

**IN THE UNITED STATES COURT
DISTRICT OF KANSAS**

SAMUEL K. LIPARI,)	
)	
Plaintiff,)	
)	
v.)	Case No. 2:07-cv-02146-CM-DJW
)	
U.S. BANCORP and)	
U.S. BANK NATIONAL ASSOCIATION,)	
)	
Defendants.)	

**DEFENDANTS' MOTION TO STAY ENTRY OF SCHEDULE,
STAY DISCOVERY AND FOR PROTECTIVE ORDER**

Defendants U.S. Bancorp and U.S. Bank National Association (“U.S. Bank”) respectfully request that the Court enter its Order staying discovery or for protective order, under Fed. R. Civ. P. 26(c), and to stay entry of a scheduling order. Defendants have filed a dispositive motion to dismiss the plaintiff’s claims that, if granted, will resolve all of the causes of action and the entirety of the action. Furthermore, additional good cause exists for discovery to be stayed pending a ruling by the Court on the motion to dismiss. As reasons for this motion, defendants state:

1. Plaintiff Samuel Lipari originally filed this lawsuit in the Circuit Court of Jackson County, Missouri. Mr. Lipari purports to bring these claims as the alleged “assignee” of the now-defunct entity known as Medical Supply Chain, Inc.

2. The defendants removed the Missouri state court case to the United States District Court for the Western District of Missouri. That court recently transferred the case to this District.

3. This Court is very familiar with the substantial history of Medical Supply Chain, Inc. and Mr. Lipari in filing lawsuits, a number of which have been resolved by motion in this

Court. *See, e.g., Medical Supply Chain, Inc. v. U.S. Bancorp, et al.*, 2003 WL 21479192 (D. Kan., Jun. 16, 2003); *Medical Supply Chain, Inc. v. Neoforma, Inc., et al.*, 419 F. Supp.2d 1316 (D. Kan. 2006); *Medical Supply Chain, Inc. v. General Elec. Co.*, 2004 WL 956100 (D. Kan., Jan. 29, 2004).

4. This lawsuit, purportedly brought by Mr. Lipari on behalf of Medical Supply Chain, Inc., is the third effort by Lipari/Medical Supply Chain to file suit against U.S. Bancorp and U.S. Bank. Defendants believe that the plaintiff's claims are barred for a number of reasons set forth in their motion to dismiss filed on April 25, 2007. Among other things, Lipari is not the proper party to file these claims, Lipari has no standing, the claims are barred by *res judicata*, the complaint must be dismissed under Fed. R. Civ. P. 8 and the allegations fail to state a claim upon which relief may be granted under Fed. R. Civ. P. 12(b)(6). (Defendants hereby incorporate the arguments set forth in their motion as further basis for good cause to be found that discovery has stayed.)

5. These defendants have already been put to much expense in defending several lawsuits, not only responding to various pleadings filed by Medical Supply Chain, Inc. or Mr. Lipari that have no basis in law or fact, but also having filed motions for sanctions. To date, this Court has awarded defendants in the various cases mentioned above nearly \$100,000 in their favor and against Medical Supply Chain, Inc. or its previous counsel (to the knowledge of the undersigned none of which has been paid). Before the defendants or the *pro se* plaintiff are put to further expense of money and time, defendants request that the Court enter a stay of any discovery and scheduling orders in this case pending a ruling upon their motion to dismiss.

6. A stay pending ruling on the motion to dismiss would be efficient and economical under the circumstances. Plaintiff cannot legitimately assert that he would suffer prejudice as a

result of the stay or protective order that the defendants seek. Any argument that delay caused by the entry of an Order pursuant to Rule 26(c) is insufficient to preclude a protective order. *See Niv v. Hilton Hotels Corp.*, 2007 WL 510113 *2 (S.D.N.Y., Feb. 15, 2007).

7. The defendants' motion to dismiss has not been interposed for an improper purpose, nor to harass or cause unnecessary delay. The arguments are well-grounded in law. The interests of judicial economy would clearly be advanced, at this juncture, by staying discovery in this action pending a decision on the dispositive motion. In particular, resolution of the pending dispositive motion would likely dispose of the entire action. *See Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Coors*, 357 F. Supp.2d 1277, 1280 (D. Colo. 2004). The parties' resources should not be unnecessarily drained while the dispositive motion is pending. *Spencer Trask Software and Information Servs., LLC v. RPost Int'l Ltd.*, 206 F.R.D. 367, 368 (S.D.N.Y. 2002).

8. Under Fed. R. Civ. P. 26(c), this Court has discretion to limit or stay discovery for good cause shown. Particularly where, as here, there is a pending dispositive motion, the stay is only for a short period of time until the motion is ruled and the opposing party would not be prejudiced, then a protective order is appropriate and good cause exists. *Spencer Trask*, 206 F.R.D. at 368.

9. Based upon the above and foregoing, defendants can establish "good cause" for entry of a stay of discovery and protective order under Fed. R. Civ. P. 26(c). No just reason can exist to compel the parties to engage in expensive discovery particularly given the prior litigation history of Medical Supply Chain, Inc., Mr. Lipari and the dispositive nature of defendants' motion.

