

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

Civil Action No. 20-cv-81163-Middlebrooks/Brannon

JEFFREY LAGRASSO and DEBORAH
LAGRASSO,

Plaintiffs,

v.

SEVEN BRIDGES HOMEOWNERS
ASSOCIATION, INC. and RACHEL ABOUD
TANNENHOLZ,

Defendants.

**MOTION OF DEFENDANT TANNENHOLZ FOR PROTECTIVE ORDER STAYING
DEPOSITIONS AND HER DISCOVERY DEADLINES PENDING DECISION ON
DISPOSITIVE MOTION**

Pursuant to Rule 26(c)(1) of the Federal Rules of Civil Procedure, defendant Rachel About Tannenholz, by and through her undersigned attorneys, respectfully moves the Court for a protective order staying the depositions and other discovery deadlines which directly affect her defense of the claim against her pending the Court's decision on her motion to dismiss based on lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted.

INTRODUCTION

In Count III of their Complaint, plaintiffs Jeffrey and Deborah LaGrasso assert a single state law claim against Rachel Aboud Tannenholz ("Tannenholz") for intentional infliction of emotional distress. As noted in Tannenholz's Motion to Dismiss, the sole count against her is

entirely without merit. Tannenholz has moved to dismiss the entire action against her for lack of subject matter jurisdiction and for failure to state a claim under Florida law. The Motion to Dismiss presents solely issues of law; no discovery is needed in order to resolve that Motion.

Plaintiffs along with defendant Seven Bridges Homeowner's Association, Inc. ("HOA") have recently requested the deposition of Tannenholz and are seeking to schedule a multitude of depositions that counsel for Tannenholz may be required to attend and/or participate in, including the deposition of the plaintiffs. If Tannenholz's Motion to Dismiss is granted, it will dispose of the entire action against Tannenholz, obviating the need for her participation in the onerous discovery. For this reason, a protective order staying the depositions and the discovery deadlines which directly affect her defense of Count III is therefore warranted.

ARGUMENT

Federal Rule of Civil Procedure 26(c)(1) authorizes the court to enter a protective order to protect a party "from annoyance, embarrassment, oppression, or undue burden or expense," including an order forbidding discovery or specifying the terms for discovery. Further, "a court has broad inherent power to stay discovery until preliminary issues can be settled which may be dispositive of some important aspect of the case." *Rando v. Gov't Emples. Ins. Co.*, No. 5:06-cv-336-Oc-10GRJ, 2006 U.S. Dist. LEXIS 109852 (M.D. Fla. Dec. 4, 2006)(quoting *Petrus v. Bowen*, 833 F.ed 581 (5th Cir. 1987)).

"While the court should not automatically stay discovery because a motion to dismiss has been filed, 'a stay is proper where the likelihood that such motion may result in a narrowing or an outright elimination of discovery outweighs the likely harm to be produced by the delay.'" *19th St. Baptist Church v. St. Peters Episcopal Church*, 190 F.R.D. 345, 349 (E.D. Pa. 2000)

(internal citation omitted); *see also McCabe v. Foley*, 233 F.R.D. 683, 685 (M.D. Fla. 2006). The Eleventh Circuit has observed that a court should resolve certain pretrial motions - such as a motion to dismiss - before discovery begins where the dispute presents a legal question and there are no issues of fact to be addressed. *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353 (11th Cir. 1997). As recognized by this Court last month, doing so is necessary to “minimize undue burdens on litigants and the Court system.” *Taylor v. Serv. Corp. Int’l*, No. 20-CIV-60709-RAR, 2020 U.S. Dist. LEXIS 192595 (S.D. Fla. Oct. 16, 2020); *see also Kooock v. Sugar & Felsenthal, LLP*, No. 8:09-CV-609-T-17EAJ, 2009 U.S. Dist. LEXIS 81153 (M.D. Fla. Aug. 19, 2009)(“In deciding whether to stay discovery pending resolution of a motion to dismiss, the court must balance the harm produced a delay in discovery against the possibility that the motion will be granted and entirely eliminate the need for such discovery.”).

A stay of discovery is appropriate where the movant shows “good cause and reasonableness.” *Bocciolone v. Solowsky*, No. 08-20200, 2008 U.S. Dist. LEXIS 59170, 2008 WL 2906719, at *2 (S.D. Fla. July 24, 2008). “[C]ourts have held good cause to stay discovery exists wherein resolution of a preliminary motion may dispose of the entire action.” *Varga v. Palm Beach Capital Management, LLC*, 2010 U.S. Dist. LEXIS 144440 (S.D. Fla. Sept. 3, 2010) (internal quotation omitted). For example, in *Varga*, this Court temporarily stayed discovery, finding good cause “[d]ue to the nature of the motions to dismiss” which raised threshold and dispositive issues of standing and improper forum. *Id.*; *see also Dayem v. Chavez*, 2014 U.S. Dist. LEXIS 196015 (S.D. Fla. Mar. 11, 2014)(finding a “stay of discovery . . . warranted” after having “peeked at the several motions to dismiss” which raised, *inter alia*, “lack of subject matter jurisdiction, lack of standing, failure to state a claim upon which relief can be granted,

[and] improper venue”); *Norfolk Southern Rwy Co. v. Power Source Supply, Inc.* 2007 U.S. Dist. LEXIS 15306 (W.D. Pa. 2007); *Rando v. Gov't Emples. Ins. Co.*, No. 5:06-cv-336-Oc-10GRJ, 2006 U.S. Dist. LEXIS 109852 (M.D. Fla. Dec. 4, 2006).

On November 4, 2020, counsel for the defendant HOA requested the depositions of Deborah LaGrasso, Jeffrey LaGrasso, the three Lagrasso children and Tannenholz. The following day, plaintiffs’ counsel requested the depositions of the following twelve (12) individuals: Heidi Womack, Lawrence Orbach, Eric Godin, Rachel Stricoff, Melissa Darnell, Bruce Tannenholz, Alicia Gittlemean, Edna Willis, Brian Goldenberg, Bob O’Connell, George Spencer and Victoria Tabari. Plaintiffs also indicated they would like to depose Tannenholz. See email attached as Exhibit A.

In the event that Tannenholz’s Motion to Dismiss is granted, she will no longer be a party to this case and there would be no reason for her counsel to attend these 17 depositions which would obviously come at significant financial expense to Tannenholz. Moreover, as it relates to the HOA’s and plaintiffs’ intent to depose Tannenholz, a protective order is appropriate because she should not be compelled to prepare and sit for a deposition as a defendant in case in which she is not a proper party. While Tannenholz may ultimately be subpoenaed by plaintiffs and/or the HOA for a deposition in this case, the scope and subject matter of such deposition as it relates to plaintiffs’ housing discrimination claims against the defendant HOA would be quite different than the permissible scope of a deposition involving plaintiffs’ intentional infliction of emotional distress claim.

Additionally, as noted in the Motion to Dismiss, the subject matter of plaintiffs’ state law claim against Tannenholz (which involves the social media posts by Tannenholz and Deborah

LaGrasso in May and June 2020 and the verbal exchanges and confrontations between them in connection therewith) is the subject of a pending lawsuit filed by Rachel Tannenholz against Deborah LaGrasso in the Circuit Court in and for Palm Beach County, Case No. 50-2020-CA-007982-XXXX-MB, filed on July 29, 2020. It would be a waste of time and resources for Tannenholz to be forced to be deposed in the instant case (which is not properly in federal court), and be forced to participate in the deposition of Deborah LaGrasso, considering that both parties will also be deposed on the same matters in the state court case.

Finally, in addition to the expenses incurred in connection with having to prepare for, defend and otherwise participate in the aforementioned depositions, other deadlines are also approaching which necessarily involve the expenditure of financial resources. For example, next week is the deadline by which Tannenholz must identify her expert. In the event that Tannenholz is not dismissed from the litigation, she intends to retain a digital forensic expert to demonstrate that certain evidence relied upon by plaintiffs in support of their claims against Tannenholz has been falsified. Tannenholz will be forced to pay a retainer for such an expert — a several thousand dollar expenditure that could be avoided in the event that she is dismissed as a party to the lawsuit.

Here, the parties have fully briefed the jurisdiction issue and the elements of a cause of action for intentional infliction of emotional distress and await only the Court's ruling. Tannenholz's pending motion to dismiss for lack of subject matter jurisdiction and failure to state a claim would dispense of the entire action against her. It is appropriate to stay discovery pending resolution of a motion to dismiss where such an issue is raised. *See United States Catholic Conference v. Abortion Rights Mobilization, Inc.*, 487 U.S. 72, 79-80, 108 S. Ct. 2268,

101 L. Ed. 2d 69 (1988) (noting it is appropriate to limit discovery until case-dispositive issues are resolved). The pending motion to dismiss does not involve any disputed issues of fact. It would be unreasonable for Tannenholz to be forced to expend substantial resources participating in depositions given the legitimate jurisdictional and facial challenges pending before the Court. Tannenholz is not seeking to stay any written discovery that is propounded between the plaintiffs and HOA, particularly as it relates to claims which do not involve Tannenholz. However, it is necessary, reasonable and appropriate to stay the depositions and the discovery deadlines involving Tannenholz until the Court is able to rule on Tannenholz's pending motion to dismiss.

CONCLUSION

For the foregoing reasons, this Court should grant defendant Tannenholz' motion for a protective order staying the depositions and the the discovery deadlines involving Tannenholz until the Court is able to rule on Tannenholz' pending motion to dismiss.

RULE 26(C) CERTIFICATION

I hereby certify that I have conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, but have been unsuccessful.

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of November, 2020, the foregoing document was filed electronically with the Clerk of Court using the CM/ECF system, and notice of this filing will be sent to all attorneys of record by operation of the Court's electronic filing system.

/s/Debra D. Klingsberg_____
Debra D. Klingsberg, Esq.
Florida Bar No. 767921