Nor were the interrogatory answers signed under oath by "an officer or managing agent" of T.S. Real Estate, as required by Minn. R. Civ. P. 33.01(d).<sup>10</sup> Rather, the interrogatory answers were signed by Landed Management, an entity of unknown relation to T.S. Real Estate.<sup>11</sup>

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<sup>5</sup> Schrader Aff. ¶¶ 4, 6 (Dec. 1, 2017) & Schrader Aff. Attach. B ¶ 7 (Affidavit of Daniel Bethke).

<sup>6</sup> Notice of Motion and Motion to Compel and for Additional Remedies (filed Dec. 1, 2017).

<sup>7</sup> Notice Mot. & Mot. Compel & Additional Remedies.

<sup>8</sup> Supplemental Memorandum in Support of Respondent's Motion to Compel and for Additional Remedies 1 (filed Dec. 14, 2017).

<sup>9</sup> For example, for its answer to the County's interrogatory 12(j), T.S. Real Estate simply referred the County to the appraisal prepared by its expert appraiser for information about the recent sale of the property, and did not identify any of the documents associated with the sale, explain how the purchase price was established, or explain the relationship that T.S. Real Estate itself apparently alleged between buyer and seller. Attach. 1 to Second Affidavit of Suzanne W. Schrader in Support of Respondent's Motion to Compel and for Additional Remedies (filed Dec. 14, 2017).

<sup>10</sup> Suppl. Mem. Supp. Resp't's Mot. Compel & Additional Remedies 1-5.

<sup>11</sup> Suppl. Mem. Supp. Resp't's Mot. Compel & Additional Remedies 1-2 & Attach 1.

On December 12, 2017, the County communicated to T.S. Real Estate the aforementioned deficiencies.<sup>12</sup> T.S. Real Estate provided supplemental answers on Wednesday, December 13, and Thursday, December 14, 2017; however, these supplemental answers were also unsigned.<sup>13</sup> T.S. Real Estate filed its response to the motion on December 13, 2017.<sup>14</sup> On December 14, 2017, the County narrowed the scope of discovery sought through its motion. Specifically, the County sought only to compel complete answers to interrogatories 11, 12j, 13, and 14 and to require the answers be signed in accordance with Minn. R. Civ. P. 33.01(d).<sup>15</sup>

We heard the County's motion to compel on December 15, 2017. On the record presented, we granted the motion.<sup>16</sup> Our written order allowed the County to "file and serve an affidavit or declaration setting forth its expenses, including attorney fees, incurred in connection with its motion to compel."<sup>17</sup> On January 29, 2018, the County filed two affidavits outlining the expenses incurred in connection with its motion to compel. Assistant Dakota County Attorney Suzanne Schrader attested that the prosecution of the motion required seven hours of attorney time,

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<sup>12</sup> Schrader Second Aff. ¶ 5.

<sup>13</sup> Schrader Second Aff. ¶ 6.

<sup>14</sup> Petitioner's Response to Respondent's Motion to Compel (filed Dec. 13, 2017).

<sup>15</sup> Suppl. Mem. Supp. Resp't's. Mot. Compel & Additional Remedies 1, 5.

<sup>16</sup> Order on Motion to Compel Discovery (filed Jan. 4, 2018).

<sup>17</sup> Order Mot. Compel Disc. 2.

indicated that a reasonable hourly rate for the attorney handling the matter was \$400 per hour, and requested an award of \$2,800.<sup>18</sup> The seven hours of time was spent as follows:<sup>19</sup>

<b>Description of Task</b>	<b>Time spent</b>
Researching and reviewing information to support motion	1 hour
Researching and drafting motion	1 hour
Finalizing motion documents and filing	2 ½ hours
Reviewing petitioner's unsigned and unnotarized discovery responses; corresponding with petitioner's attorney	30 minutes
Drafting and reviewing e-mails sent to petitioner's attorney concerning petitioner's discovery responses	1 hour
Attending hearing on motion to compel	1 hour

The County also sought to recover expenses the county assessor incurred in connection with the motion to compel. Daniel Bethke, Commercial Appraiser, attested that his assistance with the motion required two hours of his time at an hourly rate of \$50.00.<sup>20</sup> The two hours of time was spent as follows:<sup>21</sup>

<b>Description of Task</b>	<b>Time spent</b>
Reviewing information and providing input for motion to compel	1 hour
Reviewing and conferring with County Attorney	30 minutes
Finalizing motion documents and signing affidavit	15 minutes
Assisting County Attorney with e-mail response	15 minutes

<sup>18</sup> Affidavit of Suzanne W. Schrader, ¶¶ 8-10 (filed Jan. 26, 2018). Attorney Schrader's affidavit actually stated that prosecution of the motion required eight hours of attorney time and requested an award of \$3,200, but the description of tasks and indicated times total only seven hours.

<sup>19</sup> Schrader Aff. ¶¶ 2-7 (Jan. 26, 2018).

<sup>20</sup> Affidavit of Daniel Bethke ¶¶ 7-8 (filed Jan. 26, 2018).

<sup>21</sup> Bethke Aff. ¶¶ 3-6.

On February 8, 2018, T.S. Real Estate objected to the County's request as "unreasonable and excessive."<sup>22</sup> According to T.S. Real Estate, tax court precedent establishes a rate of \$400 per hour is *per se* unreasonable. In *GGP Ltd. Partnership, v. County of Hennepin*, No. 27-CV-11-08712 et al., 2014 WL 1779257, at \*1 (Minn. T.C. Apr. 28, 2014), this court upheld a rate of \$300 per hour for attorney fees as reasonable. Therefore, according to T.S. Real Estate, *GGP Ltd. Partnership* "teaches a \$400 hourly rate for an uncomplicated motion to compel is excessive."<sup>23</sup>

T.S. Real Estate asserts the length of time spent by both attorney Schrader and Mr. Bethke on the motion to compel is also excessive. For its claim, T.S. Real Estate cites *Urban Growth Property Ltd. Partnership v. County of Hennepin*, No. 27-CV-16-0509, 2017 WL 6813393 (Minn. T.C. Dec. 11, 2017), for the proposition "that a motion to compel alone in a case where no discovery has been received, merits no more than an hour of attorney time and an hour of paralegal time."<sup>24</sup> According to T.S. Real Estate, spending more than two hours on this motion is therefore *per se* unreasonable.

T.S. Real Estate also claims that awarding any fees or costs would be improper because the County did not make a good faith effort to obtain the sought-after discovery before filing its motion, as required by Minn. R. Civ. P. 37.01(b). To T.S. Real Estate, "a meet and confer conference was mandated given the fact that the focus of the motion to compel had shifted from a situation where no discovery had been served to one where the complaint [was] about the adequacy

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<sup>22</sup> Petitioner's Response to Respondent's Request for Fees 1 (filed Feb. 8, 2018).

<sup>23</sup> Pet'r's Resp. Resp't's Req. Fees 2.

<sup>24</sup> Pet'r's Resp. Resp't's Req. Fees 3 (emphasis omitted).



of a few responses and the notarization of the signature page.”<sup>25</sup> T.S. Real Estate therefore reads Rule 37.01(b) to require a movant to “meet and confer” to establish the requisite good faith effort.<sup>26</sup> Additionally, according to T.S. Real Estate, the County’s “insistence on going forward with the [motion],” despite T.S. Real Estate’s promise to correct any deficiencies in its discovery responses, indicates a lack of good faith.<sup>27</sup> We disagree.

Minnesota Rules of Civil Procedure 37.01 provides:

If the motion is granted, or if the requested discovery is provided after the motion was filed, the court shall, after affording an opportunity to be heard, require the party . . . whose conduct necessitated the motion . . . to pay to the moving party the reasonable expenses incurred in making the motion, including attorney fees, unless the court finds that the motion was filed without the movant’s first making a good faith effort to obtain the discovery without court action . . .

Minn. R. Civ. P. 37.01(d)(1). Minnesota Rules of Civil Procedure 37.01(b) requires a motion to compel discovery “include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action.” The questions before this court are whether the County made a good faith effort to obtain discovery without court action and whether the expenses sought by the County are “reasonable.”

We find the County made a good faith effort to obtain T.S. Real Estate’s discovery responses as required by Minn. R. Civ. P. 37.01(b). As detailed in attorney Schrader’s affidavit, not until after the due date for its responses did T.S. Real Estate request a Word version of the County’s discovery requests, which the County provided as a courtesy.<sup>28</sup> The County granted T.S.

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<sup>25</sup> Pet’r’s Resp. Resp’t’s Req. Fees 2 n.1.

<sup>26</sup> Pet’r’s Resp. Resp’t’s Req. Fees 2.

<sup>27</sup> Pet’r’s Resp. Resp’t’s Req. Fees 2.

<sup>28</sup> Schrader Aff. ¶ 3 (Dec. 1, 2017).

Real Estate an extension of time to respond. T.S. Real Estate failed to respond by the extended deadline. Nevertheless, the County waited more than a week, and filed its motion only after repeated calls from the Dakota County Assessor's Office failed to produce any agreement to provide responses, and only after promises by T.S. Real Estate's counsel to comply went unfulfilled. Nothing in Rule 37.01(b) required the County to grant T.S. Real Estate further extensions, nor to confer repeatedly before seeking court assistance. Moreover, after T.S. Real Estate belatedly provided incomplete discovery responses, the County amended its motion to limit the scope of its request.

When, as in this case, we have granted a motion to compel or if the requested discovery is provided only after the motion to compel was filed, Minn. R. Civ. P. 37.01(d) requires us to award the "reasonable expenses incurred in making the motion." We find the requested hourly rates of Assistant County Attorney Schrader and Mr. Bethke to be reasonable in light of their positions and experience. We find the time spent by the County on the motion reasonable in light of the facts and circumstances. Nevertheless, we reduce the County's request to the amount of \$1,800. *See* Minn. R. Civ. P. 1 (requiring courts to "assure . . . that the costs are proportionate to the amount in controversy and the complexity and importance of the issues.").

T.S. Real Estate claims that our decisions in *Urban Growth* and *GGP* effectively cap the amount of time and the hourly rate we will award in connection with a motion to compel discovery. We disagree. Nothing in *Urban Growth* or in *GGP* indicates or even suggests that this court intended its decisions to cap either the hourly fees or the amount of time to be awarded with respect to a motion under Minn. R. Civ. P. 37.01.

J.H.T.