

DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

DAVID KENDRICK,

Plaintiff,

2005-CV-0164

v.

THE HERTZ CORPORATION,

Defendant.

TO: Lee J. Rohn, Esq.
Chetema Lucas Francis, Esq.

ORDER REGARDING DEFENDANT'S MOTIONS TO STAY

THIS MATTER is before the Court upon Defendant's Motion to Stay Discovery Pending Resolution of Defendant's Appeal of Magistrate's Order Dated December 4, 2007 (Docket No. 90) and Motion to Stay Referral to Mediation Pending Resolution of Plaintiff's Appeal of Magistrate's Order Dated June 26, 2007[,] and Defendant's Appeal of Magistrate's Order Dated December 4, 2007 (Docket No. 91). Plaintiff filed oppositions to each motion, and Defendant filed replies thereto.

The Court, having considered the matter, finds that a stay of discovery is not warranted. Whether the matter ultimately is transferred or not, discovery will proceed and should not be delayed. Defendant's reliance upon *McDonnell Douglas Corp. v. Polin*, 429

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F.2d 30 (3d Cir. 1970) is misplaced. There, the trial court delayed resolution of a motion to transfer until completion of discovery. The Court of Appeals decided that postponing consideration of the motion to transfer was unnecessary. Here, in the matter at bar, the motion to transfer has been decided and now is on appeal to the District Judge. The posture of *Polin* is completely different from the one present in this case. Moreover, one of Defendant's reasons for seeking a stay of mediation is the fact that minimal discovery has occurred. The Court acknowledges Defendant's appeal of its order compelling discovery. Consequently, the Court will stay compliance with such order, but will allow all other discovery to proceed.

Because Defendant asserts a need for additional discovery prior to mediation, the Court will allow a temporary stay of mediation.

Accordingly, it is now hereby **ORDERED**:

1. Defendant's Motion to Stay Discovery Pending Resolution of Defendant's Appeal of Magistrate's Order Dated December 4, 2007 (Docket No. 90) is **GRANTED IN PART AND DENIED IN PART**.
2. Defendant's compliance with said Order Granting Plaintiff's Motion to Compel (Docket No. 82) is **STAYED** pending resolution of Defendant's appeal of such order. All other discovery shall proceed as usual.

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3. Motion to Stay Referral to Mediation Pending Resolution of Plaintiff's Appeal of Magistrate's Order Dated June 26, 2007[,] and Defendant's Appeal of Magistrate's Order Dated December 4, 2007 (Docket No. 91) is **GRANTED**.
4. Mediation in this matter is **STAYED** pending resolution of said appeals.

ENTER:

Dated: March 3, 2008

_____/s/
GEORGE W. CANNON, JR.
U.S. MAGISTRATE JUDGE