

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 10-81612-CIV-HURLEY/HOPKINS

JONATHAN E. PERLMAN,

Plaintiff,

vs.

WELLS FARGO BANK, N.A.,

Defendant.

ORDER VACATING STAY

THIS CAUSE is before the Court upon Plaintiff's Motion to Lift or Vacate Stay of Discovery [DE # 46]. Defendant filed a response [DE # 47] with both substantive and procedural objections to the motion, and Plaintiff filed a reply [DE # 48].

BACKGROUND

Plaintiff commenced this action by filing the Complaint on December 21, 2010. Plaintiff submitted an Amended Complaint [DE # 19] on April 5, 2011. Defendant filed a motion to dismiss [DE # 23] the Amended Complaint on April 21, 2011 along with a motion to stay discovery [DE # 24] during the pendency of the motion to dismiss. Plaintiff filed a response [DE # 36] to the motion to dismiss on May 23, 2011, and Defendant filed a reply [DE # 44] on June 23, 2011. Plaintiff never filed a response to the motion to stay discovery, and on July 19, 2011, the Court granted the motion to stay [DE # 45] without the benefit of a response in opposition by Plaintiff, which the Court noted "may be deemed sufficient cause for granting the motion by default." S.D. Fla. L. R. 7.1(C).

The next day, on July 20, 2011, Plaintiff filed the instant motion to vacate the stay. In the motion, Plaintiff explained that his failure to file a response was the result of "an inadvertent

misunderstanding.” Pl.’s Mot. Lift or Vacate Stay of Discovery, at 1 [DE # 46]. Defendant has pointed out the procedural impropriety of the instant motion, but in light of Plaintiff’s error and the Court’s strong interest in resolving issues on the merits, the Court will overlook the purely procedural defects Defendant (correctly) pointed out in favor of reaching the right result on whether a stay is appropriate under the circumstances of this case. *Whitehead v. Sch. Bd. for Hillsborough Cnty., State of Fla.*, 932 F. Supp. 1396, 1399 (M.D. Fla. 1996). The Court notes that it perceives no prejudice to Defendant resulting from the delay between the time Plaintiff responded to the motion to dismiss and the time Plaintiff filed the instant motion.

Turning now to the substance of the motion, this Court has previously addressed the standard applied to a motion to stay discovery during the pendency of a motion to dismiss in a related case. *See Perlman v. Bank of America, N.A.*, No. 9:11-cv-80331-DTKH. In that case, the Court found that a motion to dismiss similar to that in the instant case presented substantial issues but was not “so clear ‘on its face [that] there appears to be an immediate and clear possibility that it will be granted.’” *Feldman v. Flood*, 176 F.R.D. 651, 653 (M.D. Fla. 1997). On that basis, the Court, in its broad discretion to deal with discovery matters, *see Redford v. Gwinnett Cnty. Judicial Circuit*, 350 Fed. Appx. 341, 346 (11th Cir. 2009), declined to enter a stay. For the same reasons, the Court will vacate the stay in the instant case. While the Court desires to limit unnecessary expense in accordance with the principles espoused in *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1367 (11th Cir. 2005), the Court must also be aware of the case management problems that prolonged delays in discovery can create. *See Feldman*, 176 F.R.D. at 652.


Accordingly, it is hereby **ORDERED** and **ADJUDGED** that:

1. The motion [DE # 46] is **GRANTED**.

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2. The stay entered on July 19, 2011 [DE # 45] is **VACATED**.

DONE and **SIGNED** in Chambers at West Palm Beach, Florida, this 10th day of November,
2011.


Daniel T. K. Hurley
United States District Judge

Copies provided to counsel of record