

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION**

LORI DIAZ,

Plaintiff,

v.

ATKINSON COUNTY, GEORGIA; M-
SPACE HOLDINGS, LLC; VICTOR B.
SUTTLES; SUTTLES & ASSOCIATES-
ARCHITECTS, LLC; WINSTON
GOURLEY; SAMUEL T. GUTHRIE;
EXPERIENCE WORKS, INC.; RICKY
MOORE; SUNNYSIDE CORPORATION;
OSTELLA POPE; and COLGATE-
PALMOLIVE COMPANY,

Defendants.

CIVIL ACTION NO.: 5:15-cv-16

ORDER

This matter is before the Court on Defendant Atkinson County, Georgia's Renewed Motion to Stay Discovery pending resolution of its Motion to Dismiss Second Amended Complaint. (Doc. 68) On September 23, 2015, Plaintiff filed a Response to this Motion indicating her consent to a stay of discovery. (Doc. 78.) After careful consideration, Defendant Atkinson County, Georgia's Renewed Motion is **GRANTED**.

BACKGROUND

Plaintiff filed this action on March 4, 2015, against Atkinson County, Georgia, M-Space Holdings, LLC, Victor B. Suttles, and Suttles & Associates-Architects, LLC. (Doc. 1.) On July 17, 2015, Plaintiff filed a Motion to Amend her Complaint (doc. 33) which the Court granted (doc. 35). Plaintiff's First Amended Complaint added two additional Defendants,

Winston Gourley and Samuel T. Guthrie, and added additional claims. (Doc. 36.) On July 22, 2015, Defendant Atkinson County moved to dismiss the First Amended Complaint on grounds of sovereign immunity. (Doc. 38.) Contemporaneous with that Motion, Atkinson County moved to stay discovery while the Motion to Dismiss is pending. (Doc. 39.) After a telephonic hearing on July 24, 2015, the Court entered an Order granting Defendant Atkinson County's Motion to Stay Discovery in part allowing a limited discovery period for Plaintiff to conduct discovery related to issues as to amending her Complaint to name additional parties and discovery needed to respond to Atkinson County's Motion to Dismiss. (Doc. 47.)

On August 25, 2015, in accordance with the Court's July 24, 2015 Order, Plaintiff filed a Second Motion to Amend her Complaint (doc. 57) which the Court granted (doc. 62). Plaintiff's Second Amended Complaint added five additional Defendants, Experience Works, Inc., Ricky Moore, Sunnyside Corporation, Ostella Pope and Colgate-Palmolive Company, and added additional claims. (Doc. 63.) Defendant Atkinson County filed its Motion to Dismiss Plaintiff's Second Amended Complaint contemporaneously with the present Motion to Stay. (Doc. 67.) On September 17, 2015, Defendants Atkinson County, Georgia, Gourley, Guthrie, and Moore filed their Answer to Plaintiff's Second Amended Complaint. (Doc. 69.) Later, M-Space Holdings, LLC filed its Answer on September 21, 2015 (doc. 75); and Defendants Victor B. Suttles and Suttles & Associates-Architects, LLC filed their Answer to Plaintiff's Second Amended Complaint on September 23, 2015 (doc. 79). On October 5, 2015, Defendant Sunnyside Corporation filed a pre-answer Motion to Dismiss Plaintiff's Second Amended Complaint. (Doc. 85.) Defendants Colgate-Palmolive Company, Experience Works, Inc. and Ostella Pope by the granting of Motions for Clerk's Extension of Time are to answer, or

otherwise respond, to Plaintiff's Second Amended Complaint on or before October 14, 2015.
(Docs. 82, 90.)

DISCUSSION

With regard to the timing of discovery, the Court of Appeals for the Eleventh Circuit has recognized that

[i]f the district court dismisses a nonmeritorious claim before discovery has begun, unnecessary costs to the litigants and to the court system can be avoided. Conversely, delaying ruling on a motion to dismiss such a claim until after the parties complete discovery encourages abusive discovery and, if the court ultimately dismisses the claim, imposes unnecessary costs. For these reasons, any legally unsupported claim that would unduly enlarge the scope of discovery should be eliminated before the discovery stage, if possible.

Chudasama v. Mazda Motor Corp., 123 F.3d 1353, 1368 (11th Cir. 1997) (footnotes omitted).

For these reasons, this Court, and other courts within the Eleventh Circuit, routinely find good cause to stay the discovery period where there is a pending motion to dismiss. See, e.g., Habib v. Bank of Am. Corp., No. 1:10-cv-04079-SCJ-RGV, 2011 WL 2580971, at *6 n.4 (N.D. Ga. Mar. 15, 2011) (citing Chudasama, 123 F.3d at 1368) (“[T]here is good cause to stay discovery obligations until the District Judge rules on [the defendant’s] motion to dismiss to avoid undue expense to both parties.”); Berry v. Canady, No. 2:09-cv-765-FtM-29SPC, 2011 WL 806230, at *1 (M.D. Fla. Mar. 2, 2011) (quoting Moore v. Potter, 141 F. App’x 803, 807 (11th Cir. 2005)) (“[N]either the parties nor the court have any need for discovery before the court rules on the motion [to dismiss].”).

In the case at hand, the Court finds that good cause exists for a stay of discovery while Defendant Atkinson County’s Motion to Dismiss Plaintiff’s Second Amended Complaint is pending. A ruling on Defendant’s Motion to Dismiss before the commencement of discovery may save the parties time and resources by clarifying what issues the parties will need to address

in discovery. Additionally, in her Second Amended Complaint, Plaintiff added five Defendants to this action. One of those Defendants has filed a separate Motion to Dismiss, and three have not yet filed an answer in this action. Finally, Plaintiff filed a Response to Defendant Atkinson County's Renewed Motion to Stay on September 23, 2015, stating that she consents to a stay of discovery pending resolution of Defendant Atkinson County's Motion to Dismiss. (Doc. 76.)

THEREFORE, IT IS HEREBY ORDERED that Discovery in this matter is STAYED until such time as a ruling is made on Defendant Atkinson County's Motion to Dismiss Plaintiff's Second Amended Complaint.

IT IS FURTHER ORDERED that the Court will DEFER RULING on Defendants Gourley, Guthrie, and Moore's Motion to Limit Discovery to Issues Related to Official and Statutory Immunity upon Resolution of Defendant Atkinson County, Georgia's Motion to Dismiss (doc. 71). Within **fourteen (14) days** of entry of a ruling on Defendant Atkinson County's Motion to Dismiss, the parties are directed to contact the Court to schedule a telephonic hearing as to this Motion requesting a limited discovery period.

SO ORDERED, this 9th day of October, 2015.



R. STAN BAKER
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA