

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

TIMOTHY BAIRD,

Plaintiff,

vs.

MATTHEW C. DANIELS, *et al.*,

Defendants.

Case No. 1:12-cv-945

Judge Timothy S. Black

**ORDER DENYING PLAINTIFF'S MOTION  
FOR PARTIAL RELIEF FROM STAY (Doc. 15)**

This civil action is before the Court on Plaintiff Timothy Baird's motion for partial relief from stay (Doc. 15) and the parties' responsive memoranda (Docs. 16, 17).

**I. BACKGROUND FACTS AND PROCEDURAL POSTURE**

Baird moves the Court for partial relief from the stay of this action ordered on February 7, 2013. (Doc. 14). Specifically, Baird seeks discovery from non-parties pending the resolution of the criminal proceedings against Defendant Matthew C. Daniels.

On November 15, 2012, Daniels was indicted by the Grand Jury for the Southern District of Ohio on multiple counts, including conspiracy, bank fraud, wire fraud, and mail fraud – all related to the failed development and construction of Kenwood Towne Place. Daniels claims that the criminal trial will involve issues related to his alleged diversion of loan proceeds, the same issues alleged in the complaint in this civil matter. After considering the overlap between the criminal and civil cases, Fifth Amendment implications, and the public interest, this Court stayed this civil action. (Doc. 14).

Baird now seeks that this Court amend its stay to permit non-party discovery because: (1) Defendant's criminal trial has been postponed; (2) permitting non-party document discovery does not adversely affect Defendant's interests; and (3) permitting non-party document discovery at this juncture will facilitate an expeditious resolution when the stay is fully dissolved. (Doc. 15).

## II. STANDARD OF REVIEW

A stay of civil proceedings due to a pending criminal investigation is “an extraordinary remedy.” *Louis Vuitton v. LY USA, Inc.*, 676 F.3d 83, 98 (2d Cir. 2012). However, simultaneous criminal and civil cases involving the same or closely related facts may give rise to Fifth Amendment concerns sufficient to warrant a stay of the civil proceedings. *Claborn v. State of Ohio*, No. 2:11cv679, 2011 U.S. Dist. LEXIS 137629 (S.D. Ohio Nov. 30, 2011). The decision whether to stay civil litigation in deference to parallel criminal proceedings is committed to the sound discretion of the court. *McCullough v. Krendick*, No. 5:07cv2341, 2009 U.S. Dist. LEXIS 87849, at \*1 (N.D. Ohio Sept. 9, 2009). The factors that guide this Court's discretion in such circumstances are:

(1) the extent to which the issues in the criminal case overlap with those presented in the civil case; (2) the status of the case, including whether the defendants have been indicted; (3) the private interests of the plaintiffs in proceeding expeditiously weighed against the prejudice to plaintiffs caused by the delay; (4) the private interests of and burden on the defendants; (5) the interests of the courts; and (6) the public interest.

*McCloskey v. White*, No. 3:09cv1273, 2011 U.S. Dist. LEXIS 19877, at \*1 (N.D. Ohio Mar. 1, 2011).

### III. ANALYSIS

Baird's motion for partial relief from stay is analyzed using the same six factor balancing test identified and applied in the Court's previous Order. (Doc. 14 at 3).

Although the facts have not materially changed, Baird's request for limited relief presents a more precise question than was originally considered. Therefore, the question is: may the stay be narrowed?

The *first factor* in granting a stay is whether there is overlap between the criminal proceeding and the civil case. *McCloskey*, 2011 U.S. Dist. LEXIS 19877 at 1.

Specifically, this Court has already found that there is significant overlap between the subject matter and persons involved in the civil and criminal matters. *Id.* Accordingly, the Court originally ruled that this factor weighed in favor of stay. *Id.*

Now, although Baird has limited his new discovery request to non-party documents, there still remains the potential for significant overlap. It is likely that the criminal case against Daniels will entail the same collection of non-party information Baird seeks, *i.e.*, "bank records, credit card records, records of tenants of the Joint Entities' projects, and vendor records." (Doc. 15 at 7). Without any indication of which non-parties Baird intends to subpoena, this Court cannot assess fully the significance of potential overlap.

The *second factor* is the status of the cases. Because staying a civil case pending resolution of a criminal matter is such an "extraordinary remedy," courts ordinarily enter a stay only "when related criminal proceedings are imminent or pending." *Louis Vuitton*, 676 F.3d at 98. Here, Daniels' criminal case is scheduled for a jury trial to commence in

approximately two months, on September 30, 2013. *See USA v. Daniels*, 1:12cr123 (S.D. Ohio 2012).

While Daniels' criminal trial was continued from March 18, 2013 to September 30, 2013, a six month continuance does not change the fact that in its original Order this Court anticipated the same, finding that "while...a stay could last many months, if not years, should the criminal proceedings generate appeals, the status of the criminal proceedings weigh in favor of a stay." (Doc. 14 at 2). Therefore, the status of the case still weighs in favor of a stay.

The third factor in examining whether to grant a stay is Baird's interest in the resolution of the case. The record reflects that this case is an action for not only money damages, but injunctive relief against Daniels. (Doc. 1 at ¶ 84). This Court agrees that partial relief of the stay would promote an expeditious resolution of this case. Specifically, by "allowing the parties to obtain and review [voluminous amounts of] documents from non-parties while waiting for...Daniels' criminal case to conclude," the parties would have accomplished significant discovery. (Doc. 15 at 6). Accordingly, an expeditious resolution of the case weighs against the stay. (Doc. 14 at 5-6).

The fourth factor addresses the consequences Daniels may suffer as a result of granting Baird's motion. Baird alleges that a partial lift of the stay does not raise any Fifth Amendment concerns. Specifically, Baird is not seeking to compel Daniels to testify, respond to interrogatories, or submit evidence or documentation of any kind. (Doc. 17 at 4). Even if Daniels does have an interest in one of the non-party entities, there are no constitutional concerns because no testimony is required. (Doc. 16 at 3).

Accordingly, the Court finds that the request for non-party documents does not implicate Fifth Amendment concerns. However, while Baird's request does not raise any constitutional concerns, the scope of his discovery request may require Daniels to object or otherwise take action in response to a subpoena, thereby distracting him and his resources from trial. Therefore, the risk of distraction and the gravity of a criminal trial weigh in favor of a stay.

As to the *fifth and sixth factors*, nothing has changed the analysis since the Court's original Order granting the stay.

#### IV. CONCLUSION

The Court acknowledges the compelling and well intentioned arguments advanced by Plaintiff. However, after consideration of each factor, the Court finds that, *in toto*, the issues have not materially changed in such a way as to warrant partial relief from the stay. Therefore, Plaintiff's motion for partial relief from the stay (Doc. 15) is **DENIED**.

**IT IS SO ORDERED.**

Date: 8/5/13

*/ s/ Timothy S. Black*  
Timothy S. Black  
United States District Judge