

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

SUR G. NOVEL, *et al.*,

Plaintiffs,

vs.

Civil Action 2:13-cv-703
Judge Watson
Magistrate Judge King

WILLIAM DOUGLAS LOWE, *et al.*,

Defendants.

OPINION AND ORDER

This matter is before the Court on *Pro Se Plaintiff Sur G. Novel's Motion to Take Defendants' Depositions by Telephone*, Doc. No. 73, and the *Joint Motion of Defendants to Stay Discovery and Amend the Case Schedule or, in the Alternative, Motion to Compel Plaintiff to Appear in Person for Deposition*, Doc. No. 75 ("Motion to Stay").

This case is related to certain Ohio state court litigation arising out of family trusts and Ohio Supreme Court disciplinary proceedings against plaintiff Novel, a lawyer who is proceeding *pro se*. The action was originally filed on September 19, 2012 in the United States District Court for the Northern District of New York, *Complaint*, Doc. No. 1, and was thereafter transferred to this Court, *Memorandum-Decision and Order*, Doc. No. 45.

On September 16, 2013, the *Amended Complaint*, Doc. No. 57, was filed, joining Anna Craig, a resident of Nevada and an alleged beneficiary of an Ohio trust. *Id.* The *Amended Complaint* asserts claims of malicious prosecution, breach of contract, violation of

federal law (including federal antitrust laws), negligence, fraud, interference with the right of sepulcher, the unauthorized practice of law and professional misconduct against fifteen defendants, including an Ohio lawyer, a retired Ohio judge sitting by assignment, an Ohio trust and its trustee, the Estate of Glen Gallwitz and its executor and beneficiaries of the trust and estate. *Id.*

A preliminary pretrial conference was held on August 28, 2013, pursuant to the provisions of Fed. R. Civ. P. 16(b). Following that conference, the Court issued an order directing, *inter alia*, that all discovery be completed by April 18, 2014. *Preliminary Pretrial Order*, Doc. No. 55, p. 3.

Defendants Crystal Gallwitz, Kevin Gallwitz, Ray Gallwitz, Betty Sue Street, Patrick M. McGrath, William Douglas Lowe and Reese, Pyle, Drake & Meyer, PLL, moved to dismiss plaintiffs' claims, challenging, *inter alia*, this Court's subject matter jurisdiction. See Doc. Nos. 58, 60, 61. After plaintiff Novel moved for leave to take the depositions of defendants by telephone, Doc. No. 73, all defendants jointly filed the *Motion to Stay*, asking that discovery be stayed and that all case deadlines be suspended pending resolution of the motions to dismiss. In the alternative, defendants ask that plaintiff Novel be required to appear in person in Columbus, Ohio, for his deposition. *Id.* Plaintiff Novel opposes the *Motion to Stay*, Doc. No. 78, and defendants have filed a reply memorandum, Doc. No. 80.

Ordinarily, "the fact that a party has filed a case-dispositive motion is usually deemed insufficient to support a stay of discovery."

Bowens v. Columbus Metro. Library Bd. of Trs., No. 2:10-cv-00219, 2010 U.S. Dist. LEXIS 103399, at *4 (S.D. Ohio Sept. 16, 2010). See also *Williams v. New Day Farms, LLC*, No. 2:10-cv-0394, 2010 U.S. Dist. LEXIS 98934, at *3 (S.D. Ohio Sept. 7, 2010). However, "[t]rial courts have broad discretion and inherent power to stay discovery until preliminary questions that may dispose of the case are determined." *Gettings v. Bldg. Laborers Local 310 Fringe Benefits Fund*, 349 F.3d 300, 304 (6th Cir. 2003) (quoting *Hahn v. Star Bank*, 190 F.3d 708, 719 (6th Cir. 1999)). See also *Ohio Bell Tel. Co. v. Global NAPs Ohio, Inc.*, No. 2:06-cv-0549, 2008 U.S. Dist. LEXIS 21288, at *5 (S.D. Ohio Mar. 4, 2008) (noting that the court "might be persuaded to grant a stay of discovery if the issues were "clear-cut" such that "the likelihood of a jurisdictional dismissal were high[,] but denying request to stay discovery pending resolution of a motion to dismiss for lack of subject matter jurisdiction where the jurisdictional issue raised was "fairly debatable"). "Limitations on pretrial discovery are appropriate where claims may be dismissed 'based on legal determinations that could not have been altered by any further discovery.'" *Id.* (quoting *Muzquiz v. W.A. Foote Mem'l Hosp., Inc.*, 70 F.3d 422, 430 (6th Cir. 1995)). Accordingly, a stay of discovery pending resolution of a dispositive motion may be appropriate when the dispositive motion "raises an issue such as immunity from suit, which would be substantially vitiated absent a stay[.]" *Williams*, 2010 U.S. Dist. LEXIS 98934, at *5.

The Court concludes that the circumstances of this case justify a

stay of discovery in order to address the preliminary issue of subject matter jurisdiction.¹ First, two of the motions to dismiss argue that this Court lacks diversity jurisdiction pursuant to 28 U.S.C. § 1332. See Doc. Nos. 58, p. 9, and 61, pp. 5, 7-8 (citing, *inter alia*, *Novel v. Zapor*, Case No. 2:12-cv-737, Doc. No. 17, which concluded that plaintiff Novel is domiciled in Thailand and is therefore stateless for purposes of diversity jurisdiction). These motions, if granted, would divest this Court of diversity jurisdiction.

Second, two of the motions to dismiss also argue that federal question jurisdiction under 28 U.S.C. § 1331 is lacking. See Doc. Nos. 58, pp. 10-11, and 61, pp. 10-11. The only federal claims asserted in this action are generalized claims, see *Amended Complaint*, p. 33 ("Violation of US Federal, Ex Post Facto & Anti-Trust Laws"), asserted against defendant McGrath arising out of actions taken by this defendant in his capacity as a judge. *Id.*, at ¶¶ 177-96. Defendant McGrath invokes the protection of absolute judicial immunity. See Doc. No. 60. This immunity, if applicable, would be "substantially vitiating" absent a stay. See *Williams*, 2010 U.S. Dist. LEXIS 98934, at *5. Moreover, should the Court grant defendant McGrath's motion to dismiss, there would be no federal claims left in the action.² In the absence of diversity jurisdiction, any remaining

¹ In so concluding, the Court emphasizes that it expresses no opinion on the merits of the pending motions to dismiss.

² Judicial immunity offers protection from liability for monetary damages. *Mireles v. Waco*, 502 U.S. 9, 10 n.1 (1991). The *Amended Complaint* also seeks injunctive relief against defendant McGrath, *id.*, at ¶ 196 ("Plaintiff Novel . . . has a right to immediate injunctive relief."). It is not apparent, however, what form of injunctive relief against defendant McGrath might be

state law claims would likely be dismissed without prejudice to renewal in an appropriate state court. *See United Mine Workers v. Gibbs*, 383 U.S. 715 (1966). For all these reasons, the Court concludes that a stay of discovery is appropriate.

WHEREUPON, *Pro Se Plaintiff Sur G. Novel's Motion to Take Defendants' Depositions by Telephone*, Doc. No. 73, is **DENIED** without prejudice and the *Joint Motion of Defendants to Stay Discovery and Amend the Case Schedule or, in the Alternative, Motion to Compel Plaintiff to Appear in Person for Deposition*, Doc. No. 75, is **GRANTED**. Discovery in this action is **STAYED** and the case deadlines set forth in the *Preliminary Pretrial Order*, Doc. No. 55, are **SUSPENDED** pending resolution of the motions to dismiss, Doc. Nos. 58, 60, 61. The Court will establish a case schedule, if otherwise appropriate, following resolution of the motions to dismiss.

February 11, 2014

s/Norah McCann King
Norah M^cCann King
United States Magistrate Judge

appropriate should plaintiff prevail on his claims. Certainly, this Court does not sit in appellate review of state court proceedings. *See Coles v. Granville*, 448 F.3d 853, 858 (6th Cir. 2006).