2006 WL 894955
Only the Westlaw citation is currently available.
United States District Court,
D. Colorado.

STRING CHEESE INCIDENT, LLC.,
d/b/a Baseline Ticketing, a Colorado
limited liability company, Plaintiff(s),
v.
STYLUS SHOWS, INC., d/b/a The Shakedown
Campout & Music Festival, a Florida corporation;
Hal Abramson, individually, Peter Vaughn Shaver,
Esq., Haver & Associates, an Oregon law firm;
and John Does Nos., I through X., Defendant(s).

No. 1:02–CV–01934–LTB–PA.
|
March 30, 2006.

Attorneys and Law Firms

Richard G. Sander, Paige Barbra Lawrence, Sander Ingebretsen & Parish, P.C., Denver, CO, for Plaintiff.

Hal R. Abramson, Rockville, MD, pro se.

Patrick Dale Tooley, Dill, Dill, Carr, Stonbraker & Hutchings, PC, Denver, CO, for Defendants.

ORDER Granting in Part and Denying in Part Shaver and Haver & Associates' Motion for Stay of Discovery

COAN, Magistrate J.

***1** In this diversity case, plaintiff alleges, among other claims, that defendant Shaver, an Oregon attorney, misrepresented defendant Shakedown's financial status in connection with a music festival to be held in Oregon. The case was referred to the undersigned for pretrial case management on November 16, 2005

I.

According to its statement in the Scheduling Order, plaintiff Baseline contracted to sell tickets for Shakedown for the Oregon music festival, but became concerned about Shakedown's financial viability after defendants Abramson and Stylus Shows began demanding unusual advances on ticket sales revenues. Baseline asserts that, throughout the relevant time period, Shaver continually assured Baseline that Shakedown was fully capitalized. The music festival eventually was cancelled because defendants Abramson and Stylus allegedly did not pay the amount the venue for the festival required.

At the Scheduling Conference, Shaver and Haver verbally moved for a stay of discovery, which was granted as to Haver only pending ruling on its motion to dismiss. See Scheduling Order, Doc. # 24 at 3. The day before, on January 31, 2006, Shaver and Haver had moved for a stay of discovery in writing, see Doc. # 23, and the motion was referred to the undersigned on February 6, 2006. That motion, defendants Shaver and Haver & Associates' (Haver) Motion to Stay Discovery Pursuant to Rule 26(c), Doc. # 23, is the matter now before the Court.

Shaver and Haver argue that all discovery in this case should be stayed pending resolution of their motion to dismiss for lack of personal jurisdiction. They also claim that discovery directed to Shaver and his law firm would risk the disclosure of privileged information, see Reply at 2, and that they would be prejudiced by becoming subject to the burden and expense of litigation even though the court has not yet ruled on the pending motion to dismiss. They ask that all disclosures and discovery be stayed until the court has determined whether it has jurisdiction over Shaver and Haver.

Plaintiff objects to any stay, contending that defendants have failed to cite any authority on point that would authorize a broad stay of discovery, and that a discovery stay would only be appropriate if the case were fully concluded as a result of ruling on the motion to dismiss, relying upon *Greeley Publishing Co. v. Herget,* 233 F.R.D. 607, 2006 WL 305510 (D.Colo.2006)(internal citation omitted). Plaintiff contends that: 1) the case will not be concluded by a ruling on these defendants' motion to dismiss because even if they are dismissed, plaintiff will continue its claims against the other defendants; 2) discovery will aid in responding to the issues in defendants' motion to dismiss; and 3) discovery will not be unduly wasteful or burdensome. Plaintiff also claims that Shaver's actions in Colorado are clearly sufficient to establish personal jurisdiction and that, because his actions are imputed to the law firm of Haver & Associates, Haver also should remain as a defendant. See Pl. Resp. at 2–

3. Finally, plaintiff claims prejudice if discovery is stayed indefinitely.

II.

***2** The Federal Rules of Civil Procedure do not expressly provide for a stay of proceedings. Rule 26(c) does however, permit the court to "make any order which justice requires to protect a party ... from annoyance, embarrassment, oppression, or undue burden or expense." See Fed.R.Civ.P. 26(c)(2005). I find that subjecting a party to discovery when a motion to dismiss for lack of personal jurisdiction is pending may subject him to undue burden or expense, particularly if the motion to dismiss is later granted.

In order to evaluate Shaver and Haver's motion for stay, I may weigh the following interests: (1) plaintiff's interests in proceeding expeditiously with the civil action and the potential prejudice to plaintiff of a delay; (2) the burden on the defendants; (3) the convenience to the court; (4) the interests of persons not parties to the civil litigation; and (5) the public interest. See e.g., *FDIC v. Renda,* No. 85–2216–O, 1987 WL 348635, at *2 (D.Kan.987)(unpublished disposition).

In this action, discovery began on or about February 1, 2006 and the discovery deadline is September 15, 2006. Shaver and Haver's motion to dismiss was filed Decmber 20, 2005 and is now fully briefed. Appplying the *Renda* factors, I find that: 1) to grant defendants' motion could delay the proceedings for an unknown period of time until there is a ruling on the pending motion and that the delay would significantly impact and prejudice plaintiff's "right to pursue [its] case and vindicate its claim expeditiously" *id.* (citing *Golden Quality Ice Cream Co., Inc. v. Deerfield Specialty Papers,* 87 F.R.D. 53, 56 (E.D.Pa.1980); 2) defendants, however, also would undoubtedly be prejudiced if they were forced to engage in discovery if the court eventually granted their motion to dismiss; 3) it is generally the court's practice not to stay cases; 4) if the motion for stay were denied, an *in camera* review of allegedly privileged documents as well as a suitable protective order could ensure that certain privileged documents would not be produced and that the confidentiality of any privileged materials ordered produced would be protected; 5) the court is inconvenienced if matters proceed in a piecemeal fashion which would occur if discovery proceeded against some, but not all, defendants; 6) if discovery were to be completed between plaintiff and the other defendants before the Shaver and Haver motion to dismiss is ruled on, all parties would have to engage in a second round of discovery with Shaver and Haver if their motion to dismiss is denied; and 7) there is no evidence before me that third parties or the public interest are or may become involved in this case. Finally, I agree with plaintiff's arguments only to the extent that, even if discovery were stayed against Shaver and Haver and their motion to dismiss is granted, the case would proceed against the remaining defendants.

After considering counsels' arguments and the *Renda* factors, I find that a thirty day stay to allow for the potential of a ruling on the motion to dismiss will not unduly prejudice either side. Thereafter, however, more factors weigh in favor of proceeding with discovery rather than imposing either an indefinite stay of all discovery or a stay in favor of Shaver and Haver & Associates.

IV.

***3** Accordingly, for the reasons stated, it is hereby

ORDERED that defendants Shaver and Haver & Associates' Motion to Stay Discovery Pursuant to Rule 26(c), Doc. # 23, is *granted in part* and *denied in part* as follows. It is further

ORDERED that discovery against Shaver and Haver & Associates only is *stayed* until April 30, 2006 and that the stay is *lifted* as of May 1, 2006. It is further

ORDERED that, to the extent they have not previously done so, Shaver and Haver will produce Rule 26(a)(1) disclosures to opposing counsel no later than May 10, 2006.

All Citations

Not Reported in F.Supp.2d, 2006 WL 894955

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