



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

BAYER-HIGHLAND FAMILY PARTNERSHIP,
LTD, and 2002 SILVERSTEIN FAMILY
PARTNERSHIP, LTD,

Plaintiffs,

v.

C.A. No. 2018-0206-JTL

RF CAPITAL HOLDINGS, LLC, a Delaware LLC,
f/k/a ROTENSTREICH FAMILY PARTNERSHIP,
LTD,

Defendant and Counterclaim
and Third-Party Plaintiff,

and

BAYER PROPERTIES ENTERPRISES, LLC,

Nominal Defendant and
Counterclaim Nominal
Defendant,

and

JEFFREY A. BAYER and DAVID L.
SILVERSTEIN,

Third-Party Defendants,

and

BAYER PROPERTIES, LLC,

Third-Party Nominal Defendant.

ORDER DENYING STAY

1. This case principally involves a dispute over control of Bayer Properties Enterprises LLC (the “Parent”), a privately held Delaware limited liability company. The disputants are three men, each of whom has a corresponding entity: Jeffrey Bayer matches up with plaintiff Bayer-Highland Family Partnership, Ltd.; David Silverstein matches up with plaintiff 2002 Silverstein Family Partnership, Ltd.; and Jon Rotenstreich matches up with defendant RF Capital Holdings, LLC. In substance, Jeffrey and David have joined forces against Jon.

2. Because the case involves a control dispute, it is suitable for expedition. Recognizing that the case was plainly suited for expedition, the parties agreed to an expedited schedule without a formal ruling. A three-day trial has been scheduled for September 24-26, 2018. To confirm the obvious, this case is expedited.

3. Despite filing this action to obtain a prompt determination of their claimed entitlement to control, the plaintiffs seek to stay discovery pending decisions on pleadings-stage motions. They also seek to stay proceedings on the defendant’s claims regarding excess compensation.

4. Deciding a motion to stay requires the exercise of discretion. *See Gatz v. Ponsoldt*, 2005 WL 820604, at *1 (Del. Ch. Apr. 4, 2005). “The mere pendency of a case dispositive motion . . . does not automatically

trigger a stay of discovery.” *Pensionskasse der ASCOOP v. Random Int’l Hldg., Ltd.*, 1993 WL 35977, at *1 (Del. Ch. Jan. 26, 1993). The court “must balance the costs and hardship to defendant if discovery were to proceed against plaintiff’s need for discovery and the risk of injury to the plaintiff if a stay is granted.” *Id.* at *1. “The burden is on one who seeks to delay discovery to establish some practical reason why discovery should be stayed.” *Id.*

5. In non-expedited cases, a stay of discovery pending resolution of a pleadings-stage motion will often be granted, particularly if the motion may resolve the case or significantly affect its scope. The schedule in this case does not permit the luxury of a stay. That is particularly true because it seems unlikely that the pleadings-stage motions will resolve the case as a whole, meaning that the parties need to conduct discovery so they can present any parts of the case that go to trial.

6. Depending on the outcome of the pleadings-stage motions, it is possible that aspects of this case could be referred to arbitration. On the facts presented, that is not a sufficient basis for staying discovery. If aspects do end up in arbitration, the discovery obtained here will be useful in that proceeding. *See Pensionkasse*, 1993 WL 35977, at *2. In the meantime, the exigencies of preparing for a trial in September render a stay impractical.

7. There are claims regarding compensation and expense reimbursement that theoretically could be stayed and addressed separately on a non-expedited schedule. The defendant, however, has explained why the compensation and expense reimbursement issues are relevant to the control dispute, most clearly on issues such as motive and intent, which spill over into questions of loyalty. Under the circumstances, it will be more efficient to litigate all of the claims and defenses together.

8. The motion for a stay is therefore denied. This ruling implicates a related issue that the defendant raised in its papers: the plaintiffs and their affiliates cited the pending pleadings-stage motions as a basis for declining to answer allegations in the defendant's pleading. That was counterproductive and obfuscatory. Within five days of this order, the plaintiffs and their affiliates shall file amended answers that respond substantively to the defendant's allegations. An objection and conditional response of the type quoted in paragraph 19 of the defendant's opposition is non-responsive and will result in the allegations being deemed admitted.

Vice Chancellor J. Travis Laster
Dated: June 25, 2018