

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 19-cv-00901-WJM-NRN

MICHAELLA LYNN SURAT,

Plaintiff,

v.

RANDALL KLAMSER, in his individual capacity, and
CITY OF FORT COLLINS, a municipality,

Defendants.

**ORDER DENYING
DEFENDANTS' MOTION TO STAY PROCEEDINGS (DKT. #35)**

**N. Reid Neureiter
United States Magistrate Judge**

This case is before the Court pursuant to an Order (Dkt. #36) referring the subject motion (Dkt. #35) entered by Judge William J. Martinez on July 25, 2019. Now before the Court is Defendants Randall Klamser and City of Fort Collins' Motion to Stay Proceedings (Dkt. #35). The Court has carefully considered the motion, Plaintiff Michaelaella Lynn Surat's response (Dkt. #39), and Defendants' reply (Dkt. #46). On September 3, 2019, the Court heard argument on the subject motion (see Dkt. #48) The Court has taken judicial notice of the Court's file and has considered the applicable Federal Rules of Civil Procedure and case law. The Court now being fully informed makes the following findings of fact, conclusions of law, and order.

The Federal Rules of Civil Procedure do not expressly provide for a stay of proceedings. See *String Cheese Incident, LLC v. Stylus Shows, Inc.*, No. 02-cv-01934-LTB-PA, 2006 WL 894955, at *2 (D. Colo. March 30, 2006) (unpublished). Federal Rule

of Civil Procedure 26 does, however, provide that “[a] party or any person from whom discovery is sought may move for a protective order in the court where the action is pending The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense” Fed. R. Civ. P. 26(c). Moreover, “[t]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance.” *Landis v. North Am. Co.*, 299 U.S. 248, 254-55 (1936) (citing *Kansas City S. Ry. Co. v. United States*, 282 U.S. 760, 763 (1931)). An order staying discovery is thus an appropriate exercise of this Court's discretion. *Id.*

A stay of all discovery is generally disfavored. *Bustos v. United States*, 257 F.R.D. 617, 623 (D. Colo. 2009). However, courts have routinely recognized that discovery may be inappropriate while issues of immunity or jurisdiction are being resolved. *See, e.g., Siegert v. Gilley*, 500 U.S. 226, 231-32 (1991) (noting that immunity is a threshold issue, and discovery should not be allowed while the issue is pending); *Workman v. Jordan*, 958 F.2d 332, 336 (10th Cir. 1992) (same). Similarly, a stay may be appropriate if “resolution of a preliminary motion may dispose of the entire action.” *Nankivil v. Lockheed Martin Corp.*, 216 F.R.D. 689, 692 (M.D. Fla. 2003); *see Vivid Techs., Inc. v. Am. Science & Engineering, Inc.*, 200 F.3d 795, 804 (Fed. Cir. 1999) (“When a particular issue may be dispositive, the court may stay discovery concerning other issues until the critical issue is resolved.”).

When considering a stay of discovery, this Court has considered the following factors: (1) the plaintiff's interests in proceeding expeditiously with the civil action and the potential prejudice to plaintiff of a delay; (2) the burden on the defendants; (3) the convenience to the Court; (4) the interests of persons not parties to the civil litigation; and (5) the public interest. *See String Cheese Incident*, 2006 WL 894955, at *2.

Here, Defendants seek to stay all discovery pending resolution of their motion to dismiss that argues Plaintiff's lawsuit is barred by *Heck v. Humphrey*, 512 U.S. 477 (1994) (Dkt. #35). In short, Defendants argue that Plaintiff's excessive force claim necessarily addresses the validity of her underlying criminal conviction which, while currently on appeal, has not been overturned.

In contrast, Plaintiff argues that the *String Cheese* factors (which they request that the Court modify to employ a "preliminary peek" approach, where the Court considers the likelihood of success of the motion to dismiss) militates against a stay of discovery. Plaintiff maintains she would be prejudiced by any further delay, and that Defendants will not be unfairly burdened by proceeding.

The Court finds that the *String Cheese* factors do not support entry of a stay in this case. Most significantly, the Court finds that the interest of Plaintiff to proceed expeditiously outweighs any burden on Defendants of having to participate in discovery while their motion to dismiss is pending. In addition, the fact that many witnesses were identified and testified in Plaintiff's criminal case suggests that the burden of proceeding with discovery is not great. As Judge Boland noted, "Defendants always are burdened when they are sued, whether the case ultimately is dismissed; summary judgment is granted; the case is settled; or a trial occurs. That is a consequence of our judicial

system and the rules of civil procedure. There is no special burden on the defendant in this case.” *Chavez v. Young Am. Ins. Co.*, No. 06-cv-02419-PSF-BNB, 2007 WL 683973, at *2 (D. Colo. Mar. 2, 2007) (denying *unopposed* motion to stay).

As to the third *String Cheese* factor, the Court has an interest in managing its docket by seeing the case proceed expeditiously. The Court also finds that the interests of non-parties and the public interest do not greatly favor either side. Finally, at the hearing on this matter, the Court expressed concern that if Plaintiff chose to assert her Fifth Amendment rights in her deposition in this case in order to protect the appeal of her criminal conviction, Defendants would not be able to proceed with Plaintiff’s deposition, which would create unfairness in the discovery process. However, Plaintiff, through counsel, has stated that she will not assert the Fifth Amendment during her deposition, which alleviates that concern. The Court will hold Plaintiff to her assurance on this matter.

WHEREFORE, for the foregoing reasons, it is hereby

ORDERED that Defendants Randall Klamser and City of Fort Collins’ Motion to Stay Proceedings (Dkt. #35) is DENIED.

Date: September 13, 2019
Denver, Colorado

BY THE COURT



N. Reid Neureiter
United States Magistrate Judge