

FILED
COURT OF CLAIMS
OF OHIO

IN THE COURT OF CLAIMS OF OHIO

OHIO DEPARTMENT OF TRANSPORTATION,	:	Case No. 2014-00405-PR
	:	
Plaintiff/Counterclaim-Defendant,	:	Judge Patrick M. McGrath
	:	
v.	:	
	:	<u>ODOT'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO EXPEDITE DISCOVERY</u>
E.J. WARD, INC.,	:	
	:	
Defendant/Counterclaim-Plaintiff.	:	

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In its Motion for Expedited Discovery, Defendant/Counterclaimant, E.J. Ward, Inc. ("Defendant"), asserts that this Court should issue an Order compelling Plaintiff/Counterclaim Defendant, Ohio Department of Transportation ("ODOT"), to respond to Defendant's October 8, 2014 written discovery within 14 days, rather than the minimum of 28 days provided by Civ.R. 33 and Civ.R. 34. Defendant's Motion is based entirely on Defendant's allegation that ODOT did not timely or completely respond to Defendant's public records request. Defendant's Motion is without merit.

First, this Court does not have jurisdiction over Defendant's public records request. R.C. 149.43(C)(1); see also, e.g., *George v State*, 10th Dist. No. 10AP-4, 10AP-97, 2010-Ohio-5262, ¶ 23 (holding that the Court of Claims cannot decide a public records claim even if it is ancillary to a claim against the state for money damages). As this Court is well aware, the proper channel for Defendant's alleged grievances with ODOT's response to Defendant's public records request is to file a mandamus action in common pleas court. R.C. 149.43(C)(1).

Second, since receiving ODOT's 6,000 pages of documents in response to the public records request, not once has Defendant contacted ODOT, or the undersigned for that matter, to resolve the alleged deficiencies. Instead, Defendant chose to immediately file its Motion for Expedited Discovery, inaccurately characterizing its issues with the public records request as a

discovery dispute. This is a public records request dispute, not a discovery dispute.

In any event, insofar as Defendant asserted that expedited discovery is warranted because the documents it received from ODOT were not collated, Bates-stamped, or did not identify the custodian, neither is required under R.C. 149.43. Public records need only be kept in a manner facilitating duplication, and presented to the requestor in the manner stored. R.C. 149.43(B)(2).

Third, orders expediting discovery typically are used in the context of injunctions, expedited trial dates, Lone Pine orders (used to expedite discovery in mass tort litigation), when a given party is not cooperating with discovery, and the like. This is a fairly straightforward contract case, not an injunction or mass tort litigation.

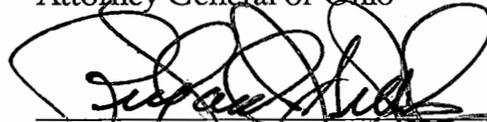
Trial in this case is set for June 15-17, 2015, some eight months from now. There is no discovery cutoff. No depositions have been scheduled, or even requested for that matter. At the telephone case management conference conducted on September 26, 2014, Defendant's counsel did not suggest that there was not enough time to conduct discovery or that the current trial date is not manageable. And Defendant cannot point to any failure of ODOT to cooperate in discovery in this litigation.

To be sure, Defendant has not demonstrated any urgency whatsoever with respect to conducting discovery to date. This lawsuit has been pending since February 2014, some eight months, and Defendant only recently attempted to conduct discovery. Indeed, it took Defendant nearly two months, beyond the minimum 28 days set forth in the Civil Rules, to respond to Plaintiff's discovery requests, which were served upon Defendant in June 2014. If Defendant were, in fact, truly concerned about getting enough information to analyze this case for purposes of immediately discussing settlement, as Defendant claimed in its Motion, why didn't Defendant contemporaneously with its public records request in May 2014 (three months after the lawsuit was filed) also serve corresponding written discovery requests?

Quite simply, there is absolutely no compelling reason for this Court to order ODOT to expedite its discovery responses. Up until October 8, 2014, Defendant chose to circumvent the discovery process and make a public records request instead. Defendant cannot now invoke the Civil Rules concerning discovery, let alone claim it urgently needs discovery responses, having waited eight months to get the discovery ball rolling. Accordingly, Defendant's Motion for Expedited Discovery is without merit, and should be denied.

Respectfully submitted,

MICHAEL DEWINE
Attorney General of Ohio

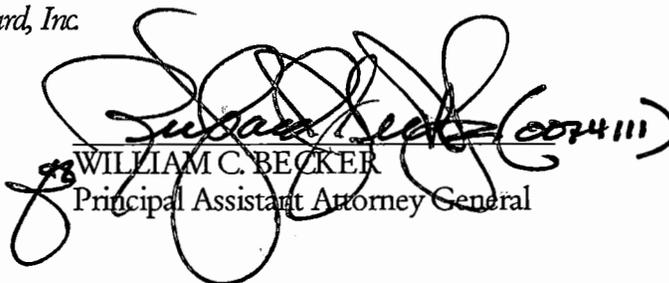


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent by regular U.S. mail, postage prepaid, and email this 16th day of October, 2014 to:

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