

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

MARY SMITH and GEORGE SMITH,)
individually; and MARY SMITH, as)
administrator of the ESTATE OF)
MARCUS DEON SMITH, deceased,)

Plaintiffs,)

v.)

1:19CV386

CITY OF GREENSBORO; GUILFORD)
COUNTY; Greensboro police officers)
JUSTIN PAYNE, ROBERT DUNCAN,)
MICHAEL MONTALVO, ALFRED)
LEWIS, CHRISTOPHER BRADSHAW,)
LEE ANDREWS, DOUGLAS)
STRADER, and JORDAN BAILEY; and)
Guilford EMS paramedics ASHLEY)
ABBOTT and DYLAN ALLING,)

Defendants.)

ORDER

This matter is before the Court on the parties' Individual Rule 26(f) Reports and Defendants' Motion to Temporarily Stay the Start of Discovery. (Docket Entries 67, 68, 70.)

An initial pretrial conference hearing was held in this matter on June 17, 2020. (Minute Entry dated 6/17/2020.) Consistent with their position in the individual report, Defendants argue that a stay of discovery is warranted in light of their pending motion for judgment on the pleadings. (*See* Docket Entries 67, 68.) They further contend that discovery should be stayed until the completion of state proceedings related to the heirship petition recently filed by Plaintiff Smith, as administrator of the deceased's estate. (*Id.*) To the contrary, Plaintiffs contend that discovery should proceed immediately, particularly because the vast majority of

discovery will be on liability, not damages (which is partially related to the heirship proceeding). (Docket Entry 70.)

After the hearing, the Court ordered the parties to contact the state probate court to ascertain the projected timeframe for resolution of the heirship proceeding. (Text Order dated 6/17/2020.) Plaintiffs filed a response, estimating that the proceeding will take 4-6 months to be completed. (Docket Entry 73.) Defendants thereafter filed a response indicating that the heirship proceeding would likely be resolved much sooner than the timeframe set forth in Plaintiffs' report. (Docket Entry 74.)

After consideration of the parties' positions, the Court will deny Defendants' motion to stay discovery and enter an order to commence discovery immediately. Rule 26(c) of the Federal Rules of Civil Procedure authorizes the court to issue orders establishing limitations on discovery. The scope and conduct of discovery are in the sound discretion of the district court. *Erdmann v. Preferred Research, Inc.*, 852 F.2d 788, 792 (4th Cir. 1988). "In deciding whether to stay discovery pending resolution of a pending motion, the Court inevitably must balance the harm produced by a delay in discovery against the possibility that the motion will be granted and entirely eliminate the need for such discovery." *Simpson v. Specialty Retail Concepts, Inc.*, 121 F.R.D. 261, 263 (M.D.N.C. 1988). While motions to stay discovery are generally not favored because delaying discovery can create case management problems and cause unnecessary litigation expenses, such a request may be more appropriate where the resolution of a motion to dismiss or for judgment on the pleadings could dispose of the entire case. *Id.* Courts have applied a three-factor analysis in deciding whether to grant or deny a motion to stay: "(1) the interests of judicial economy; (2) hardship and equity to the moving

party if the action is not stayed; and (3) potential prejudice to the non-moving party.” *Blankenship v. Trump*, No. 2:19-CV-00549, 2020 WL 748874, at *2 (S.D.W. Va. Feb. 13, 2020) (citation omitted).

Here, the Court finds that a stay of discovery is unwarranted. The resolution of Defendants’ motion for judgment on the pleadings will not resolve this matter in its entirety. Nor does the Court find it appropriate to stay discovery pending resolution of the state heirship proceeding. The instant matter has already been pending for over one year, and delaying discovery could create case management problems in the future. Moreover, Plaintiffs would be prejudiced by such stay of discovery as much of discovery will surround questions of liability and damages not connected to the heirship proceeding. Indeed, the interests of justice suggests that discovery should commence immediately. Any hardship to Defendants as a result of moving forward with discovery is minimal. Therefore, at its discretion, the Court will deny Defendants’ motion and enter a scheduling order in this matter. Accordingly,

IT IS THEREFORE ORDERED that Defendants’ Joint Motion to Temporarily Stay the Start of Discovery (Docket Entry 68) is **DENIED**. The Clerk shall **TERMINATE** the parties’ Individual Rule 26(f) Reports (Docket Entries 67, 70). Discovery in this matter shall commence as follows:

1. Pre-discovery Disclosures: The parties shall exchange information required by Fed. R. Civ. P. 26(a)(1) no later than **July 16, 2020**.

2. Discovery Plan:

a. Without limiting the parties' rights to discovery under the Federal Rules of Civil Procedure, the Court anticipates that discovery will be needed on the following subjects:

- i. The Estate's claims as set forth in the Complaint that remain following the Court's March 25, 2020 Order (Docket Entry 58), the affirmative defenses asserted by the remaining defendants, the alleged damages; and
- ii. All other matters that are relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

b. Discovery shall be placed on a case-management track established in LR 26.1.

The Court finds that the appropriate case management plan for this case is:

Exceptional (with modifications as set forth below).

c. The date of completion of all discovery (general and expert) is **April 2, 2021**.

d. Reports from retained experts under Rule 26(a)(2) are due during the discovery period:

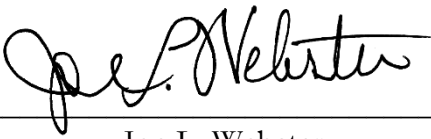
- i. From Plaintiff: No later than **January 18, 2021**.

- ii. From Defendants: No later than **February 16, 2021**.
 - iii. Supplementations under Rule 26(e) shall be due no later than **March 3, 2021**.
- e. Discovery Limits: Discovery in this matter is limited as follows:
 - i. Maximum of **30** interrogatories (including subparts) may be served by each party.
 - ii. Maximum of **30** requests for admission (including subparts) by each party.
 - iii. Depositions are limited to twelve (12) depositions of non-parties (excluding experts) for each side (i.e., twelve (12) depositions for Plaintiff(s) and twelve (12) depositions for Defendants), in addition to depositions of parties and experts.
- f. Mediation: Mediation should be conducted early in the discovery period, the exact date to be set by the mediator after consultation with the parties. The parties agree to the designation of **Jonathan R. Harkavy** as mediator.
- g. Deposition Schedule: As set forth by agreement of the parties, prior to the discovery deadline.
- h. Trial Date: The trial date in this matter shall be determined by the Court.
- i. Other items:
 - i. The parties shall have until **September 2, 2020** to seek leave of Court to join additional parties or amend pleadings. After this date, the court will consider, inter alia, whether the granting of leave would delay trial.

- ii. Dispositive motions shall be filed no later than **May 3, 2021**.
- iii. The parties do not consent to magistrate jurisdiction pursuant to 28 U.S.C. § 636(c) or appointment of master.
- iv. The trial is expected to take approximately ten (10) to fourteen (14) days.

A jury trial has been demanded.

SO ORDERED. This, the 2nd day of July, 2020.



Joe L. Webster
United States Magistrate Judge