UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA, JACKSONVILLE DIVISION

ELIAS MAKERE, FSA, MAAA	)	Case No (LT)
Plaintiff	)	**3:20-cv-00905-MMH-JRK**
	)	
v.	)	
	)	
ALLSTATE INSURANCE COMPANY,	)	
Defendant	)	

PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO STAY DISCOVERY

Plaintiff, ELIAS MAKERE, on this 4th day of January 2021, respectfully asks this Honorable Court to deny '*Defendant's Motion to Stay Discovery*' (hereinafter "That Motion").

Key Points:

A.) Grounds Misleading; Unmeritorious; Unsubstantiated; Harmful;

B.) Precedence USFLMD regularly denies such motions

Table of Contents:

Background: Defendant moved for an indefinite discovery stay
Problem: Plaintiff's substantial rights would be harmed by a stay
Request: This Court denies Defendant's motion

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§I.E.4 MDD | Stays of Discovery | (emphasis added)

"Normally, the pendency of a motion to dismiss or a motion for summary judgment will not justify a unilateral motion to stay discovery pending resolution of the dispositive motion. Such motions for stay are rarely granted. However, unusual circumstances may justify a stay of discovery in a particular case upon a specific showing of prejudice or undue burden."

Precedence

- 3:18-cv-00811-TJC-MCR - USFLMD (8/4/20)
- 8:17-cv-02647-SCB-JSS - USFLMD (12/7/20)
- 2:18-cv-00254-SPC-NPM - USFLMD (12/4/20)
- 2:20-cv-00542-SPC-MRM - USFLMD (11/6/20)
- 8:19-cv-02523-TPB-AAS - USFLMD (12/31/20)

USFLMD recently denied motions to stay discovery

Abbreviations

[C###] - Paragraph ### from The Complaint[2/]

[M###] - Page ### from That Motion[3/]

[S###] - Page ### from The Subpoena[4/]

[X@##] - Page ## from Exhibit @ in The Notice[5/]

MDD - Middle District Discovery Handbook (2015)

USFLMD - US District Court, Florida, Middle District

USFLSD - US District Court, Florida, Southern District

RESPONSE

I. Procedural History

1. On August 12, 2020, Plaintiff initiated this action by suing Defendant for employment discrimination (under 42 USC §1981, and §760 FS). His complaint was equipped with a *motion to proceed in forma pauperis*.
2. On August 21, 2020, Defendant moved to dismiss this case on customary grounds (inapplicable claim, lack of jurisdiction, etc.). For which Plaintiff responded on October 2, 2020 (citing due process, the seminal case of *McDonnel-Douglas v Green*[1/], and more).
3. Seven days later (10/9/20), this Honorable Court entered an order granting Plaintiff *pauperis* status. Thereby certifying him as a poor person.
4. To this date, no other party (or non-party) has documented any financial hardship.
5. On October 29, 2020, this Court rendered the Case Management and Scheduling Order. Accordingly, Plaintiff began discovery; discovery highlighted by cooperation and discovery concessions **[XE34]-[XE38]**.
6. Lastly, on December 18, 2020, Defendant moved for a stay of discovery. Basing its request on costliness **[M003]** (emphasis added):

> *"10. Because a favorable ruling on Defendant's Motion to Dismiss will dispose of this case in its entirety, and because interim discovery, which Plaintiff presently seeks, will be extremely costly in terms of both money and time invested by Defendant and this Court, Defendant requests this Honorable Court stay discovery until this Court rules on the Motion to Dismiss"*

II. Direct Rebuttal

7. Defendant's argument for an order to stay proceedings fails for four reasons: (1) it was misleading; (2) it 'peaked prematurely'; (3) it was unsubstantiated; and (4) it would harmfully delay Plaintiff's case.

(1) Misleading Argument

8. Defendant navigated this Court down a misleading path. It did so by relying primarily on the 11th Circuit's decision in Chudasama v Mazda Corp., 123 F. 3d 1353 (11th Cir. 1997); citing it four (4) times and quoting it as follows:

> *"when faced with a motion to dismiss a claim for relief that significantly enlarges the scope of discovery, the district court should rule on the motion before entering discovery orders, if possible."*

9. The Chudasama case (hereinafter "That Case") differs from the instant case in all material respects.

   a) For starters, That Case involved "excessive and dilatory discovery tactics run[ning] amok"; while this case has experienced no such thing.

   b) That Case "resulted in draconian sanctions"; this case has not.

   c) That Case had one count that "substantially widened the scope of discovery"; this case does not.

   d) That Case had multiple years' worth of discovery; this case has not.

   e) That case involved a "dubious" claim; this case does not[6/].

10. These differences are material because the 11th Circuit couched its decision on "*[That Case] illustrat[ing] the mischief that results when a district court effectively abdicates responsibility...*". No such mischief or abdication has been exhibited in this case.

11. Subsequent to Chudasama, other district courts have steered clear of that path. In Romacorp v Prescient, 1:10-cv-22872 (USFLSD, 6/8/11), USFLSD said:

> *"Various courts have recognized that [Chudasama] does not stand for the broad proposition that a court must stay discovery when there is a pending motion to dismiss."*

Likewise, in Bocciolone v Solowsky, 1:08-cv-20200 (USFLSD, 7/24/08), USFLSD explained Chudasama's inapplicability:

> *"Since the Eleventh Circuit handed down Chudasama, it has been analyzed on numerous occasions, and courts have consistently rejected any per se requirement to stay discovery pending resolution of a dispositive motion."*

12. Indeed, this Court codified these holdings in §I.E.4 of the Middle District's Civil Discovery Handbook:

> *"Such [unilateral motions to stay discovery upon the pendency of a motion to dismiss] are rarely granted."*

13. So, since the rare pillar for which That Case stood has not withstood the lights of the instant case's path, That Motion's argument should be deemed misleading; and thereby denied.

(2) Premature, Melting Peaks of Requested Dismissal

14. The proper route required Defendant to show the "*necessity, appropriateness, and reasonableness*" of a discovery stay (see Ray v Spirit Airlines, 0:12-cv-61528 (USFLSD, 11/9/12).

15. In Feldman v Flood, 176 FRD 651 (USFLMD 1997), this Court held that such a showing would entail "*tak[ing] a preliminary peek*" at the motion/response to dismiss to see if "*if there appears to be an immediate and clear possibility that it will be granted*".
16. As the record shows, this case's path will not arrive at an order to stay either. This is so because: absent a clear indication that a case will be dismissed in its entirety, a motion to stay should be denied.
    a) Please accord SKY v Greenshoe, 1:06-cv-21722 (USFLSD, 1/24/07), where the court denied a discovery stay because a preliminary review of the motion to dismiss showed that it was more likely than not that some claims would survive.
    b) Similarly instructive is Ray; in which USFLSD declined to stay discovery because a preliminary peek at the motion to dismiss and response thereafter did not indicate the case was "*surely destined for dismissal*".
17. In the instant case, Defendant resurrected that mountain-like peak by mentioning *res judicata*.
18. Yet, a preliminary peek into Plaintiff's response to that peak reveals that the 'mountain' was meek. To be clear: Defendant cannot cry *res judicata* when - at the most crucial checkpoints – Plaintiff was denied his due process rights to litigate his sex discrimination complaint. Ditto for "*fully and fairly*" trying his race discrimination complaint. The Seminal Case of McDonnel-Douglas v Green, 411 US 792 (1973) established the severe impropriety of such an affair:

> *"We cannot accept [defendant]'s suggestion that it should prevail on an issue that [plaintiff] was not privileged to present. We cannot say that the district court's action in striking the racial discrimination claim did not hamper the preparation and presentation of [plaintiff]'s case"*
>
> *"..."*
>
> *"[Plaintiff] should have been accorded the right to prepare his case and plan the strategy of trial with the knowledge that [all causes] of action [were] properly before the [Lower Tribunal]. Accordingly, we remand the case for trial of [plaintiff]'s claim of racial discrimination consistent with the views set forth below."*

Thus, a "preliminary peek" into the opposed motion to dismiss places a century's old sunray onto the summit of Defendant's peak.

19. Its peak was made of ice. Its peak was meek. A peek at the ice on the peak shows the peak had melted. The peak is what they Ray defeats.

20. Obviously, that pathway to a discovery stay will not suffice either.

(3) Unsubstantiated Claims of 'Undue Expense'

21. Yet, even though Defendant's 'mountain' was really a well-robed iceberg, the substance beneath it was also superficial.

22. In direct terms, Defendant never produced facts to support That Motion's claim of undue expense.

23. The pertinent parts of That Motion read as follows (emphasis added) **[M007]:**

> *"the motion practice related to the two subpoenas would be extraordinarily costly."*
>
> *"..."*

> *"The potential harm to Allstate of proceeding with potentially extensive and costly discovery relative to claims this Court may dismiss outweighs any benefit Plaintiff might receive"*

24. Defendant, however, failed to disclose what those purported costs were. It never outlined its legal fees (hourly rate for lead counsel, partner, paralegals) or anything else:

    - No billing records.
    - No affidavits responsive to costs or time.

    Nothing. Just a bare statement.

25. The opposing – and controlling - Ray decision included a note that the movant failed to identify "*in any specific and tangible way the unreasonable discovery burdens it [would] face absent a stay*".

26. Likewise, since Defendant failed to substantiate its claims of the 'extraordinary costs' Plaintiff's "two [non-party] subpoenas" placed on it, this Court should deem that path [to a discovery stay] inoperable.[8/]

(4) Harmful Delay

27. Lastly, even if Defendant could somehow shift the burden [of steering this case away from its floating snow pod of discovery stays] onto Plaintiff, Plaintiff can oblige.

28. Plaintiff would be harmed by a discovery stay.

29. For one, his ability to fully litigate his case would be severely prejudiced. The undefined timespan for a federal court ruling would leave his evidence pursuits in despair.

a) Despair in terms of non-party evidence destruction (see **Affidavit**)

b) Despair in terms of evidence expiration

30. Secondly, the longer Plaintiff's *pro se* litigation continues the heavier the financial burden of prosecution becomes. USFLSD detailed the major categories of financial damage that civil rights litigants endure upon unlawful employment discrimination in its Hardman v Zale, 0:16-cv-62826-DPG decision (USFLMD, 2/28/17).

31. Plus, as the Court has already certified, Plaintiff is a poor person.

32. So, as a poor person seeking justice, Plaintiff cannot afford to take Defendant's misled, melted, unmerited path to discovery stays.

CONCLUSION

WHEREFORE, Plaintiff respectfully asks this Court to deny Defendant's Motion for a Stay of Discovery.

Dated this 4th day of January 2021.

Respectfully submitted,

/s/ Elias Makere
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Get ***Booked Up*** on Justice!

CERTIFICATE OF COMPLIANCE

I certify that the size and style of type used in this document is Times New Roman 14-point Font (caption) and Courier New 12-point Font (contents); thus complying with the font requirements of Local Rule 1.05(a).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of January 2021, I electronically filed the foregoing with the Clerk of Courts by using its online filing page. I also emailed it to the attached service list.

/s/ Elias Makere

Endnotes:

[1/] see McDonnel-Douglas v Green, 411 US 792 (1973)

[2/] The Complaint = "*Complaint Against Allstate Insurance Company with Jury Demand*" (Dkt No. 1; 8/12/20).

[3/] That Motion = "*Defendant's Motion to Stay Discovery...*" (Dkt No. 28; 12/18/20).

[4/] The Notice = '*Notice to the Courts to Take Judicial Notice*' (Dkt No. 31; Exhibits; 12/21/20).

[5/] The Notice = '*Notice to the Courts to Take Judicial Notice*' (Dkt No. 31; Exhibits; 12/21/20).

[7/] **[C051]** = "*[Allstate] only fired the black man who failed an actuarial exam*" = the ultimate fact underlying the case (which is not dubious at all)

[8/] Neither one of the non-party subpoenas Plaintiff propounded asked for any Defendant trade secrets/confidential information. In other words, Defendant lacks standing to claim those "two subpoenas" were "extraordinarily costly"/burdensome.

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PLAINTIFF'S AFFIDAVIT

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA, JACKSONVILLE DIVISION

ELIAS MAKERE, FSA, MAAA	)	Case No (LT)
Petitioner	)	**3:20-cv-00905-MMH-JRK**
	)	
v.	)	
	)	
ALLSTATE INSURANCE COMPANY,	)	
Respondent	)	

PLAINTIFF'S AFFIDAVIT IN SUPPORT OF PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO STAY DISCOVERY

The affiant, Elias Makere, swears or affirms as follows:

Background

1. I am over the age of eighteen (18).
2. I am a plaintiff in the above-captioned case.
3. This affidavit is made in good faith.

Familiarity

4. I have read the Local Rules of Court, Federal Rules of Civil Procedure, the Federal Rules of Evidence, and parts of the Middle District's Discovery Handbook [so far].
5. The information in this affidavit is based on my own personal knowledge.

Facts

6. I'm seeking discovery from direct parties (ie, Allstate) and Non-Parties (eg, Society of Actuaries – "SOA").

7. I'm confident that the material I seek will yield admissible evidence in my lawsuit against Allstate.
8. One major problem I'm faced with, though, is the potential for some of these parties to destroy evidence.
    a. For example, I believe the SOA will destroy/hide evidence. I already know they have a policy for routinely destroying company material (eg, actuarial exam material, etc.). Material that is pertinent to my suit against Allstate.
    b. As another example, I believe Allstate will also destroy evidence. This belief is largely based on (i) my experiences with the company; and (ii) publicly available records of their deceit.
        i. Example of Allstate deceit #1: Allstate claimed it interviewed its staff to investigate who placed a racist doll on my desk. One such staff member was the individual who put it there. Yet, Allstate claimed that nobody corroborated the existence of the racist doll. Importantly, this staff member testified – to state administrative authorities - that he never lied to anyone about being involved. Long story short, Allstate lied about the doll to cover-up its conduct.
        ii. Example of Allstate deceit #2: depending on <u>when</u> you ask, Allstate will admit I charged it with sex discrimination. At any other moment of convenience, though, Allstate will turn around and say I never did.

9. I could cite dozens more examples.

10. The key is that these parties' destructive and deceitful predilections only worsen with time. I strongly believe that any further delays will unnecessarily erode my ability to present facts to a jury.

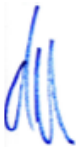
So, may you please deny Allstate's recent request for a discovery stay?

Thank you.

Verification Under Oath Pursuant to 28 USC §1746

I declare under penalty of perjury that the foregoing is true and correct.
Executed on this 4th day of January 2021.

UNITED STATES OF AMERICA



1/4/2021

Elias Makere, Plaintiff/Affiant
