

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

WILLIAM B. CHANDLER III
CHANCELLOR

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Submitted: September 26, 2008
Decided: October 8, 2008

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Re: *Ford Motor Co., et al. v. Drive America Holdings, Inc., et al.*
Civil Action No. 3910-CC

Dear Counsel:

This proceeding arises out of a protracted dispute between Ford Motor Company (“Ford”) and Jaguar Land Rover North America LLC with Drive America Holdings, Inc. (“Drive America”) and Angelo, Gordon & Company, L.P. Drive America has moved to dismiss plaintiffs’ claims and is seeking an order to stay discovery pending resolution of their motion to dismiss. After considering the briefs, I grant defendants’ motion for a protective order staying discovery.

The decision to stay discovery pending resolution of a dispositive motion rests within the “sound discretion of the Court.”¹ Although an order to stay discovery should not be granted automatically,² it is often the case that such an order is granted when a motion to dismiss is before the Court.³ The general inquiry is that the “Court must balance the broad policy of allowing discovery against the dual goals of fairness and efficiency.”⁴ In other words, I must “balance the costs and hardship to defendants if discovery were to proceed against plaintiffs’ need for discovery and the risk of injury to plaintiffs if a stay were granted.”⁵

In this case, several factors influence my decision to grant defendants’ motion to stay. First, the briefing schedule for defendants’ pending motion to dismiss has been established in a relatively expedited manner ending on November 20, 2008. I fail to see the risk of prejudice resulting from a delay in discovery when the time frame for deciding the dispositive motion is roughly sixty days. I reject plaintiffs’ argument suggesting that defendants’ alleged fraudulent acts would render Drive America incapable of paying a judgment if the Court eventually found in plaintiffs’ favor. Plaintiffs provide no evidence at this stage

¹ *Gatz v. Ponsoldt*, C.A. No. 174-N, 2005 WL 820604, at *1 (Del. Ch. Apr. 4, 2005).

² *See Schick, Inc. v. Amalgamated Clothing & Textile Workers*, 1987 WL 12450 (Del. Ch. June 18, 1987).

³ *See Ohrstrom v. Harris Trust Co.*, 1997 WL 666977, at *2 (Del. Ch. Oct. 20, 1997) (stating that when there is “no emergency that requires discovery, normally [the Court’s] discretion is exercised in favor of staying discovery”); *Gatz*, 2005 WL 820604, at *1.

⁴ *Gatz*, 2005 WL 820604, at *1.

⁵ *Ohrstrom*, 1997 WL 666977, at *2.

that Drive America will soon become insolvent or financially incapable of paying within the next two months.

Second, plaintiffs have failed to show how they would otherwise be significantly prejudiced or left without a remedy if a stay of discovery is granted. Plaintiffs have not argued that the evidence they seek is “subject to deterioration, manipulation, or just being forgotten” while defendants’ motion to dismiss is pending.⁶ Defendants, on the other hand, will almost certainly incur substantial costs if discovery continues during briefing on the dispositive motion. I am aware of the significant outlay of time and expense in the discovery process, a process that may be rendered unnecessary by the motion to dismiss. Defendants have a significant interest in avoiding the possibly needless costs of discovery. Therefore, in balancing the costs of discovery with the relatively small harm threatening plaintiffs, I find the scale tips in favor of the defendants.


Nevertheless, I see no reason why depositions of two third-party individuals, who are willing and able to provide their depositions, would be significantly burdensome to defendants. Thus, I will expect the two third-party depositions (Messrs. Dickerson and Bethell) from the general order to stay all discovery.

⁶ *Skubik v. New Castle County*, C.A. No. 16091, 1998 WL 118199, at *2 (Del. Ch. Mar. 5, 1998).

For the reasons set forth above, I grant defendants' Motion for a Protective Order Staying Discovery, with the exceptions of Messrs. Dickerson and Bethell.

IT IS SO ORDERED.

Very truly yours,

A handwritten signature in cursive script that reads "William B. Chandler III". The signature is written in black ink and includes a horizontal line under the "III" at the end.

William B. Chandler III

WBCIII:tet