UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

DLJ MORTGAGE CAPITAL, INC.,

          Plaintiff,

-vs-   Case No. 2:10-cv-558-FtM-36SPC

WACHOVIA BANK, N.A.,

          Defendant.

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ORDER

This matter comes before the Court on Defendant's Motion to Stay Discovery, and Incorporated Rule 26(C)(1) and Local Rule 3.01(g) Certificates and Memorandum of Law (Doc. #25) filed on August 26, 2011. Defendant Wells Fargo Bank, N.A., successor by merger with Wachovia Bank, N.A., seeks entry of an order staying discovery in this case because Plaintiff's Amended Complaint (Doc. #23) fails to allege any factual basis for its claim of interest in the Check at issue in this case. Contemporaneously with this Motion, Wachovia has filed a motion to dismiss Plaintiff's Amended Complaint for failure to state a claim and submits that its pending motion to dismiss presents a meritorious basis for dismissal of this action in its entirety. Accordingly, Wachovia seeks relief from the obligation to incur at this juncture the costs associated with conducting discovery in this matter.

In deciding whether to stay discovery pending resolution of a motion to dismiss, the court must balance the harm produced by a delay in discovery against the possibility that the motion will be granted and entirely eliminate the need for such discovery. McCabe v. Foley, 233 F.R.D. 683, 685

(M.D. Fla. 2006) (citation omitted). The Court finds that a stay of discovery in this matter is not warranted and this case shall proceed in accordance with the deadlines set forth in the Case Management and Scheduling Order (Doc. #15). The parties may move the Court for an extension of deadlines if needed.

Accordingly, it is now

ORDERED:

Defendant's Motion to Stay Discovery, and Incorporated Rule 26(C)(1) and Local Rule 3.01(g) Certificates and Memorandum of Law (Doc. #25) is **DENIED**.

DONE AND ORDERED at Fort Myers, Florida, this ___31st___ day of August, 2011.

SHERI POLSTER CHAPPELL
UNITED STATES MAGISTRATE JUDGE

Copies: All Parties of Record