

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

STEVE AND ALLISON GARRY,)	CIV. 03-4019-KES
)	
Plaintiffs,)	
)	
vs.)	ORDER DENYING
)	MOTION TO COMPEL
HOMELAND CENTRAL INSURANCE)	
COMPANY, formerly known as)	
Hawkeye Security Insurance Company,)	
)	
Defendant.)	

Defendant, Homeland Central Insurance Company (Homeland), moves to compel a response to its fifth question in its request for production of documents: Garrys' complete federal tax returns and filings for the calendar years 1995 through 2002. Homeland argues that this information is relevant because plaintiffs, Steve and Allison Garry, claim a loss in excess of \$617,705 of personal property. Homeland contends that because the value of property is at issue, Garrys' income tax returns are relevant to show whether they had the financial ability to acquire, dispose of, and subsequently reacquire the personal property at issue. Homeland further contends that this information is not privileged and therefore is discoverable.

Garrys oppose the motion. They argue that the tax returns are not relevant because they have not placed any information contained in the returns at issue. Garrys argue that their financial wherewithal has no bearing on any matters contested in the case. Their financial status will not reveal anything about the value of their personal property. Garrys maintain

that their financial ability to replace their furniture has no relevance to whether or not Homeland fulfilled its contractual obligations. Finally, Garrys note that Homeland failed to make any showing that the information is not available elsewhere.

In Homeland's reply, it contends that the information is relevant because Garrys' original disclosures set forth claimed damages for loss of income, real and personal property, and lost time. Garrys' income tax returns are, therefore, relevant to their claims for lost income, lost time, medical expenses, and health assessments. Homeland contends that Garrys have not provided this information through any other documentation.

Garrys filed a surreply brief in which they waive any claim for lost income or medical expenses in the lawsuit. Because the tax returns are neither relevant nor lead to discoverable information, Garrys urge the court to deny the motion.

"Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party." Fed. R. Civ. P. 26(b). This includes not only admissible evidence but also matters "reasonably calculated to lead to the discovery of admissible evidence." Hofer v. Mack Trucks, Inc., 981 F.2d 377, 380 (8th Cir. 1992). Garrys' tax returns from 1995 to 2002 are not relevant to any issues in this case nor will they likely lead to any admissible evidence. First, Garrys' financial ability to buy new furniture is not relevant to whether defendant breached its contract. Garrys are seeking damages under their insurance contract for furniture they claimed was damaged by exposure to mold. Their ability to pay for replacement furniture has no bearing on any issues in this case and therefore their tax returns are not discoverable under this rationale. See Wacker v. Gehl Co., 157 F.R.D. 58, 59 (W.D. Mo. 1994) (party seeking motion to compel regarding issues not clearly relevant to the case must make threshold showing of relevance).

Second, there is no articulable correlation between Garrys' income and their ability to initially acquire the personal property at issue. The property could have been acquired through cash, credit, savings, inheritance, or liquidation of assets. Garrys' income between 1995 and 2002 as reported on their income tax returns does not directly correspond to the value of the alleged damaged personal property.

Finally, even if the tax returns have some relevance to the valuation of Garrys' personal and real property, such information can be obtained through other documents. See Minnesota Min. & Mfg. v. North American Science Assoc. Inc., 189 F.R.D. 406, 408 (D. Minn. 1999) (information was not discoverable and could be obtained through other sources).

Courts, moreover, generally hesitate to order disclosure of tax returns even though they are not privileged. See Heathman v. United States Dist. Court for Central Dist. California, 503 F.2d 1032, 1035 (9th Cir. 1974) (although not privileged, courts have recognized a public policy against disclosure of tax returns); Wiesenberger v. W.R. Hutton & Co., 35 F.R.D. 556, 557 (S.D.N.Y. 1964) (courts are reluctant to order production of tax returns, so unless it is "clearly required in the interests of justice, litigants ought not to be required to submit such returns as the price for bringing or defending a lawsuit"). Although the standard of relevance in the context of discovery is broad, "this often intoned legal tenant should not be misapplied so as to allow fishing expeditions in discovery. Some threshold showing of relevance must be made before parties are required to open wide the doors of discovery and to produce a variety of information which does not reasonably bear upon the issues in the case." Hofer v. Mack Trucks, Inc., 981 F.2d 377, 380 (8th Cir. 1992).

Furthermore, Garrys' tax returns are neither relevant nor discoverable to prove lost income, lost time, or medical expenses. Garrys did not claim damages for these items and,

therefore, none of these matters are at issue in this case. Because they are not at issue, Garrys' tax returns are not relevant, will not lead to admissible information, and are not discoverable. Even if Homeland could demonstrate that these matters were in fact issues in this case, Garrys have waived any claim for damages related to lost income, lost time, or medical expenses.

Accordingly, it is hereby

ORDERED that defendant's motion to compel (Docket 116) is denied.

Dated August 2, 2004.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE