

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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APACE COMMUNICATIONS, LTD.,

Plaintiff,

DECISION AND ORDER

07-CV-6151L

v.

JEFFREY BURKE, et al.,

Defendants.

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Defendants, Lori Levine and Steven Levine, have moved for summary judgment (Dkt. #168). This Court set a schedule for responding to the motion (Dkt. #169).

Now, plaintiff moves (Dkt. #180) to stay briefing and arguing on the summary judgment motion pending completion of fact discovery. Counsel for the Levines submitted a letter, dated December 3, 2011 (Dkt. #183) opposing the request.

I hereby GRANT the motion to stay (Dkt. #180) the briefing and argument of the Levines' summary judgment motion (Dkt. #168).

Because of plaintiff's counsel's medical issues and other matters, familiarity with which is presumed by the parties, Magistrate Judge Marian W. Payson granted plaintiff's request for an extension of fact discovery into February 2012. The Magistrate Judge gave certain directives relative to obtaining alternative counsel and selecting dates for depositions but, as of the date of this order, the parties continue to be embroiled in those matters and there appears to have been little progress made by counsel to orchestrate the scheduling and timing of the discovery permitted by Magistrate Judge Payson.

Although it may be that this discovery sheds little light on the issues raised by the Levines' summary judgment motion, it would be imprudent for this Court now to forge ahead in light of the Magistrate Judge's determination that some modest extension of discovery was warranted. Once the discovery schedule has been concluded, this Court will revisit the briefing and schedule argument, if necessary, of the Levine cross-motion for summary judgment.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "David G. Larimer". The signature is written in a cursive style with a large, looping initial "D".

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DAVID G. LARIMER  
United States District Judge

Dated: Rochester, New York  
December 14, 2011.