

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

MICHAEL E. MANN, PH.D.,)	
)	Case No. 2012 CA 8263 B
Plaintiff,)	
)	Judge Frederick H. Weisberg
v.)	
)	
NATIONAL REVIEW, INC. <i>et. al.</i> ,)	
)	
Defendants.)	
)	

ORDER

This matter is before the court on the motion of Defendant National Review for a Protective Order Staying Discovery Pending Appeal, and the oppositions of Plaintiff and Defendant Steyn.¹ All of the Defendants except Mr. Steyn have filed interlocutory appeals of the court’s denial of their Anti-SLAPP Act special motions to dismiss.

Whether a party may file an interlocutory appeal from a denial of an anti-SLAPP special motion to dismiss is an open question. *See Competitive Enterprise Inst. v. Mann*, Nos. 14-CV-101, 14-CV-126, Order to Show Cause (March 26, 2014). Until the Court of Appeals decides that issue, however, the three Defendants who have filed an appeal should not be required to engage in discovery for many of the reasons discussed in the court’s Oct. 2, 2013, Order in this case. ““It makes no sense for trial to go forward while the court of appeals cogitates on whether there should be one.”” Order of Oct. 2, 2013, at 3 (quoting *Apostol v. Gallion*, 870 F.2d 1335, 1338 (7th Cir. 1989)). Having directed the Defendants to show cause why the appeal should not

¹ At the time Defendant National Review filed its motion, Plaintiff had not sent renewed discovery requests to Defendants Competitive Enterprise Institute and Simberg, but those Defendants have consented to a stay of discovery pending appeal. Nat’l Review Mem. in Supp. of Mot. for Protective Order at p. 5, n.2.

be dismissed as having been taken from a non-final order, the Court of Appeals may dismiss the appeal without significant additional delay, and discovery can then finally go forward. If the Court of Appeals decides to accept jurisdiction and consider the merits of the anti-SLAPP motions, it would not be fair to force the appealing Defendants to engage in discovery, even if this court would have concurrent jurisdiction and discretion to do so.

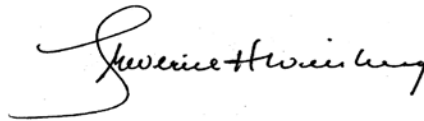
To be sure, there has been too much procedural delay already in this case. Plaintiff filed his original complaint in October of 2012, and Defendants filed their original Anti-SLAPP motions in December of 2012. Discovery has not yet occurred. A continuing stay of discovery will impose the burdens of additional delay on all parties, but particularly on Plaintiff and Defendant Steyn, who has distanced himself from the other Defendants and expressed his desire to proceed expeditiously, even if that means the case would go forward only on Plaintiff's claims against Steyn and Steyn's counterclaim, with the other Defendants left behind. Nonetheless, it would be costly, inefficient, and duplicative to have two rounds of discovery: one round between Plaintiff and Defendant Steyn, and a second round between Plaintiff and the other Defendants.² The court is unwilling to sever Mr. Steyn's case from the other Defendants to accommodate his desire to go it alone. If it is not dismissed, there is no compelling reason to try this case more than once. The parties' interests are diverse and irreconcilable, in part because of the way they have chosen to exercise their legitimate procedural rights. A stay of discovery preserves the status quo long enough for the Court of Appeals to rule on the jurisdictional issue and, if it

² Plaintiff opposes the motion to stay discovery and argues that, at a minimum, the court should permit him to proceed with discovery against Defendant Steyn. However, his idea of discovery against Steyn includes the right to take what he chooses to call "third party discovery" from the other three Defendants as it relates to Plaintiff's claims against Steyn. Beyond that, Plaintiff takes the ironic – albeit legally correct – position that he should be able to proceed with discovery against Steyn, but Steyn should be precluded from taking discovery on his counterclaim because Plaintiff's anti-SLAPP special motion to dismiss the counterclaim triggers an automatic statutory stay. D.C. Code § 16-5502(c)(1).

resolves that issue in favor of the three appellants, to decide whether Plaintiff has a right to proceed with his case.

Accordingly, it is this 11th day of April, 2014,

ORDERED that the motion of Defendant National Review, Inc. for a Protective Order Staying Discovery Pending Appeal be, and it hereby is, granted; and all proceedings in this case are stayed pending the decision of the District of Columbia Court of Appeals on the Defendants' interlocutory appeals.³



Judge Frederick H. Weisberg

Copies to all parties listed in Case File Xpress

Clerk of the Court
District of Columbia Court of Appeals

³ If the Court of Appeals remands without reversing the Order denying Defendants' motions to dismiss, the automatic statutory stay of discovery relating solely to Defendant Steyn's counterclaim will remain in place long enough for the court to rule on Plaintiff's pending Anti-SLAPP special motion to dismiss the counterclaim.