

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

LUIS GARMENDIZ,

Plaintiff,

v.

Case No: 8:17-cv-00987-EAK-AAS

CAPIO PARTNERS, LLC,

Defendant.

ORDER DENYING MOTION TO STAY THE PROCEEDINGS

Before the Court is the Defendant's Motion to Stay the Proceedings (Doc. No. 8) (the "**Motion to Stay**") filed by the Defendant Capiro Partners, LLC (the "**Defendant**"), and the response in opposition (Doc. No. 9) filed by the Plaintiff, Luis Garmendiz (the "**Plaintiff**"), and the reply (Doc. No. 19) filed by the Defendant. For the reasons set forth below, the Motion to stay is **DENIED**.

I. Background

On April 27, 2017, the Plaintiff filed a Complaint against the Defendant alleging that the Defendant violated the Telephone Consumer Protection Act (the "**TCPA**"), 47 U.S.C. § 227, and the Fair Debt Collect Practices Act (the "**FDCPA**"), 14 U.S.C. § 1692 et seq. (Doc No. 1, ¶ 1). On May 23, 2017, Defendant filed its Answer (Doc. 6), and on June 20, 2017, the Defendant filed the Motion to Stay. (Doc. No 8). On July 5, 2017, the Plaintiff filed his response in opposition to the Motion to Stay. (Doc. No. 9).

II. Legal Standard

"The District Court has broad discretion to stay proceedings as an incident to its power to control its own docket." Clinton v. Jones, 520 U.S. 681, 706 (1997). The burden

is on the movant to show that a stay is appropriate. See Id. at 708. The beginning point, in analyzing whether granting a stay is appropriate, starts with the decision of the United States Supreme Court in Landis v. N. Am. Co., 299 U.S. 248 (1936).¹ In Landis, the Supreme Court held that the proponents of the stay “must make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which he prays will work damage to some one [sic] else.” Id. at 256. Consistent with the Supreme Court’s holding in Landis, courts have examined the following factors to determine if a stay is appropriate: (1) whether the stay would prejudice the non-moving party, (2) whether the proponent of the stay would suffer a hardship or inequity if forced to proceed, and (3) whether granting the stay would further judicial economy.²

This Court finds that consideration of the hardship imposed on the moving party if forced to proceed is of paramount importance. Due to the potential for damage to the nonmoving party and the rare circumstances under which a stay should be granted, Landis requires the movant to establish a *hardship or inequity*, not merely that the stay

¹ Many circuits have cited Landis in determining whether a stay is appropriate. See Ortega Trujillo v. Conover & Co. Communications, Inc., 221 F.3d 1262, 1265 (11th Cir. 2000); CTF Hotel Holdings, Inc. v. Marriott Intern., Inc., 381 F.3d 131 (3d Cir. 2004); Muhammad v. Warden, Baltimore City Jail, 849 F.2d 107, 113 (4th Cir.1988); Ohio Envtl. Council v. U.S. Dist. Court, S. Dist. of Ohio, E. Div., 565 F.2d 393, 396 (6th Cir. 1977) ; In re Beebe, 56 F.3d 1384 (5th Cir. 1995); Jones v. Clinton, 72 F.3d 1354, 1364 (8th Cir. 1996), aff’d, 520 U.S. 681 (1997); Lockyer v. Mirant Corp., 398 F.3d 1098, 1009-13 (9th Cir. 2005); Commodity Futures Trading Com’n v. Chilcott Portfolio Mgmt., Inc., 713 F.2d 1477, 1484-86 (10th Cir. 1983); Belize Soc. Dev. Ltd. v. Gov’t of Belize, 668 F.3d 724, 731 (D.C. Cir. 2012).

² See Konopca v. Ctr. for Excellence in Higher Educ., Inc., CV155340FLWDEA, 2016 WL 4644461, at *2 (D.N.J. Sept. 6, 2016); Rajput v. Synchrony Bank, 3:15-CV-1079, 2016 WL 6433134, at *4 (M.D. Pa. Oct. 31, 2016); Doerken v. USAA Sav. Bank, CV 16-08824-RSWL-MRW, 2017 WL 1534186, at *2 (C.D. Cal. Apr. 26, 2017) (citing Lockyer v. Mirant Corp., 398 F.3d 1098, 1110 (9th Cir. 2005)); Edens v. Volkswagen Group of Am., Inc., 16-CV-0750 (WMW/LIB), 2016 WL 3004629, at *1 (D. Minn. May 24, 2016). While courts in this District have considered different factors, this Court finds that the factors considered by courts outside of this District more consistent with the holding in Landis. Cf. Mackiewicz v. Nationstar Mortgage, LLC, 615CV465ORL18GJK, 2015 WL 11983233, at *1 (M.D. Fla. Nov. 10, 2015) (stating that the courts in the Middle District of Florida consider these factors: (1) whether a stay will unduly prejudice or tactically disadvantage the nonmoving party, (2) whether a stay will simplify the issues and streamline the trial, and (3) whether a stay will reduce the burden of litigation on the parties and on the court.).

will reduce its burden. Landis, 299 U.S. at 255 (emphasis added). Therefore, for the reasons stated above, this Court will weigh the forgoing factors with particular emphasis on the hardship imposed on the moving party in determining whether a stay is appropriate.

III. Discussion

As discussed above, this Court will primarily consider the following three factors to determine whether a stay is appropriate: (1) whether a stay will unduly prejudice or tactically disadvantage the nonmoving party, (2) whether the moving party will suffer a hardship or inequity going forward, and (3) whether a stay will preserve judicial resources. After weighing the factors, this Court determines that a stay is inappropriate.

A. Undue Prejudice

The Court must first consider whether granting a stay will constitute undue prejudice on the Plaintiff. This Court may not subject the Plaintiff to delays that are immoderate. Ortega Trujillo v. Conover & Co. Communications, Inc., 221 F.3d 1262, 1264 (11th Cir. 2000) (internal citations omitted). In Ortega Trujillo, the Eleventh Circuit stated “[a] stay is immoderate and hence unlawful unless so framed in its inception that its force will be spent within reasonable limits, so far at least as they are susceptible of prevision and description.” Id. (quoting Landis, 299 U.S. at 257). In determining whether the stay is immoderate, the Eleventh Circuit considers the scope of the stay, its potential duration, and the reasons for the stay. Id.

The Defendant argues that the stay will not unduly prejudice the Plaintiff because this Motion is brought before any significant litigation or resources have been expended. (Doc. No. 8, 7). The Plaintiff argues that a stay will cause prejudice because the Defendant may continue its unlawful practices and relevant evidence would be more difficult to obtain due to the passage of time. (Doc. No. 9, 16).

The Defendant's argument concerning the undue prejudice to the Plaintiff is insufficient. Granting a stay now, under these circumstances, will be an immoderate stay because of the uncertainty regarding when the D.C. Circuit Court of Appeals will issue a final determination. See Richardson v. Verde Energy USA, Inc., CV 15-6325, 2016 WL 4478839, at *2 (E.D. Pa. Aug. 25, 2016). Moreover, the potential for either party, in the D.C. Circuit Court of Appeals' case, to request a review by the circuit court *en banc* and/or seek a writ of *certiorari* to the United States Supreme Court will further delay any concrete resolution to the issue. See Petras v. Ocwen Loan Servicing, 5:17-CV-73-OC-30PRL, 2017 WL 2426846, at *2 (M.D. Fla. June 5, 2017). Furthermore, the risk of evidence being lost or destroyed and the potential for witnesses' memories to fade further demonstrates the potential for prejudice to the Plaintiff. See Coleman v. Verde Energy USA, Inc., 317CV00062DRHSCW, 2017 WL 1382875, at *2 (S.D. Ill. Apr. 18, 2017). In light of the foregoing, the Court finds that granting a stay will prejudice the Plaintiff.

B. Hardship to the Defendant

Second, the Court must consider whether the Defendant will suffer a hardship or inequity from being required to defend this lawsuit. The Defendant bears the burden of establishing that it will suffer a hardship or inequity if forced to proceed. Landis, 299 U.S. at 255. Although the Supreme Court in Landis did not define what would constitute a hardship or inequity, many modern courts have held that being required to defend a lawsuit does not constitute a hardship or inequity. See Lockyer v. Mirant Corp., 398 F.3d 1098, 1112 (9th Cir. 2005). As stated below, the Defendant's argument that a stay will preserve judicial resources and streamline the issues at hand is more appropriate under the analysis of judicial economy, not in determining whether the Defendant will suffer a

hardship. Therefore, this Court finds that the Defendant has not sufficiently established a hardship or inequity.

C. Judicial Economy

Finally, the Court must consider whether the D.C. Circuit Court of Appeals' decision will simplify the issues before the Court, and reduce the financial burden on the parties and the Court. The Defendant bears the burden of establishing that judicial economy is best served by ordering a stay. Clinton, 520 U.S. at 708. Courts have considered the potential to simplify and streamline issues, together with the reduction of the financial burden on the parties and the Court, as factors in determining whether a stay will preserve judicial economy.³

The Defendant argues that the D.C. Circuit Court of Appeals' decision will simplify the issues of whether the technology used by the Defendant fits the definition of an Automatic Telephone Dialer System ("**ATDS**") under the TCPA and whether the TCPA includes the unintended recipient of a call as the "called party." (Doc. No. 8, 3). With respect to the Defendant's argument that granting a stay will simplify the issues in this case, this Court finds it inappropriate to predict the outcome of the appeal in determining whether a stay is appropriate. In every case, there is always the possibility that the law will change in a manner that impacts the viability of the parties' claims and defenses. Far from simplifying the Court's analysis, granting a stay under these circumstances would

³ See Doerken, 2017 WL 1534186, at *3 (C.D. Cal. Apr. 26, 2017) (granting a stay because it would "simplify the issues in the case and conserve resources both for the parties and the court."); Delozier v. Nationstar Mortgage, LLC, 3-16-1433, 2016 WL 8201929, at *1 (M.D. Tenn. Oct. 27, 2016) (granting a stay because it would "narrow and/or simplify the issues in the case and avoid possible litigation costs and hardships."); Rajput, 2016 WL 6433134, at *7 (M.D. Pa. Oct. 31, 2016) (granting a stay because it would "clarify and streamline the legal issues" and conserve resources).

set unwise precedent that every time a controversial issue is raised on appeal, all related or similar cases must be halted pending the appellate court's ruling. This Court is equally unconvinced that the stay would meaningfully conserve costs for the parties or the Court. The parties will still have to participate in discovery regarding whether the D.C. Circuit Court of Appeals' ruling is directly applicable to this case.⁴ Moreover, with the case in its early stages, the D.C. Circuit Court of Appeals' ruling can potentially still be raised at the summary judgment stage, allowing the case to proceed forward in the meantime.

IV. Conclusion

Accordingly, the Defendant has failed to demonstrate a hardship or inequity if a stay is not granted, and as a result, the Defendant's Motion to Stay is **DENIED**.

DONE and **ORDERED** in Chambers, in Tampa, Florida this 25th day of July 2017.


ELIZABETH A. KOVACHEVICH
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record

⁴ See Kafatos v. Uber Techs., Inc., 15-CV-03727-JST, 2016 WL 97489, at *2 (N.D. Cal. Jan. 8, 2016) (stating that "the parties still require discovery on a number of factual issues regardless of the outcome of those cases."); Coleman v. Verde Energy USA, Inc., 317CV00062DRHSCW, 2017 WL 1382875, at *2 (S.D. Ill. Apr. 18, 2017) (stating that discovery will still have to occur to determine whether the dialing system aligns with the statutory definition); Richardson v. Verde Energy USA, Inc., CV 15-6325, 2016 WL 4478839, at *3 (E.D. Pa. Aug. 25, 2016) (stating that the defendant "would experience no harm by engaging in discovery and motion practice."); Lathrop v. Uber Techs., Inc., 14-CV-05678-JST, 2016 WL 97511, at *4 (N.D. Cal. Jan. 8, 2016) ("Even if the D.C. Circuit were to modify or vacate the 2015 FCC Order, factual disputes, such as whether an ATDS was used and whether text recipients provided their consent, will remain here.").