

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MICHELLE B. BUSH,

Plaintiff,

v.

NATIONSBANK,

Defendant.

Civil Action No. 98-2239
CKK/DAR

ORDER

This action was referred to the undersigned United States Magistrate Judge for discovery. By a Civil Notice prepared by the Clerk of the Court on March 18, 1999, the undersigned scheduled a hearing on the pending motions which concerned the conduct of discovery for 3:00 p.m. on March 25, 1999. By that date, seven motions were pending, including plaintiff's motions for sanctions (Docket Nos. 37 and 82), to compel discovery (Docket No. 28) and for other relief, including a stay of discovery (Docket Nos. 69 and 86); non-party Manpower International, Inc.'s Motion for Protective Order (Docket No. 54); and Defendant's Motion for a Briefing Schedule or for a Protective Order or for a Competency Hearing (Docket No. 64). In addition, a discovery request docketed as a motion (Docket No. 80) appeared on the civil docket. Finally, at least 25 documents which included discovery requests, or arguments regarding the sufficiency of the responses to her requests, had been filed by plaintiff prior to March 25 (Docket Nos. 33, 35, 38, 39, 40, 41, 42, 43, 44, 46, 47, 50, 51, 52, 53, 57, 58, 59, 61, 62, 65, 67, 74, 76 and 83).

Counsel for defendant and counsel for non-party movant Manpower appeared for the March 25 hearing; however, plaintiff did not appear. The undersigned, sua sponte, continued the

hearing to 3:00 p.m. on April 6, 1999. In a written order filed and transmitted to plaintiff by facsimile on March 25, the undersigned ordered plaintiff to file her written opposition to Defendant's Motion for a Briefing Schedule or for a Protective Order or for a Competency Hearing by April 1, 1999, and to serve the opposition upon counsel for defendant. See March 25, 1999 Order (Docket No. 88) at 1. In addition, the undersigned advised plaintiff of her obligation as a pro se litigant to comply with the Federal Rules of Civil Procedure and the Local Rules and orders of this Court, including the Scheduling Order entered on March 25. See March 25, 1999 Supplemental Order (Docket No. 87) at 1-4.

Prior to 3:00 p.m. on April 6, plaintiff filed a "Response" to the Supplemental Order entered on March 25 (Docket No. 91), and a "Request for a Review of the Supplemental Order" (Docket No. 92). Plaintiff also filed two motions for continuance of the April 6 hearing (Docket Nos. 93 and 98), each of which was denied by a written order (Docket Nos. 96 and 99) transmitted to plaintiff by facsimile.¹ Plaintiff did not file an opposition or other response to

¹ Plaintiff offered varying reasons in support of her requests, including a mediation scheduled for 10:00 a.m. on April 6 in a matter pending before the District of Columbia Department of Human Rights and Local Business Development, and her "known disabilities." However, in neither motion did plaintiff suggest that any of the circumstances she described prevented her from appearing in court at 3:00 p.m. on April 6; indeed, in "Plaintiff's Response to Magistrate Judge Robinson's Supplemental Order" (Docket No. 91), filed by plaintiff on March 30, 1999, plaintiff wrote that

Plaintiff will appear on Tuesday, April 6, 1999, to be 'instructed' on discovery. Plaintiff will comply with all demands and requests ORDERED by Magistrate Judge Robinson.

Plaintiff's Response to Magistrate Judge Robinson's Supplemental Order at 2. Prior to 3:00 p.m. on April 6, plaintiff made several telephone calls to the Clerk of the Court, the pro se staff attorney and Chambers of the undersigned to either inquire about the status of her requests for continuance or to state that she was not coming; however, at no time did she offer any reason why she could not come. For all of these reasons, the undersigned found that neither request for

Defendant's Motion for a Briefing Schedule or for a Protective Order or for a Competency Hearing. See March 25, 1999 Scheduling Order at 1; Supplemental Order at 4.

Counsel for defendant and counsel for non-party movant Manpower appeared for the April 6 hearing, but plaintiff again failed to appear. The undersigned heard the arguments of counsel for defendant in support of Defendant's Motion for a Briefing Schedule or for a Protective Order or for a Competency Hearing. With respect to the first of the three options proposed by defendant--resolution of the case on the basis of summary judgment briefs, affidavits, interrogatories and documents produced to date--counsel for defendant offered as an exhibit a two and one-half inch binder which contained a copy of the discovery responses defendant had served to date.² Counsel for defendant agreed that should any issues remain after determination of its motion for summary judgment, this court could then resolve the extant disputes concerning the conduct of discovery. Counsel for defendant consented to the denial without prejudice of the other two motions proposed by defendant in its motion. Counsel for defendant also consented to the entry of an order setting an earlier date for the filing of its motion for summary judgment.³

continuance was supported by good cause. See Jackson v. Finnegan, Henderson, Farabow, Garrett & Dunner, 101 F. 3d 145, 152 (D.C. Cir. 1996).

² The binder, marked as Defendant's Exhibit 1 and received into evidence, is being maintained by the Clerk of the Court. Plaintiff has acknowledged receipt of many of the responses served by defendant. See, e.g., Plaintiff's Objection to the Hearing on Motions Regarding the Conduct of Discovery (Docket No. 83) at 1("only six [interrogatories] have been satisfied"); Response to Defendant's Memorandum on Hearing (Docket No. 63) at 2 ("Defendant's responses prove that Defendant was aware of Plaintiff's attempts to apply"); Plaintiff's Response to Mr. Martel's Letter Dated February 10, 1999 (Docket No. 48) at 1 (defendant has not produced "all" or "complete" documents).

³ The trial court set June 4, 1999 as the date for defendant to file its motion for summary judgment, intending that discovery proceed through May 21, 1999. See February 1, 1999 Scheduling Order (Docket No. 30) at 2.

The undersigned also heard the arguments of counsel for non-party movant Manpower in support of Manpower's Motion for Protective Order. Counsel for Manpower maintained that for the reasons set forth in the memorandum in support of its motion, discovery of Manpower should be limited, if not stayed.⁴

Upon consideration of the memoranda in support of the two motions as to which the undersigned heard argument on April 6; defendant's Hearing Exhibit 1, offered and received into evidence; the arguments of counsel for defendant and of counsel for non-party movant Manpower; the written submissions of plaintiff⁵ and the entire record herein, the undersigned will stay further discovery pending determination of defendant's dispositive motion, and, with defendant's consent, shorten the time in which its dispositive motion must be filed. Defendant has answered at least 23 interrogatories, produced at least 75 pages of documents, and responded to at least 51 requests for admissions. Upon review of the responses, and consideration of the authorities on which defendant relies in support of its request, the undersigned finds that no further discovery is needed to permit the parties to support or oppose defendant's dispositive motion.⁶ The discretion of a court to stay discovery in such circumstances is well-settled:

⁴ Plaintiff filed no opposition or other response to Manpower's Motion for Protective Order.

⁵ See n. 2, supra.

⁶ See Memorandum in Support [of] Defendant's Motion for a Briefing Schedule or for a Protective Order or for a Competency Hearing at 4-5 . Indeed, plaintiff requested a "STAY ON THE DISCOVERY PROCEEDINGS until a disposition has been made on Plaintiff's request to revoke the settlement/release agreement in Manpower, International Inc., Case # 98-cv-2062 (CKK)." RELIEF FROM ORDER Release Agreement with Manpower International Inc. (Docket Nos. 69 and 86).

It is within the sound discretion of the Court to postpone discovery of issues relating to the merits of a case pending resolution of potentially dispositive motions.

Costal States Gas Corporation v. Department of Energy, 84 F.R.D. 278, 282 (D. Del. 1979).

This Court has stayed discovery where, as here, no further discovery “is necessary to sustain an opposition to [a motion for summary judgment].” Moldea v. The New York Times, 137 F.R.D. 1, 2 (D.D.C. 1990). See also Hovermale v. School Board of Hillsborough County Florida, 128 F.R.D. 287, 289 (M.D. Fla. 1989)(a magistrate judge “has broad discretion to stay discovery pending the decision on a dispositive motion.”); cf. White v. Fraternal Order of Police, 909 F. 2d 512, 517 (D.C. Cir. 1990)(Court of Appeals will reverse District Court’s stay of discovery pending determination of motion for summary judgment only for abuse of discretion).

Additionally, the undersigned finds that plaintiff would not be prejudiced by a stay of discovery pending determination of defendant’s dispositive motion, as the parties’ discovery disputes will be addressed by the undersigned in the context of any issues which remain after a ruling by the trial court on defendant’s motion for summary judgment. Indeed, such procedure would expedite the determination of the merits of plaintiff’s causes of action, conserve the resources of the parties and make the most efficient use of judicial resources. See Costal States Gas Corporation v. Department of Energy, 84 F.R.D. at 282.

It is, therefore, this ____ day of April, 1999,

ORDERED that Defendant’s Motion for a Briefing Schedule or for a Protective Order or for a Competency Hearing (Docket No. 64) is **GRANTED IN PART**, and that further discovery, including further consideration of the pending motions which concern the conduct of discovery

(Docket Nos. 28, 37, 54, 80, 82 and 92) is **STAYED** pending determination of defendant's motion for summary judgment; and it is

FURTHER ORDERED that with respect to its alternative requests, Defendant's Motion for a Briefing Schedule or for a Protective Order or for a Competency Hearing is **DENIED WITHOUT PREJUDICE**; and it is

FURTHER ORDERED, with the consent of defendant, that the Scheduling Order entered on February 1, 1999 is modified to require that defendant file its dispositive motion by April 30, 1999; and it is

FURTHER ORDERED that plaintiff shall file her opposition to defendant's motion for summary judgment no later than May 17, 1999; and it is

FURTHER ORDERED that defendant shall file its reply no later than May 27, 1999.

DEBORAH A. ROBINSON
United States Magistrate Judge