

DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

TAMYKA WEEKS,

Plaintiff,

1:09-cv-50

v.

**LEEWARD ISLANDS APOTHECARIES,
LLC d/b/a THE MEDICINE SHOPPE, TROY
A. DE CHABERT-SCHUSTER, GREGORY
L. SCHUSTER, and LOWELL SCHUSTER,**

Defendants.

**TO: K. Glenda Cameron, Esq.
Robert A. Waldman, Esq.**

ORDER

THIS MATTER is before the Court upon Defendants' Motion to Stay Discovery (Docket No. 15). Plaintiff filed an opposition to said motion, and Defendants filed a reply thereto.

Defendants seek a stay of discovery pending resolution of their motion to dismiss. Plaintiff opposes a stay, arguing that the harm produced by the delay outweighs the possibility that the motion will be granted and entirely eliminate the need for discovery.

Weeks v. Leeward Islands Apothecaries, LLC
1:09-cv-50
Order
Page 2

It is generally accepted that “a district court has broad discretion ‘to stay discovery until preliminary questions that may dispose of the case are determined.’ *Petrus v. Bowen*, 833 F.2d 581, 582 (5th Cir. 1987). Such a stay is not, however, automatically granted whenever a motion to dismiss is pending” *Keystone Coke Co. v. Pasquale*, No. Civ. A. 97-6074, 1999 WL 46622 at *1 (E.D. Pa. January 7, 1999) (citations omitted).

As the United States District Court for the Northern District of California observes:

Had the Federal Rules contemplated that a motion to dismiss under Fed.R.Civ.Pro. [sic] 12(b)(6) would stay discovery, the Rules would contain a provision to that effect. . . . Furthermore, a stay of the type requested by defendants, where a party asserts that dismissal is likely, would require the court to make a preliminary finding of the likelihood of success on the motion to dismiss. This would circumvent the procedures for resolution of such a motion.

Gray v. First Winthrop Corp., 133 F.R.D. 39, 40 (N.D. Cal. 1990).

Based upon the foregoing, the Court finds that Defendants have failed to carry their “heavy burden of making a ‘strong showing’ why discovery should be denied.” *Id.* (citing *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975)).

Accordingly, it is now hereby **ORDERED** that Defendants’ Motion to Stay Discovery (Docket No. 15) is **DENIED**.

Weeks v. Leeward Islands Apothecaries, LLC

1:09-cv-50

Order

Page 3

ENTER:

Dated: May 26, 2010

/s/ George W. Cannon, Jr.

GEORGE W. CANNON, JR.

U.S. MAGISTRATE JUDGE