

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 19-23590-CIV-BLOOM

HAVANA DOCKS CORPORATION,

Plaintiff,

vs.

ROYAL CARIBBEAN CRUISES LTD.,

Defendant.

DEFENDANT’S MOTION TO STAY DISCOVERY FOR NINETY DAYS

Defendant Royal Caribbean Cruises Ltd. (“Royal Caribbean”), pursuant to the Court’s inherent authority, moves for the entry of an Order staying discovery for ninety days, subject to renewal, because the effect of COVID-19 on the cruise industry and Royal Caribbean has made it virtually impossible, and definitely impractical, for Royal Caribbean to meaningfully participate in the discovery process.

In January 2020, upon joint motion of the parties, the Court stayed discovery in this action pending the resolution of Royal Caribbean’s motion for judgment on the pleadings (DE 30).¹ In the time since then, COVID-19 has turned the cruise industry, including Royal Caribbean, upside down.

The U.S. Centers for Disease Control issued “No Sail Orders” to cruise lines (Exhibit 1). Royal Caribbean announced the worldwide suspension of its cruises through April 11, 2020, then

¹ That joint motion also memorialized the parties’ “agree[ment] that if Royal Caribbean’s motion [for judgment on the pleadings] is denied, they will jointly request an amended scheduling order requesting an enlargement of pre-trial deadlines to ensure that there is ample time for the Parties to complete discovery and develop their cases.” The parties are currently in the process of discussing a proposed amended scheduling order to present to the Court.

through May 12 and now, most recently, through June 12 (Exhibit 2). On April 15, 2020, Royal Caribbean terminated or furloughed 26% of its U.S.-based employees due to the economic effects of the pandemic. *See* Jane Wooldridge and Taylor Dolven, *Royal Caribbean Cruises sheds 26% of U.S. workers as coronavirus cancellations continue*, The Miami Herald, www.miamiherald.com/news/business/tourism-cruises/article242023321.html (last visited April 30, 2020).

Two days after those layoffs, on April 17, 2020, the Court entered its omnibus order denying Royal Caribbean's motion for judgment on the pleadings and lifting the stay of discovery (DE 45). Almost immediately, and as was their right, counsel for Plaintiff contacted counsel for Royal Caribbean to propose that Royal Caribbean serve on May 1, 2020 its responses to Plaintiff's pending written discovery requests (the order staying discovery was entered before Royal Caribbean's responses were due). Counsel for Royal Caribbean responded that he would discuss the proposal with the client, but that May 1 seemed impractical in light of the layoffs, which included people from whom responsive information would need to be obtained, and Royal Caribbean's inside counsel being pressed to deal with the emerging and emergency COVID-caused issues that are arising daily. Counsel for Royal Caribbean also stated that his client was likely to request that counsel seek to stay discovery.

Through this Motion, and after having conferred with the client, Royal Caribbean is now seeking a ninety day stay of discovery.

"The District Court has broad discretion to stay proceedings as an incident to its power to control its own docket." *See Clinton v. Jones*, 520 U.S. 681, 706 (1997). This includes the discretion to manage and schedule discovery. *See Perez v. Miami-Dade Cty.*, 297 F.3d 1255, 1263 (11th Cir. 2002). ("[D]istrict courts are entitled to broad discretion in managing pretrial discovery

matters.”); *Johnson v. Bd. of Regents of Univ. of Georgia*, 263 F.3d 1234, 1269 (11th Cir. 2001) (“[W]e accord district courts broad discretion over the management of pre-trial activities, including discovery and scheduling.”).

Good cause exists for staying discovery for ninety days because, as set out above, COVID-19 has caused Royal Caribbean to redeploy and reallocate its human and economic resources in ways that make it virtually impossible for Royal Caribbean to engage right now in the type of exhaustive discovery that will be required in this action, in which Plaintiff seeks to discover, among other things thousands of pages of document.

The effect that COVID-19 has on cruise lines’ ability to participate in discovery has already been recognized in this District:

Is it rational to expect defense counsel to enlist assistance from cruise ship attorneys and other employees (e.g., to track down documents and information) to adequately prepare the corporate representative when the entire cruise ship industry is on lockdown and thousands of employees have been let go? Of course not.

C.W. v. NCL (Bahamas) Ltd., 19-cv-24441, D.E. 38 (S.D. Fla. Mar. 21, 2020).

Other courts in this District, and in other districts, have stayed discovery due to the effects of the pandemic. *See, e.g., Kleiman v. Wright*, 2020 WL 1472087 at *2 (S.D. Fla. March 26, 2020) (Bloom, J.) (extending discovery deadlines “in light of the COVID-19 global pandemic, the profound logistical issues affecting Florida and New York residents, businesses, and the courts... The Court recognizes the present difficulties of working remotely with limited staff and resources against the COVID-19 backdrop. . . In this setting, it is therefore appropriate to amend the current deadlines.”); *C.W.*, D.E. 41 (March 31, 2020) (Altonaga, J.) (staying case “Given the inability to proceed with the orderly progress of the case due to the uncertainty regarding the duration of the restrictions, and to conserve the parties’ and judicial resources”); *Mata v. Expedia*, 19-22529, D.E. 122 (S.D. Fla. March 13, 2020) (Altonaga, J.) (staying discovery and administratively closing case

“[g]iven it is impossible to proceed with the orderly progress of the case due to the uncertainty regarding the duration of travel restrictions, and to conserve the parties’ and judicial resources”); *Roguerio v. American Airlines*, 19-23965, D.E. 85 (S.D. Fla. April 6, 2020) (Martinez, J.) (granting 60 day renewable stay and administratively closing case “[g]iven the inability to proceed with the orderly progress of the case due to the uncertainty regarding the duration of the restrictions and worldwide pandemic, and to conserve the parties’ and judicial resources”); *Garbutt v. Ocwen Loan Servicing, LLC*, 2020 WL 1476159, at *1 (M.D. Fla. Mar. 26, 2020) (staying discovery because “Defendant and its counsel is required to work from home, limiting their ability to access information for discovery . . . Due to the circumstances caused by COVID-19, the Court will stay discovery in this action until June 1, 2020”); *Libutan v. MGM Grand Hotel LLC*, 2020 WL 1434440, at *2 (D. Nev. Mar. 24, 2020) (granting request to stay discovery and all proceedings until June 1, 2020 finding that “the unavailability of witnesses and documents due to the closure of MGM Grand will significantly infringe on both parties’ ability to meaningfully participate in the discovery process, which is an appropriate basis for staying proceedings”) (citations omitted); *Sears v. Russell Rd. Food & Bev.*, 2020 U.S. Dist. LEXIS 44385, at *4 (D. Nev. Mar. 13, 2020) (finding that due to the “parties’ infringed ability to meaningfully participate in the discovery process because of COVID-19, the Court will grant in part the parties’ instant motion as to this basis for a stay of discovery).

A ninety day stay of discovery is also appropriate because Royal Caribbean has recently filed a motion, pursuant to 28 U.S.C. §1292(b), asking the Court certify for interlocutory appeal the Court’s omnibus order denying Royal Caribbean’s motion for judgment on the pleadings, and granting Plaintiff’s motion for leave to file an amended complaint (DE 47). Although the filing of a motion seeking relief under §1292(b) does not automatically stay proceedings, the statute

expressly authorizes district courts to order a stay while such a motion is pending. *See* 28 U.S.C. §1292(b) (“[A]pplication for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order.”). Staying discovery for ninety days will conserve the time and resources of the parties because it will spare them the time and expense of engaging in discovery while the Court considers the §1292(b) issues.

For these reasons, Royal Caribbean respectfully requests the entry of an order staying discovery for ninety days, subject to renewal upon the parties’ filing of a status report at the end of that ninety day period.

Certificate of Counsel

Counsel for Royal Caribbean conferred with counsel for Plaintiff before filing this motion. Counsel for the parties were unable to reach agreement.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of May 2020, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF System.

By: /s/ Scott D. Ponce