

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.

**AGREED JOINT MOTION TO STAY DISCOVERY PENDING A RULING ON
MOTION FOR RECONSIDERATION AND FOR EXTENSION OF PRETRIAL
DEADLINES AND INCORPORATED MEMORANDUM OF LAW**

Plaintiff, Jonathan E. Perlman, Esq. ("Perlman" or "Receiver"), as Court appointed Receiver of Creative Capital Consortium, LLC, et. al. (the "Receivership Entities") and Defendant, Wells Fargo Bank, N.A. ("Wells Fargo"), by and through their undersigned counsel and pursuant to S.D. Local Rule 7.1 and in the interest of preserving the resources of the parties and the Court, hereby request that this Court enter an Order staying discovery pending a ruling on Wells Fargo's Motion for Reconsideration Order Granting in Part Defendants' Motion to Dismiss and Denying Defendants' Motion to Strike (the "Motion for Reconsideration")(ECF No. 80) and an appropriate extension of the pretrial deadlines in this matter. In support hereof, the parties state as follows:

1. On November 22, 2011, this Court entered its Order Granting in Part Defendants' Motion to Dismiss and Denying Defendants' Motion to Strike (ECF No. 52)(the "Partial Dismissal Order").

2. Subsequent to the Partial Dismissal Order, on January 11, 2012, the Eleventh Circuit Court of Appeals issued its unpublished opinion in *Lawrence v. Bank of America*, 455 Fed. Appx. 904 (11th Cir. 2012)("Lawrence I").

3. On May 23, 2012, the Court dismissed with prejudice all claims brought by the Receiver in the related action against Bank of America, N.A. styled: *Perlman v. Bank of America, N.A.*, Case No. 9:11-cv-80331-Hurley/Hopkins, formerly pending in the United States District Court for the Southern District of Florida (the "Bank of America Action"). See Order Granting Defendants Motion to Dismiss (ECF No. 82)("Bank of America Dismissal Order") in the Bank of America Action.

4. The Bank of America Dismissal Order was based upon the reasoning of the intervening Eleventh Circuit Court of Appeals opinion in *Lawrence II*. See Bank of America Dismissal Order (ECF No.82), pp. 1-2.

5. On June 1, 2012, Wells Fargo filed its Motion for Reconsideration of the Partial Dismissal Order based upon Wells Fargo's contention that the same considerations that caused the Eleventh Circuit Court of Appeals to affirm the dismissal with prejudice of all claims in *Lawrence II* and this Court to dismiss with prejudice all claims in the Bank of America Action have equal applicability to the instant action.

6. On June 17, 2012, the Receiver filed his Motion for Extension of Time to Respond to the Motion for Reconsideration (ECF No. 81), requesting an extension of time, through July 10, 2012, to file his response to the Motion for Reconsideration.

7. Absent a stay of discovery pending a ruling on the Motion for Reconsideration and an appropriate extension of the pretrial deadlines, there are a number of ongoing discovery matters that will require the utilization of significant resources of both the parties and the Court during the time in which the Motion for Reconsideration is pending before the Court, including preparation of expert reports, a number of out-of-state depositions, and motions to compel regarding discovery responses.

8. In the interest of avoiding potentially needless time, travel, expense, and utilization of Court resources, the parties believe it is in the best interest for this Court to enter a stay of discovery pending a ruling on the Motion for Reconsideration and an appropriate extension of pre-trial deadlines.

9. As this matter is not set for trial until March 2013, neither the parties nor the Court will be prejudiced by entry of the requested stay pending a ruling on the Motion for Reconsideration and an appropriate extension of pre-trial deadlines.

10. On the other hand, significant resources of both the parties and the Court will be utilized if the Court declines to enter a stay pending a ruling on the Motion for Reconsideration and an appropriate extension of pre-trial deadlines.

WHEREFORE, for good cause shown, the parties request that this Court enter an Order (1) staying all discovery pending a ruling on the Motion for Reconsideration (ECF No. 80); (2) entering an appropriate extension of the pretrial deadlines in this matter; and (3) granting such other and further relief as this Court deems just and proper.

Dated: June 21, 2012

/s/ Elliot A. Hallak

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CERTIFICATE OF COMPLIANCE WITH S.D. FLA. L.R. 7.1(A)(3)

I HEREBY CERTIFY that, in accordance with S.D. Fla. L.R. 7.1(A)(3), counsel for both parties have agreed to the filing of this joint agreed motion and the relief requested herein.

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CERTIFICATE OF SERVICE

I hereby certify that on June 21, 2012, 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.

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SERVICE LIST

*United States District Court
Southern District of Florida*

CASE NO: 10-CV-81612

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