

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

LABMD, INC.,)	
)	
Plaintiff,)	
)	
vs.)	Civil Action No. 15-92
)	Chief Magistrate Judge Maureen P. Kelly
)	
TIVERSA HOLDING CORP. <i>formerly</i>)	
<i>known as</i> TIVERSA, INC.; ROBERT J.)	
BOBACK; M. ERIC JOHNSON; DOES)	Re: ECF No. 298
1-10,)	
Defendants.)	

ORDER

Presently before the Court is a Joint Motion to Continue Stay and Incorporated Citations to Law filed by Defendants Tiversa Holding Corp. (“Tiversa”) and Robert J. Boback (“Boback”). ECF No. 298. Also before the Court is the Opposition to Defendants’ Joint Motion to Continue Stay filed by Plaintiff LabMD, Inc. (“LabMD”). ECF No. 299.

The instant iteration of the labyrinthine litigation between these parties began in January 2015, with a ten-count Complaint against thirteen Defendants. ECF No. 1. Following extensive litigation of three Motions to Dismiss as to two Complaints, only part of one Count remains. ECF No. 185. The sole remaining claim alleges defamation per se as to specific Defamatory Statements 13 and 16. Id.

On August 29, 2017, this Court conducted an initial case management conference that lasted one hour and eighteen minutes. During the conference a multitude of issues were raised by both parties and addressed by the Court. ECF No. 246. Following the conference, a case

management/scheduling order was issued. ECF No. 247. In the order, the Court permitted six months of discovery and set a discovery deadline of January 29, 2018. Id.

Following the August 29, 2017, case management conference, the Court issued an order referring this case to ADR in the form of mediation before Attorney Carole Katz to be concluded by October 29, 2017. ECF No. 248.

On October 12, 2017, this Court conducted a status conference with counsel at which time a number of issues were raised by counsel and discussed with the Court including: e-discovery and search terms/custodians, the production of insurance information, a consent order and issues relative to best preparing the case for a successful mediation. ECF No. 285.

At no time during the Court conferences on August 29, 2017, or October 12, 2017, did LabMD or its counsel ever complain to this Court that there had been any discovery misconduct or abuse by Defendants or their counsel, nor did LabMD ever inform the Court that it intended to file any claims against Defendants and their respective counsel.

On October 20, 2017, a mere eight days after the October 12 status conference, LabMD filed yet another new lawsuit against Tiversa and Boback, docketed at Civil Action No. 17-1365 (“the New Case”), and named Tiversa and Boback’s legal counsel in the instant action as defendants. Specifically, LabMD named Reed Smith LLP and Jarrod D. Shaw, Esquire and Clark Hill PLC and Robert J. Ridge, Esquire as defendants. In the New Case, LabMD alleges “abusive litigation and wrongful use of civil proceedings” in two other lawsuits involving these parties: (1) an ongoing (but stayed) state defamation action in the Court of Common Pleas of Allegheny County; and (2) a federal defamation action that was dismissed over three years ago on November 4, 2014. ECF No. 288-1. Inexplicably, the Complaint in the New Case contains allegations concerning discovery responses the instant case. Id. ¶¶ 150-151.

On October 23, 2017, upon learning of the New Case, Tiversa filed an Emergency Motion for a Telephonic Conference. ECF No. 288. A telephone conference was held that day, ECF No. 293, following which the Court granted Defendants' Joint Motion to Postpone ADR, ECF Nos. 290 and 294, and Defendants' Joint Motion to Stay, ECF Nos. 292 and 295. This case was stayed through December 4, 2017. ECF No. 295.¹

On December 4, 2017, this Court held a status conference during which Defendants informed the Court that they, and their counsel, intend to file motions to dismiss in the New Case. ECF No. 296 at 2. Defense counsel also expressed their serious concerns that the filing of the New Case was a purposeful attempt by LabMD and its counsel to interfere with the legal representation of Tiversa and Boback by the law firms of Reed Smith and Clark Hill and their attorneys.

In the instant Motion, Defendants request a stay of this case pending the Court's ruling on the anticipated motions to dismiss filed on behalf of their counsel in the New Case. ECF No. 298. Defendants cite the significant effect on the instant litigation that the rulings on the motions to dismiss will have, the relatively short length of time of the proposed stay and the lack of prejudice to LabMD therefrom. Id. Defendants also cite the difficulty of proceeding with discovery in this case while their responses to prior discovery are litigated in the New Case. Id.

In a short three paragraph response in opposition to the instant Motion, LabMD cites excerpts from a 2014 conference in the federal defamation case and baldly asserts that “[t]here is no reason for extending the stay and to do so will only serve to postpone the ultimate resolution of this action.” ECF No. 299.²

¹ That stay remains in effect until the disposition of the instant motion. ECF No. 296 at 2.


² The previous case of *Tiversa Holding Corp. and Robert J. Boback v. LabMD, Inc. and Michael J. Daugherty*, Civil Action No. 13-1296, was closed over three years ago on November 4, 2014.

The Court finds LabMD's concerns about the delay in resolution of this case to be disingenuous, at best, given the timing of the filing of the New Case and its reliance on alleged conduct in 2014. Significantly, the chilling effect that the New Case may have on Defendants' ability to defend instant case is clear to this Court.

Accordingly, this Court finds that the length of stay requested is reasonable, that Defendants and their counsel will suffer substantial hardship and inequity if required to move forward with discovery in this case at this time and that good cause has been shown. As such, the instant case will remain stayed.

AND NOW, this 20th day of December, 2017, Defendants' Joint Motion to Continue Stay, ECF No. 298, is GRANTED. This case is STAYED in its entirety until further order of court pending ruling on the motions to dismiss in the New Case. While the case is stayed, no pending or new party or third-party discovery, subpoenas, depositions, interrogatories, document request or any other procedures shall be conducted or issued.

BY THE COURT:


MAUREEN P. KELLY
CHIEF UNITED STATES MAGISTRATE JUDGE

cc: All Counsel of Record Via CM-ECF