

# In the United States Court of Federal Claims

No. 06-844T

(Filed: October 27, 2007)

(Unpublished)

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AUSTIN INVESTMENT FUND, LLC, \*  
by and through its Tax Matters Partner, \*  
RICOBENE LLC, \*  
\*  
Plaintiff, \*  
\*  
v. \*  
\*  
THE UNITED STATES, \*  
\*  
Defendant. \*  
\*  
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*Thomas A. Cullinan*, Sutherland, Asbill & Brennan, LLP, Atlanta, GA, for Plaintiff.

*Edward O.C. Ord*, Ord & Norman, San Francisco, CA, for Plaintiff-Intervenor.

*Robert J. Higgins*, with whom were *John A. DiCicco*, Acting Assistant Attorney General, *Steven Frahm*, Acting Chief, United States Department of Justice, Tax Division, Court of Federal Claims Section, Washington, D.C., *Mary M. Abate*, Of Counsel, for Defendant.

## OPINION AND ORDER ON INTERVENOR PLAINTIFF'S MOTION FOR RECONSIDERATION

WHEELER, Judge

In this tax case, Plaintiff Austin Investment Fund, LLC, by and through its Tax Matters Partner, Ricobene LLC, seeks readjustment of partnership items set forth by the Commissioner of Internal Revenue in his Notice of Final Partnership Administrative Adjustment of Austin with respect to the Tax Year ending on December 31, 2002. On September 8, 2008, Plaintiff-Intervenor Bruce Elieff and Kathy Abrahamson filed a motion

for reconsideration of the Court's August 28, 2008 Order extending the discovery deadlines by four months and stating that Mr. Elieff and Ms. Abrahamson are one intervening party.

For the reasons stated below, the Court finds that Mr. Elieff and Ms. Abrahamson are one intervening party and shall be treated as such for the purposes of this case. The Court, however, extends the deadlines for discovery by an additional three months. Accordingly, Intervenor's motion is hereby GRANTED in part, and DENIED in part.

### Background

On August 13, 2007, Mr. Elieff and Ms. Abrahamson filed a motion to intervene in this partnership readjustment case pursuant to RCFC 24(a). This Court granted the motion to intervene on September 14, 2007, and indicated that Mr. Elieff and Ms. Abrahamson, collectively "Elieff," would "be identified as 'Plaintiff-Intervenor' in this action." Intervention Order at 1.

Intervenor, on August 25, 2008, filed a motion to extend the discovery deadlines, seeking an additional seven months of discovery. Mot. to Ext. Disc. at 1. In its response, Defendant, while not opposing the requested enlargement of time, explained that the Intervenor's counsel, during discovery, had taken the position that Mr. Elieff and Ms. Abrahamson were separate intervening parties. Def.'s Resp. to Pl.-Int.'s Mot. to Enl. Disc. Period at 1, 4. This Court, on August 28, 2008, extended the discovery schedule by four months and explained that, as the granting of Intervenor's motion to intervene applied to Mr. Elieff and Ms. Abrahamson as a single party, Intervenor was required to participate in discovery as a single party. Sec. Am. Scheduling Order at 1, 2. On September 8, 2008, Intervenor filed a motion for reconsideration of the Court's Order, requesting that the Court grant the full seven months extension to discovery and withdraw its ruling that the Intervenor is one party in this case. Mot. for Recons. at 2.

### Mr. Elieff and Ms. Abrahamson Intervened as a Single Party.

Mr. Elieff and Ms. Abrahamson intervened in the present action as a single party and thus failed to meet this Court's procedural requirements. The Rules of the United States Court of Federal Claims require that an individual desiring intervention in an action must serve a motion to intervene upon the parties of that action. RFCF 24(c) ("A person desiring to intervene shall serve a motion to intervene upon the parties as provided in RCFC 5.").

A review of the plain language of the motion to intervene demonstrates that Mr. Elieff and Ms. Abrahamson submitted a single motion to intervene which requested the entrance of a single intervening party. The motion to intervene filed by the pair is replete with

references to the entrance of a single party into this matter. In fact, all throughout the motion, Mr. Elieff and Ms. Abrahamson refer to themselves collectively in the singular as “Elieff”. See generally, Mot. to Intervene. Consistent with this position, Mr. Elieff and Ms. Abrahamson repeatedly request that the Court permit the singular “Elieff” to enter as a single intervening party. Id. at 1 (“BRUCE ELIEFF and KATHY ABRAHAMSON (collectively “Elieff”) . . . moves this Court for an order to allow Elieff to enter the above captioned case as a party plaintiff-complainant (hereafter “PC”), and that Elieff be permitted to consider and have the right to file any amended complaint he deems appropriate.”); Id. at 6 (“Elieff requests the Court to grant this motion and allow Elieff to intervene in the above captioned civil action as a party plaintiff-complainant.”); Mem. in Supp. Mot. to Intervene at 14 (“This Court should grant the motion and allow ELIEFF to intervene as a party plaintiff-complainant.”). In fact, at no point in the motion or its supporting memorandum is there a request that Mr. Elieff and Ms. Abrahamson enter as two, separate intervening parties.

Thus, it is plain from their motion that Mr. Elieff and Ms. Abrahamson sought entry into this matter as a single, intervening party and have not met this Court’s requirements for intervening as separate parties. See RFCF 24(c). The Intervenor’s motion to reconsider the status of Mr. Elieff and Ms. Abrahamson is thus DENIED.

#### Discovery Extension.

Intervenor also requests that the Court reconsider its extension of the discovery period and grant a full, additional seven months instead of four months. Mot. for Recons. at 2. For good cause shown, the motion to reconsider the enlargement of time for discovery is GRANTED. All discovery deadlines set forth in the Court’s August 28, 2008 Order shall be extended by an additional three months. Accordingly:

1. Fact discovery shall close on May 4, 2009;
2. Plaintiff shall disclose the identity of its expert witnesses and their expert reports by June 3, 2009;
3. Defendant shall depose Plaintiff’s expert witnesses by July 1, 2009;
4. Defendant shall disclose the identity of its expert witnesses and their expert reports by August 4, 2009;
5. Plaintiff shall depose Defendant’s expert witnesses by September 2, 2009;
6. Plaintiff and Defendant shall disclose their rebuttal expert reports, if any, by October 2, 2009;

7. Plaintiff and Defendant shall depose the opposing party's rebuttal expert witnesses, if any, by October 16, 2009;
8. All discovery shall close on October 30, 2009.

IT IS SO ORDERED.

s/Thomas C. Wheeler  
THOMAS C. WHEELER  
Judge