UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
(WEST PALM BEACH DIVISION)
CASE NO. 9:10-CV-81612
(Ancillary Pro. No. 08-81565-CIV-Hurley/Hopkins)

JONATHAN E. PERLMAN, ESQ., as court appointed Receiver of Creative Capital Consortium, LLC, et al.

Plaintiff,

vs.

WELLS FARGO BANK, N.A., as successor-in-interest to Wachovia Bank, N.A.,

Defendant.
_____/

WELLS FARGO BANK, N.A.'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO LIFT OR VACATE STAY OF DISCOVERY AND INCORPORATED MEMORANDUM OF LAW

Defendant, Wells Fargo Bank, N.A., as successor-in-interest to Wachovia Bank, N.A. ("Wachovia"), by and through its undersigned counsel and pursuant to S. D. Local Rule 7.1, hereby files its response in opposition to Plaintiff's Motion to Lift or Vacate Stay of Discovery (the "Motion to Vacate Stay")(ECF No. 46). In support hereof, Wachovia states as follows:

I. Introduction

The Court, applying the applicable law, correctly decided Wachovia's Motion for Stay of Discovery Pending Ruling Upon Motion to Dismiss the Amended Complaint and/or Motion to Strike Immaterial, Impertinent, and Scandalous Matter (the "Motion to Stay")(ECF No. 24). As described further herein, Plaintiff's Motion to Vacate Stay is procedurally defective and substantively without merit. Accordingly, Plaintiff's Motion to Vacate Stay should be denied and this Court's Order Granting Defendant's Motion to Stay Discovery (the "Stay Order")(ECF No. 45) should not be disturbed.

II. Memorandum of Law

A. The Motion to Vacate Stay is Procedurally Defective

Plaintiff has not cited any Federal Rule of Civil Procedure or Local Rule upon which his Motion to Vacate Stay is based. In fact, Plaintiff's Motion to Vacate Stay is, in reality, a response in opposition to Wachovia's Motion to Stay, as evidenced by the assertion that "the underlying motion to stay discovery should be summarily denied" (*see* Motion to Vacate Stay, ECF No. 46, p.2), which was filed two (2) months ***after*** the May 20, 2011 response deadline (and after the Court has already decided the Motion to Stay), without Plaintiff first having requested and been granted leave of Court to file an overdue response as required by Fed. R. Civ. P. 6(b)(1)(B). Thus, the Motion to Vacate Stay is unauthorized and should not be considered by the Court.

Furthermore, Plaintiff's Motion to Vacate Stay is procedurally defective and should be denied because Plaintiff failed to confer with Wachovia's counsel prior to filing the Motion to Vacate Stay as required by S.D. Local Rule 7.1(a)(3). In the Motion to Vacate Stay, in his "Certificate of Good Faith Conference", Plaintiff represented to the Court that "Receiver's counsel has conferred with all parties who may be affected by the relief sought in this motion in a good faith effort to resolve the issues, but has been unable to resolve the issues". *See* Motion to Vacate Stay, ECF No. 46, p. 14. That statement is not true. Rather, after regular business hours, at 8:25 p.m. on July, 20, 2011, Francis Massabki, sent the e-mail attached hereto as Exhibit A, stating Plaintiff's intention to file the Motion to Vacate Stay. At or about 10:06 p.m. that evening (approximately one (1) hour and forty (40) minutes later), ***prior to receiving any response from Wachovia's counsel***, Francis Massabki filed the Motion to Vacate Stay. *See* Notice of Electronic Filing attached hereto as Exhibit B. S.D. Local Rule 7.1(a)(3) expressly provides that: "Failure to comply with the requirements of this Local Rule may be cause for the Court to grant or deny the motion and impose on counsel an appropriate sanction, which may include an order to pay the amount of the reasonable

expenses incurred because of the violation, including a reasonable attorney's fee." Accordingly, as expressly authorized by S.D. Local Rule 7.1(a)(3), this Court should deny the Motion to Vacate Stay based upon Plaintiff's failure to confer with Wachovia's counsel prior to filing the Motion to Vacate Stay.

Based upon the foregoing, Plaintiff's Motion to Vacate Stay is procedurally defective and should be denied.

B. The Motion to Vacate Stay Lacks Substantive Merit

1. Standard for Motion to Stay Discovery Pending Ruling on a Motion to Dismiss

In the Motion to Vacate Stay, Plaintiff suggests that Wachovia has argued that there is a "per se" rule...requiring the Court to rule on every potentially dispositive motion to dismiss before permitting discovery to proceed." *See* Motion to Vacate Stay, ECF No. 46, pp. 4-5. This is a mischaracterization of Wachovia's Motion to Stay. Rather, Wachovia argued that in cases analogous to this, where a motion to dismiss has been filed that raises serious facial challenges to the sufficiency of Plaintiff's claims, and is potentially dispositive of the entire action and will potentially entirely eliminate the need for discovery in the action, Courts within this Circuit and District have routinely ordered that discovery be stayed pending a ruling on the motion to dismiss.[1]

The authority relied upon by Plaintiff is distinguishable and inapplicable herein particularly because in those cases, a resolution of a pending motion to dismiss would not dispose of the entire action or completely eliminate the need for discovery.[2] *See e.g. Bocciolone v. Solowsky*, 2008 WL 2906719 at *2 (S.D. Fla. 2008)("Because resolution of Defendants' Motion to Dismiss could not possibly resolve the entire case and because there is sufficient reason to question whether it will

[1] For purposes of avoiding repetition, Wachovia incorporates herein the arguments and authority set forth in its Motion to Stay (ECF No. 24).

[2] *In re Winn Dixie Stores, Inc. Erisa Litigation*, 2007 WL 1877887 at *2-3 (S.D. Fla. 2007) was previously stayed for over two years due to the bankruptcy of Winn-Dixie. The *Winn-Dixie* Court stated that "the unique posture of this case makes a discovery stay impractical"..."Given the length of time this case has been pending, further delays in litigation are not easily justified." The *Winn-Dixie* Court's concerns regarding the length of time that case had been pending do not exist in the instant matter.

even dispose of all claims against these Defendants, it would be improper for the Court to stay discovery pending resolution of that Motion."); *S.K.Y. Management LLC v. Greenshoe, Ltd.*, 2007 WL 201258 at *2 (S.D. Fla. 2007)("another problem with the Defendant's motion is that the pending motion to dismiss will admittedly not result in a resolution of the entire case."); *S.D. v. St. Johns County School Dist.*, 2009 WL 3231654 at *2 (M.D. Fla. 2009) ("In the instant action, even if some or all of the individual Defendants were ultimately dismissed...they would still be subject to discovery as fact witnesses regarding Plaintiffs' claims against the St. Johns County School District."); *Feldman v. Flood*, 176 F.R.D. 651, 653 (M.D. Fla. 1997)("Both parties recognize that many of the issues which will be the subject of discovery will be litigated eventually, if not in this Court, in the Delaware proceedings.").

Wachovia's Motion to Dismiss the Amended Complaint and/or Motion to Strike Immaterial, Impertinent, and Scandalous Matter (the ""Motion to Dismiss")(ECF No. 23) raises a number of serious facial challenges, including whether Plaintiff has standing to maintain this action, which if ruled in Wachovia's favor would be dispositive of this entire case, and entirely eliminate the need for discovery in this case. Accordingly, the Stay Order correctly applies the applicable law to the circumstances of this case and the Stay Order should not be disturbed.

2. Wachovia Has Never Agreed to Proceed With Discovery Prior to a Ruling on the Motion to Dismiss

In the Motion to Vacate Stay, Plaintiff appears to argue that discovery should be allowed to proceed in this matter because the parties had a discovery conference in April 11, 2011.[3] *See* Motion to Vacate Stay, ECF No. 46, p. 3. However, Wachovia's participation in the April 11, 2011 discovery conference was done as required by the Federal Rules of Civil Procedure and Local Rules of this District. During the April 11, 2011 conference, Wachovia did not hide its intention to seek a

[3] Frank Massabki, the attorney who filed the Motion to Vacate Stay on behalf of Plaintiff, was not a participant to the April 11, 2011 discovery conference and perhaps is unaware of what transpired.

stay of discovery until the Court ruled on its Motion to Dismiss. Specifically, during the April 11, 2011 conference, Wachovia's counsel expressly advised Plaintiff's counsel of Wachovia's intention to file the Motion to Stay and would only agree to certain discovery matters *in the event that the Court directs that discovery proceed in this matter.* A copy of Wachovia's counsel's correspondence to Plaintiff's counsel dated April 12, 2011 in this regard is attached hereto as Exhibit C. Accordingly, Wachovia's counsel's good faith discussion of discovery matters in the event the Court orders that discovery occur in no way operates as a waiver of Wachovia's right to proceed with the Motion to Stay.

3. Wachovia and the Court Will Be Prejudiced If Discovery Proceeds At This Time

The *Chudasama* Court articulates prejudice that would be incurred by the parties and the Court if discovery were to proceed at this time as follows:

> "[I]n survey of 1000 judges, abusive discovery was rated highest among the reasons for the high cost of litigation. Discovery imposes several costs on the litigant from whom discovery is sought. These burdens include the time spent searching for and compiling relevant documents; the time, expense, and aggravation of preparing for and attending depositions; the costs of copying and shipping documents; and the attorneys' fees generated in interpreting discovery requests, drafting responses to interrogatories and coordinating responses to production requests, advising the client as to which documents should be disclosed and which ones withheld, and determining whether certain information is privileged. The party seeking discovery also bears costs, including attorneys' fees generated in drafting discovery requests and reviewing the opponent's objections and responses. Both parties incur costs related to the delay discovery imposes on reaching the merits of the case. Finally, discovery imposes burdens on the judicial system; scarce judicial resources must be diverted from other cases to resolve discovery disputes...
>
> Allowing a case to proceed through the pretrial processes with an invalid claim that increases the costs of the case does nothing but waste the resources of the litigants in the action before the court, delay resolution of disputes between other litigants, squander scarce judicial resources, and damage the integrity and the public's perception of the federal judicial system." *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1367-1368 (11th Cir. 1997)(internal citations and quotations omitted).

As set forth in the Wachovia's counsel's April 12, 2011 correspondence attached hereto as Exhibit C, if discovery in this matter proceeds the parties contemplate numerous discovery matters which may require Court intervention, including, issues regarding requests for disclosure of non-party account records, requests for disclosure of proprietary documents, and certain deposition issues. Allowing discovery to proceed prior to a ruling on the Motion to Dismiss would, in all likelihood, impose an unnecessary burden on the parties and the Court.

Moreover, Plaintiff has already expressed an intention to seek production of certain documents which Wachovia believes are proprietary and confidential, including, its internal policies and procedures. Notwithstanding a confidentiality agreement or confidentiality order entered into between the parties, it is possible that, if produced, such documents will be filed with the Court and thus become public record. The *Chudasama* Court explained the potential harm of requiring production of a party's confidential documents as follows:

> "The potential economic harm of allowing Mazda's proprietary information to be disclosed to its commercial competitors may very well exceed its potential liability in this case. If we were to let the sanctions stand, Mazda, and other large corporations amenable to suit in the Middle District of Georgia, may determine that, from the outset, Mazda would have been better off to disclose *no* proprietary information and accept a default. Although it would have lost the lawsuit, it would have been assured that its proprietary information would not end up in the public record." *Chudasama*, 123 F.3d at 1372.

Simply stated, production of Wachovia's confidential and proprietary documents at this time will be particularly harmful to Wachovia, especially if it is determined that such production is wholly unnecessary because Plaintiff cannot maintain any claims against Wachovia (*e.g.* because Plaintiff lacks standing).

4. Discovery Is Not Needed For Plaintiff to Defend the Motion to Dismiss

Finally, Plaintiff appears to suggest that discovery is necessary for his defense of Wachovia's Motion to Dismiss. *See* Motion to Vacate Stay, ECF No. 46, p. 13. As a preliminary matter, nowhere in Plaintiff's Response in Opposition to the Motion to Dismiss (ECF No. 36) does

Plaintiff suggest that he needs to conduct discovery in order to defend the Motion to Dismiss. In fact, the Motion to Dismiss has been fully briefed since June 23, 2011, when Wachovia filed its Reply to Response to Motion to Dismiss Amended Complaint (ECF No. 44) and no discovery has been propounded in this action, including while the Motion to Dismiss was being briefed. Plaintiff's reliance on *Allstate Life Ins. Co. v. Estate of Miller*, 2004 WL 141698 (S.D. Fla. 2004) is wholly misplaced, because the *Miller* Court addressed discovery to establish "***factual disputes relevant to the motion for summary judgment***." *Miller*, 2004 WL 141698 at *1 (emphasis added). On the other hand, in reviewing a motion to dismiss: "[s]uch a dispute always presents a purely legal question; there are no issues of fact because the allegations contained in the pleading are presumed to be true. Therefore, neither the parties nor the court have any need for discovery before the Court rules on the motion." *Chudasama,* 123 F.3d at 1367-1368. "Discovery should follow the filing of a well-pleaded complaint. It is not a device to enable a plaintiff to make a case when his complaint has failed to state a claim." *Id.* (citation omitted). Accordingly, Plaintiff's apparent contention that he needs to conduct discovery in order to respond to the Motion to Dismiss, is without merit as a matter of law.

Based upon the foregoing, Plaintiff's Motion to Vacate Stay is substantively without merit and should be denied.

WHEREFORE, Defendant, Wells Fargo Bank, N.A. as successor-in-interest to Wachovia Bank, N.A., respectfully requests entry of an Order denying Plaintiff's Motion to Vacate Stay (ECF No. 46) and granting such other and further relief as is just and proper.

Dated: August 8, 2011.

FOX ROTHSCHILD LLP
222 Lakeview Avenue, Suite 700
West Palm Beach, FL 33401
Telephone: (561) 835-9600
Facsimile: (561) 835-9602

By: */s/ Amy S. Rubin*
Amy S. Rubin
Florida Bar No. 476048
arubin@foxrothschild.com
Elliot A. Hallak
Florida Bar No. 762741
ehallak@foxrothschild.com

Counsel for Defendant Wells Fargo Bank, N.A. as successor-in-interest to Wachovia Bank, N.A.

CERTIFICATE OF SERVICE

I hereby certify that on August 8, 2011, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

FOX ROTHSCHILD LLP
222 Lakeview Avenue, Suite 700
West Palm Beach, FL 33401
Telephone: (561) 835-9600
Facsimile: (561) 835-9602

By: */s/ Amy S. Rubin*
Amy S. Rubin
Florida Bar No. 476048
arubin@foxrothschild.com
Elliot A. Hallak
Florida Bar No. 762741
ehallak@foxrothschild.com

Counsel for Defendant Wells Fargo Bank, N.A.

SERVICE LIST

United States District Court
Southern District of Florida

CASE NO: 10-CV-81612

Amy S. Rubin
Florida Bar Number: 476048
arubin@foxrothschild.com
Elliot A. Hallak
Florida Bar No. 762741
ehallak@foxrothschild.com
Fox Rothschild LLP
222 Lakeview Avenue, Suite 700
West Palm Beach, FL 33401
Telephone: (561) 835-9600
Facsimile: (561) 835-9602

Attorneys for Defendant Wells Fargo Bank, N.A.

David C. Cimo
Florida Bar Number 775400
dcimo@gjb-law.com
David P. Lemoie
Florida Bar Number 188311
dlemoie@gjb-law.com
Carmen Contreras-Martinez
Florida Bar Number 093445
ccontreras@gjb-law.com
Genovese Joblove & Battista, P.A.
100 Southeast Second Street
44th Floor
Miami, FL 33131
Telephone: (305) 349-2300
Facsimile: (305) 349-2310

Attorney for Plaintiff, SEC Receiver Perlman

Michael R. Josephs
Florida Bar Number 119242
mrj@josephsjack.com
Josephs Jack, P.A.
2950 SW 27th Avenue
Suite 100
Miami, FL 33133
Telephone: (305) 445-3800
Facsimile: (305) 448-5800

Co-Attorney for Plaintiff, SEC Receiver Perlman

Hallak, Elliot A.

From: Massabki, Frank [fmassabki@gjb-law.com]
Sent: Wednesday, July 20, 2011 8:25 PM
To: Rubin, Amy S.; Hallak, Elliot A.
Cc: Perlman, Jonathan; Cimo, David C.; Contreras-Martinez, Carmen; mrj@josephsjack.com; Lemoie, David
Subject: Perlman vs Wells Fargo -- motion to lift stay order

Dear Ms. Rubin and Mr. Hallak:

On behalf of the Receiver in the above-referenced action, we intend to file a Motion to Lift or Vacate Stay of Discovery relating to the Court's Order Granting Defendant's Motion to Stay Discovery [DE 45] dated July 19, 2011.

The basis for the motion is that a stay is not warranted under the circumstances, including, in the Receiver's view, because the pending motion to dismiss [DE 23] is legally deficient and unlikely to dispose of the entire case, and the underlying motion to stay [DE 24] fails to show any specific prejudice upon its denial.

I understand, as reflected in the motion to stay [DE 24], that the parties are in disagreement regarding this stay issue. Nevertheless, in an abundance of caution, and pursuant to Local Rule 7.1(a)(3)(A), I write to confirm that the parties' respective positions in the matter have not changed. If this is inaccurate, please let me know.

Thank you.

Frank Massabki

GENOVESE JOBLOVE & BATTISTA P.A. Attorneys at Law

Frank Massabki, Esq.
fmassabki@gjb-law.com
100 SE 2nd Street, 44th Floor
Miami, Florida 33131
Direct: (305) 349-2329
Main: (305) 349-2300
Fax: (305) 428-8826
www.gjb-law.com

Miami | Fort Lauderdale

EXHIBIT A

Hallak, Elliot A.

From: cmecfautosender@flsd.uscourts.gov
Sent: Wednesday, July 20, 2011 10:06 PM
To: flsd_cmecf_notice@flsd.uscourts.gov
Subject: Activity in Case 9:10-cv-81612-DTKH Perlman, Esq.v. Wells Fargo Bank, N.A. Motion to Vacate

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
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U.S. District Court

Southern District of Florida

Notice of Electronic Filing

The following transaction was entered by Massabki, Francis on 7/20/2011 at 10:06 PM EDT and filed on 7/20/2011
Case Name: Perlman, Esq.v. Wells Fargo Bank, N.A.
Case Number: 9:10-cv-81612-DTKH
Filer: Jonathan E. Perlman
Document Number: 46

Docket Text:
Plaintiff's MOTION to Vacate [45] Order on Motion to Stay by Jonathan E. Perlman. Responses due by 8/8/2011 (Massabki, Francis)

9:10-cv-81612-DTKH Notice has been electronically mailed to:

Amy S. Rubin arubin@foxrothschild.com, bhutson@foxrothschild.com, ehallak@foxrothschild.com, jritchie@foxrothschild.com, rputnam@foxrothschild.com

Carmen Contreras-Martinez ccontreras@gjb-law.com, eserres@gjb-law.com, gjbecf@gjb-law.com

David Charles Cimo dcimo@gjb-law.com, dsanchez@gjb-law.com, gjbecf@gjb-law.com

David Paul Lemoie dlemoie@gjb-law.com, gjbecf@gjb-law.com, hburke@gjb-law.com

Elliot Aaron Hallak EHallak@foxrothschild.com, jritchie@foxrothschild.com, rputnam@foxrothschild.com

EXHIBIT
B

Michael R. Josephs mrj@josephsjack.com, acj@josephsjack.com, tjn@josephsjack.com

9:10-cv-81612-DTKH Notice has not been delivered electronically to those listed below and will be provided by other means. For further assistance, please contact our Help Desk at 1-888-318-2260.:

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1105629215 [Date=7/20/2011] [FileNumber=9041067-0
] [40096cd485c43e33c39a6eb1755edf8a9df57688802f760cd2f34c85c32f0b65bc2
a24444bd41337da3e7fe097bf697a125a9881f761fc676a94381fbfe22b88]]

Hallak, Elliot A.

From: Hallak, Elliot A.
Sent: Tuesday, April 12, 2011 12:00 PM
To: 'Lemoie, David'; Rubin, Amy S.
Cc: Perlman, Jonathan; Cimo, David C.; Contreras-Martinez, Carmen; Michael Josephs
Subject: RE: Perlman vs Wells Fargo

David:

Please allow this e-mail to serve as a follow-up to our April 11, 2011 discovery conference and certain of Wells Fargo's comments as to your e-mail below. As we mentioned we would likely do during our call, simultaneously with the filing of the Motion to Dismiss Amended Complaint, Wells Fargo will file a Motion to Stay Discovery Pending a Ruling on the Motion to Dismiss Amended Complaint. We believe that the law is settled and clear in this Circuit that facial challenges as to the legal sufficiency of a complaint should be resolved before the parties are required to incur potentially unnecessary discovery costs. Moreover, the law in this Circuit is clear that any legally unsupported claim that will unduly enlarge the scope of discovery should be eliminated before the discovery stage. *See e.g.*, *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1367-1368 (11th Cir. 1997). Please advise us as soon as possible whether your client agrees to a stay of discovery pending a ruling on the Motion to Dismiss Amended Complaint.

As such, Wells Fargo cannot agree to participate in discovery, including the exchange of initial disclosures and the filing of a Discovery Plan (if necessary) until the Court rules on the Motion to Stay Discovery. That being said, in the event discovery in this matter proceeds, Wells Fargo has the following comments to your e-mail below:

(a) Wells Fargo will agree to the exchange of initial disclosures as required by Federal Rule of Civil Procedure 26 (a)(1) and S.D. Fla. Local Rule 26.1(A) within ten (10) days of the conclusion of any stay of discovery or any order denying Wells Fargo's request to stay discovery, but in any event, no earlier than May 2, 2011.

(b) In addition to the sources of discovery mentioned, Wells Fargo intends to seek discovery from Bank of America, N.A., J.P. Morgan Chase Bank, N.A. and any other entities where the Receivership Entities and any persons connected therewith maintained proceeds. The parties also reserve all rights to file motions for protective orders, motions to quash, and the like as to any discovery and/or deposition requests (including as to non-parties). In the event Plaintiff seeks discovery and/or deposition testimony from any officers and directors of Wells Fargo, Wells Fargo anticipates seeking protective order(s) to prevent such discovery/depositions from proceeding.

(c) The parties agree that they will endeavor to maintain and produce electronically stored information in a format that will preserve metadata in accordance with applicable law.

(e) Wells Fargo anticipates that it will request leave of Court to take in excess of ten (10) depositions.

(f) As noted above, Wells Fargo will file a Motion to Stay Discovery Pending a Ruling on the Motion to Dismiss Amended Complaint and Wells Fargo anticipates that it may be necessary to file motions for protective orders pursuant to Fed. R. Civ. P. 26(c). Wells Fargo is also unsure at this time whether it will be necessary to request that the Court enter any other orders pursuant to Fed.R.Civ.P. 16(b) - (c), including, but not limited, the modification of any dates set forth in the Order Setting Trial and Discovery Deadlines (ECF No. 14). Wells Fargo reserves all rights in this regard.

Additional matters -

(1) Wells Fargo anticipates that Plaintiff will request documents that Wells Fargo believes are proprietary. Our office will forward you a draft Confidentiality Agreement to address such matters. In the event the parties cannot agree on the form of a Confidentiality Agreement, Wells Fargo will request that a Confidentiality Order be entered.

EXHIBIT C

(2) Wells Fargo anticipates that it will be required, by law, to make objections as to certain discovery/document requests (including as to requests as to non-party financial account records) and that Court intervention will be necessary to resolve such objections.

Upon your review, please advise us if you have any additional comments/concerns relative to the foregoing and if your client agrees to a stay of discovery pending a ruling on the motion to dismiss we will be filing.

We look forward to working with you relative hereto.

Elliot A. Hallak
Attorney at Law
Fox Rothschild LLP
561.804.4439 - Direct

From: Lemoie, David [mailto:Dlemoie@gjb-law.com]
Sent: Monday, April 11, 2011 12:35 PM
To: Rubin, Amy S.; Hallak, Elliot A.
Cc: Perlman, Jonathan; Cimo, David C.; Contreras-Martinez, Carmen; Michael Josephs
Subject: Perlman vs Wells Fargo

Dear Amy:

The pretrial scheduling Order issued by Judge Hurley excuses the parties in this case from preparing and filing an agreed scheduling order regarding discovery and other pretrial matters. Nonetheless, the Order does require the parties to conduct a discovery conference under Rule 26(f) of the Federal Rules of Civil Procedure in order to address the scope and timing of discovery. In anticipation of our discovery conference call scheduled for 3:30 P.M. this afternoon, the Receiver offers the following discovery plan in compliance with Rule 26(f):

(a) In connection with their initial disclosure obligations, the parties will serve their initial disclosures, as required by Federal Rule of Civil Procedure 26(a)(1) and S.D. Fla. Local Rule 26.1(A), by **April 22, 2011**.

(b) Both parties will likely seek discovery from, among others, the Receivership Entities; individuals and business entities related in any manner to George Theodule and/or involved in the Ponzi scheme alleged in the Receiver's Complaint; alleged victims; expert witnesses; current or former employees, officers, and directors of Defendant, Wells Fargo; and any other person or entity who may have relevant knowledge of the claims or defenses pertaining to this matter, including but not limited the facts and circumstances surrounding the banking relationship among and between Wells Fargo, George Theodule, and the Receivership Entities. Defendant will seek also discovery from the Receiver and the SEC. The parties do not believe that they should conduct discovery in phases or be limited to particular issues (other than the broad limitations imposed by the Federal Rules of Civil Procedure.)

(c) Whenever feasible, the parties will produce all electronically stored information in Bate-stamped, OCR text, or PDF format. Alternatively, if unable to produce electronically stored information in such a manner, the parties will produce the information in the currently stored format. The parties further agree that they will maintain all relevant electronically stored information in its original format until final resolution of this matter.

(d) The parties have agreed that if any party inadvertently produces electronically stored information, or other documents, that the producing party claims after production are privileged, they will notify the opposing party or parties within a reasonable time frame of learning that an inadvertent production had occurred, then all parties who had received such information shall promptly return, sequester or destroy it, and must take reasonable steps to retrieve the information from third parties, including expert witnesses. However, the parties reserve their right to claim that the information disclosed was not privileged or that the privilege was waived.

(e) The parties do not believe it will be necessary to exceed the limitation provided by Federal Rule of Civil Procedure 30(a)(2)(A) regarding oral/videographic depositions without leave of court, but reserve their right to seek such leave if necessary.

(f) The parties are not requesting that the Court issue any other orders under Federal Rules of Civil Procedure 16 (b)-(c) or 26(c).

Please review the proposed discovery plan in anticipation of our conference call today.

Regards,

David P. Lemoie, Esq.