

IN THE SUPREME COURT OF OHIO

KEITH A. BROWN AND)	Case No. 2007-1718
NOEL P. BROWN (deceased))	
)	
Appellants,)	Appeal From The Ohio Board of Tax
)	Appeals
WILLIAM W. WILKINS,)	
Tax Commissioner)	Board of Tax Appeals
)	Case No. 2006-R-1041
Appellee.)	
)	

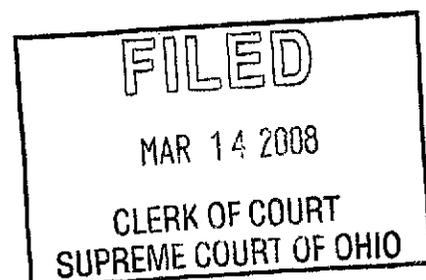
**APPELLANTS' MEMORANDUM IN OPPOSITION TO APPELLEE'S
MOTION FOR SUMMARY AFFIRMANCE**

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If nothing else, the Tax Commissioner and the Board of Tax Appeals (the "Board") have acted very consistently throughout the course of this case, resulting in an obliteration of the Taxpayers' (the "Browns") rights. In this regard the following events have occurred, or failed to occur:

1. The Browns had timely perfected an appeal to the Board, which entitled them to discovery and a mandatory hearing.
2. The Tax Commissioner failed and refused to respond to the Browns' written discovery.
3. The Tax Commissioner then failed and refused to comply with and to respond to the Order of the Board requiring him to respond to the Browns' written discovery.
4. Counsel for the Tax Commissioner failed to appear for and participate in two telephone conferences scheduled by the Board's Attorney Examiner to discuss the discovery issues.
5. Instead of enforcing its Order requiring the Tax Commissioner to respond to the Browns' discovery, or taking any action regarding the aborted conferences, the Board, without comment, issued an Order to Show Cause to the Browns to show why their case should not be dismissed.
6. The Browns opposed the Motion to Show Cause, but the Board elected to dismiss the case, without permitting the Browns to conduct any discovery and without giving the Browns the mandatory hearing.
7. The Browns perfected an appeal of right to this Court. Each party filed a brief on the merits.

8. The Browns then timely and properly requested oral argument. The Tax Commissioner did not respond to or comment on this request. On February 26, 2008 this Court granted the request for oral argument.¹
9. The Browns have reached the highest court in this State without having had any discovery or hearing.
10. Now, the Tax Commissioner has filed, without any supporting legal authority whatsoever, a Motion for Summary Affirmance, arguing that the Browns should not be given an opportunity to argue their case orally before this Court. The basis for this Motion is that the Browns did not file a Reply Brief to the Tax Commissioner's three page Merit Brief, as if that is somehow dispositive of the case.

What the Tax Commissioner seeks to accomplish by this Motion is to deny the Browns any right to be heard on this matter, in order to close the loop on the long history of denying the Browns any opportunity at all to present their case. The implication in the Tax Commissioner's Motion is that the Browns do not have a basis to appeal. First, the Browns have a right to appeal. Second, the Browns have a very strong basis to appeal, although the Tax Commissioner is going to extraordinary lengths to prevent the Browns from presenting their case.

The facts in the *Knust*² and *Lovell*³ cases are distinguishable from the Browns' situation. The procedural irregularities and abuses in the Browns' case are distinguishable from the prior cases also. The Browns understand very well the impact of precedent from this Court and the

¹ Oral argument is scheduled for May 6, 2008.

² *Knust v. Wilkins*, 111 Ohio St.3d 331, 2006-Ohio-5791.

³ *Lovell v. Levin*, 116 Ohio St.3d 200, 2007-Ohio-6054.

fact that the prior *Knust* and *Lovell* cases are recent cases. The Browns are entitled to present their case. In doing so, the Browns will address fully their fact situation, the procedural issues, and the decisions in the *Knust* and *Lovell* cases, apparently to the dismay of the Tax Commissioner.

The Browns respectfully request that this Court deny the Tax Commissioner's Motion and that they be permitted to present their arguments to this Court as scheduled on May 6, 2008.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On the 13th day of March, 2008, one copy of the foregoing Appellants' Memorandum in Opposition to Appellee's Motion for Summary Affirmance was served via regular US Mail upon the upon the following counsel of record:

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