

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

RICHARD P. GLUNK, MD,	:	CIVIL NO. 1:14-CV-659
	:	
Plaintiff,	:	(Judge Kane)
	:	
v.	:	
	:	(Magistrate Judge Carlson)
PENNSYLVANIA STATE BOARD OF MEDICINE, et al.,	:	
	:	
Defendants.	:	

MEMORANDUM ORDER

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

This matter comes before us on a motion for discovery filed by the plaintiff, (Doc. 90.), a motion filed at a time when there are a battery of dispositive motions pending in this case.

We have previously stayed discovery pending the resolution of these motions. We possess broad discretion over discovery matters, discretion which extends to decisions relating to the issuance of protective orders limiting and regulating the timing of discovery. Indeed, it is undisputed that: “ ‘[t]he grant and nature of [a protective order] is singularly within the discretion of the district court and may be reversed only on a clear showing of abuse of discretion.’ Galella v. Onassis, 487 F.2d 986, 997 (2d Cir.1973) (citation omitted).” Dove v. Atlantic Capital Corp., 963 F.2d

15, 19 (2d Cir. 1992). One of these cardinal principles, governing the exercise of discretion in this field, is that the district court may properly defer or delay discovery while it considers a potentially dispositive pretrial motion, provided the district court concludes that the pretrial motion does not, on its face, appear groundless. See, e.g., James v. York County Police Dep't, 160 F.App'x 126, 136 (3d Cir. 2005); Nolan v. U.S. Dep't of Justice, 973 F.2d 843,849 (10th Cir. 1992); Johnson v. New York Univ. Sch. of Ed., 205 F.R.D. 433, 434 (S.D.N.Y. 2002).

Briefly deferring discovery in such a case, while the Court determines the threshold issue of whether a complaint has sufficient merit to go forward, recognizes a simple, fundamental truth: Parties who file motions which may present potentially meritorious and complete legal defenses to civil actions should not be put to the time, expense and burden of factual discovery until after these claimed legal defenses are addressed by the Court. In such instances, it is clearly established that:

“[A] stay of discovery is appropriate pending resolution of a potentially dispositive motion where the motion ‘appear[s] to have substantial grounds’ or, stated another way, ‘do[es] not appear to be without foundation in law.’ ” In re Currency Conversion Fee Antitrust Litigation, 2002 WL 88278, at *1 (S.D.N.Y. Jan. 22, 2002) (quoting Chrysler Capital Corp. v. Century Power Corp., 137 F.R.D. 209, 209-10 (S.D.N.Y.1991)) (citing Flores v. Southern Peru Copper Corp., 203 F.R.D. 92, 2001 WL 396422, at *2 (S.D.N.Y. Apr. 19, 2001); Anti-Monopoly, Inc. v. Hasbro, Inc., 1996 WL 101277, at *2 (S.D.N.Y. March 7, 1996).

Johnson v. New York Univ. School of Educ., 205 F.R.D. 433, 434 (S.D.N.Y. 2002).

Guided by these legal tenets we continue to believe that a brief stay of discovery is appropriate until the Court has had an opportunity to address preliminary dispositive motions we conclude that a brief stay does not result in manifest injustice, the legal standard which applies to a motion to reconsider, this motion to reconsider is denied, without prejudice to pursuit of discovery, if appropriate, once motions to dismiss have been addressed by the Court.

Order

Accordingly, for the foregoing reasons, IT IS ORDERED that the plaintiff's motion for discovery, (Doc. 90.), is DENIED.

So ordered this 11th day of March 2016.

S/Martin C. Carlson
Martin C. Carlson
United States Magistrate Judge