

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-80331-CV-HURLEY/HOPKINS

JONATHAN E. PERLMAN,

Plaintiff,

vs.

BANK OF AMERICA, N.A.,

Defendant.

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ORDER DENYING DEFENDANT’S MOTION TO STAY

THIS CAUSE is before the Court upon Defendant’s Motion for Stay Pending a Final Judgment in the Case of *Perlman v. Wells Fargo Bank, N.A.* or, in the Alternative, a Ruling on Bank of America’s Motion to Dismiss Plaintiff’s Complaint [DE # 27].

“Matters pertaining to discovery are committed to the sound discretion of the district court” *Redford v. Gwinnett Co. Judicial Circuit*, 350 Fed. Appx. 341, 346 (11th Cir. 2009). However, the Eleventh Circuit has counseled that “[f]acial challenges to the legal sufficiency of a claim or defense, such as a motion to dismiss based on failure to state a claim for relief, should . . . be resolved before discovery begins.” *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1367 (11th Cir. 2005). The court in *Feldman v. Flood* set forth the following legal principles as applicable when a party has moved to stay discovery:

“A court has broad inherent power to stay discovery until preliminary issues can be settled which may be dispositive of some important aspect of the case. *Petrus v. Bowen*, 833 F.2d 581 (5th Cir.1987). See *Harlow v. Fitzgerald*, 457 U.S. 800 (1982)—(discovery may be stayed to determine the dispositive issue of immunity of government officials). Motions to stay discovery may be granted pursuant to Rule 26(c), Fed.R.Civ.P., and the moving party bears the burden of showing good cause and reasonableness. *Howard v. Galesi*, 107 F.R.D. 348 (S.D.N.Y.1985). Such

motions are not favored because when discovery is delayed or prolonged it can create case management problems which impede the Court's responsibility to expedite discovery and cause unnecessary litigation expenses and problems. *Kron Medical Corp. v. Groth*, 119 F.R.D. 636 (M.D.N.C.1988). As a result, a request to stay all discovery pending resolution of a motion is rarely appropriate where resolution of the motion will not dispose of the entire case. *Lugo v. Alvarado*, 819 F.2d 5 (1st Cir.1987). Finally, the Court ordinarily should not stay discovery which is necessary to gather facts in order to defend against the motion. *Wilderness Soc. v. Griles*, 824 F.2d 4 (D.C.Cir.1987); *Panola Land Buyers Ass'n v. Shuman*, 762 F.2d 1550 (11th Cir.1985).

“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. This involves weighing the likely costs and burdens of proceeding with discovery. It may be helpful to take a preliminary peek at the merits of the allegedly dispositive motion to see if on its face there appears to be an immediate and clear possibility that it will be granted. *See also Hovermale v. School Board of Hillsborough County*, 128 F.R.D. 287 (M.D.Fla.1989).”

176 F.R.D. 651, 652 (M.D. Fla. 1997) (quoting *Simpson v. Specialty Retail Concepts, Inc.*, 121 F.R.D. 261, 263 (M.D.N.C. 1988)). Some courts have applied a stricter standard. *See, e.g., Wood v. McEwen*, 644 F.3d 797, 802 (9th Cir. 1981) (stating that a district court may “stay discovery when it is *convinced* that the plaintiff will be unable to state a claim for relief.”) (emphasis added); *Gray v. First Winthrop Corp.*, 133 F.R.D. 39, 40 (N.D. Cal. 1990) (“A party seeking a stay of discovery carries the heavy burden of making a ‘strong showing’ why discovery should be denied.” (quoting *Blankenship v. Hearst Corp.*, 519 F.3d 418, 429 (9th Cir. 1975))). Others have applied a more lenient standard. *See, e.g., Gandler v. Nazarov*, 1994 WL 702004, *4 (S.D.N.Y. 1994) (staying discovery in light of a motion that was “potentially dispositive, and appear[ed] to be not unfounded in the law.”).

In light of the broad discretion reposed in the trial courts when considering a motion to stay, the Court will deny the instant motion and allow discovery to proceed. The Court is in the process

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of reviewing Defendant's motion to dismiss, and "while [it] present[s] substantial issues, [it] is not so clear 'on its face [that] there appears to be an immediate and clear possibility that it will be granted.'" *Feldman*, 176 F.R.D. at 653 (quoting *Simpson*, 121 F.R.D. at 263).

Accordingly, it is hereby **ORDERED** and **ADJUDGED** that Defendant's motion [DE # 27] is **DENIED**.

DONE and **SIGNED** in Chambers at West Palm Beach, Florida, this 28th day of October, 2011.


Daniel T. K. Hurley
United States District Judge

Copies provided to counsel of record