

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



DIVISION ONE  
FILED: 09/21/2010  
RUTH WILLINGHAM,  
ACTING CLERK  
BY: GH

UNDERHILL TRANSFER COMPANY, INC., ) 1 CA-SA 10-0180  
an Arizona corporation, )  
) DEPARTMENT C  
Petitioner )  
)  
v. ) Yuma County  
) Superior Court  
THE HONORABLE MARK WAYNE REEVES, ) No. S1400 CV0200700801  
Judge of the SUPERIOR COURT OF )  
THE STATE OF ARIZONA, in and for )  
the County of YUMA, )  
)  
Respondent Judge, )  
)  
JOHN T. UNDERHILL SR., a single ) **DECISION ORDER**  
man, )  
)  
Real Party in Interest. )  
\_\_\_\_\_ )

The court, Presiding Judge Maurice Portley and Judges Margaret H. Downie and Daniel A. Barker participating, has considered the petition for special action by Underhill Transfer Company, Inc. ("UTC"). For the following reasons, we accept jurisdiction and grant relief by lifting the discovery stay.

**FACTS AND PROCEDURAL HISTORY**

John Underhill Sr. ("Underhill") was the principal shareholder of UTC, a publicly traded company. He stepped down in January 2006.

Within a year, UTC allegedly defaulted on Underhill's consulting agreement. He sued UTC for breach of contract in 2007. UTC filed a counterclaim for abuse of process.

Underhill filed a motion to stay discovery after UTC had filed a successful Arizona Civil Procedure Rule 56(f) motion. He sought to stay discovery until after the David Caruthers bankruptcy hearings and the former shareholder trials in October 2010. The trial court granted the motion and stayed discovery until February 1, 2011.

#### **JURISDICTION**

Special action jurisdiction is discretionary. Ariz. Rev. Stat. ("A.R.S.") § 12-120.21(A)(4) (2010); *U-Totem Store v. Walker*, 142 Ariz. 549, 551, 691 P.2d 315, 317 (App. 1984). If, however, a party does not have a remedy on appeal, we can exercise special action jurisdiction. Ariz. R.P. Spec. Act. 8(a). Discovery issues can be resolved by special action. See *Am. Family Mut. Ins. Co. v. Grant*, 222 Ariz. 507, 511, ¶ 10, 217 P.3d 1212, 1216 (App. 2009).

#### **DISCUSSION**

"A trial court has broad discretion in matters of discovery, and its decision will not be disturbed absent a showing of abuse." *Plattner v. State Farm Mut. Auto Ins. Co.*, 168 Ariz. 311, 319, 812 P.2d 1129, 1137 (App. 1991). Discretion is abused when "the reasons given by the court for its action

are clearly untenable, legally incorrect, or amount to a denial of justice." *State v. Chappel*, 135 Ariz. 281, 297 n.18, 660 P.2d 1208, 1224 n.18 (1983).

Here, the superior court stayed discovery for six months. Although the superior court is in the best position to resolve discovery disputes, *State v. Tankersley*, 191 Ariz. 359, 368, ¶ 35, 956 P.2d 486, 495 (1998), absent a stipulation, the wholesale stay of discovery for six months is an abuse of discretion. The stay contravenes the purpose of discovery, which is designed to ensure a just, speedy, and inexpensive determination of every action. Ariz. R. Civ. P. 1. Moreover, the stay of discovery undermines the court's authority to control discovery and resolve disputes. See *State Farm Mut. Ins. Co. v. Superior Court*, 167 Ariz. 135, 138, 804 P.2d 1323, 1326 (App. 1991).

Although Underhill hopes that the ancillary litigation is favorably resolved, the trial court cannot limit all discovery that UTC may want to conduct to prosecute its counterclaim until after ancillary litigation is resolved. Instead, UTC should be allowed to conduct reasonable discovery to prosecute its counterclaim. If requested, the trial court can manage discovery disputes and keep the case on track to be settled or tried.

**CONCLUSION**

Based on the foregoing, we accept jurisdiction, and grant relief by lifting the discovery stay.

/s/

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MAURICE PORTLEY, Presiding Judge