

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION

ALYSSON MILLS, IN HER CAPACITY  
AS RECEIVER FOR ARTHUR LAMAR  
ADAMS AND MADISON TIMBER  
PROPERTIES, LLC,

Plaintiff,

v.

THE UPS STORE, INC.; HERRING  
VENTURES, LLC d/b/a THE UPS STORE;  
AUSTIN ELSÉN; TAMMIE ELSÉN;  
COURTNEY HERRING; DIANE LOFTON;  
CHANDLER WESTOVER; RAWLINGS &  
MACINNIS, PA; TAMMY VINSON; and  
JEANNIE CHISHOLM,

Defendants.

Case No. 3:19-cv-364-CWR-FKB

Arising out of Case No. 3:18-cv-252,  
*Securities and Exchange Commission v.  
Arthur Lamar Adams and Madison  
Timber Properties, LLC*

Hon. Carlton W. Reeves, District Judge

**MOTION TO STAY CASE**

Defendant The UPS Store, Inc. (“TUPSS, Inc.”) submits this Motion to Stay Case pending disposition of its Motion to Dismiss for Lack of Subject Matter Jurisdiction (“Motion to Dismiss”) made pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, stating the following in support:

1. Plaintiff Alysson Mills (“Plaintiff” or the “Receiver”), in her capacity as Receiver for Arthur Lamar Adams and Madison Timber Properties, LLC (together, “Adams/Madison Timber”) brings this lawsuit alleging claims of civil conspiracy, aiding and abetting, and negligence under state law—all arising from damages allegedly sustained by investors in Adams’ Ponzi scheme. *See* Amended Complaint [14].

2. On August 26, 2020, TUPSS moved to dismiss this lawsuit for lack of subject matter jurisdiction based on the Receiver's lack of standing, as the Receiver only has standing to bring claims on behalf of the Receivership—not the investors.. *See* Motion to Dismiss [138] and Memorandum in Support [139].

3. The Court has the authority to grant a stay in this case, and it is firmly in the interest of judicial economy and justice to do so pending the resolution of TUPSS, Inc.'s fundamental, dispositive motion challenging subject matter jurisdiction. A stay would not prejudice the Receiver.

4. The Court has granted stays in three related cases where the Receiver alleges the same claims and damages raised here. *See Mills v. Butler Snow, LLP*, No. 3:19-cv-866 (S.D. Miss.); *BankPlus*, No. 3:19-cv-196 (S.D. Miss.); *Mills v. Trustmark Nat'l Bank*, No. 3:19-cv-941 (S.D. Miss.). In two of those cases, the defendants have filed motions to dismiss challenging the Receiver's standing on the same bases raised by TUPSS, Inc. *See* Motion and Memorandum of Law in Support of Baker Donelson's Motion to Dismiss the Amended Complaint, *Mills v. Butler Snow LLP*, No. 3:18-cv-866 (S.D. Miss.), ECF Nos. 59-60; Motion and Memorandum in Support of Trustmark's Motion to Dismiss, *Mills v. Trustmark Nat'l Bank*, No. 3:19-cv-00941 (S.D. Miss.), ECF Nos. 39-40.)

5. For the reasons set forth in this Motion and the accompanying memorandum of law, to avoid imposing the burdens of discovery or other proceedings on the Court or any of the parties, TUPSS, Inc. respectfully asks this Court to enter a stay of discovery and other proceedings in this matter while its Motion to Dismiss remains pending.

Respectfully submitted,

**HELPS DUNBAR, LLP**

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**CERTIFICATE OF SERVICE**

I, LaToya C. Merritt, do hereby certify that on September 28, 2020, I electronically filed the foregoing *MOTION* with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following counsel of record:

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THIS, the 28th day of September, 2020.

*/s/ LaToya C. Merritt*

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Hon. Carlton W. Reeves, District Judge

**MEMORANDUM IN SUPPORT OF MOTION TO STAY CASE**

Defendant The UPS Store, Inc. (“TUPSS, Inc.”) submits this Memorandum in Support of Motion to Stay Case pending disposition of TUPSS, Inc.’s Motion to Dismiss for Lack of Subject Matter Jurisdiction (“Motion to Dismiss”). Because such a stay would be in the interests of judicial economy and justice and would not prejudice Plaintiff Alysson Mills (“Plaintiff” or the “Receiver”), TUPSS, Inc.’s Motion to Stay Case should be granted.

**RELEVANT BACKGROUND**

Plaintiff is the Receiver for the estates of Arthur Lamar Adams and his company Madison Timber Properties, LLC (together, “Adams/Madison Timber”)—the perpetrators of a Ponzi scheme that bilked more than 150 investors. The Receiver brings this lawsuit alleging three claims against TUPSS, Inc.: civil conspiracy, aiding and abetting, and negligence under state law. *See*

Amended Complaint [14]. For each of these claims, the Receiver seeks to recover damages that investors allegedly lost by investing in the Adams/Madison Timber Ponzi scheme. *See id.*

On August 26, 2020, TUPSS, Inc. filed a Motion to Dismiss challenging the Receiver's standing, given that the claims and damages the Receiver raises against TUPSS, Inc. belong not to Adams/Madison Timber, but to their victims: the investors in their Ponzi scheme. *See* Motion to Dismiss [138] and Memorandum in Support [139]. Because the Receiver lacks standing, the Court lacks subject matter jurisdiction. *See id.* All Defendants in this action joined in TUPSS, Inc.'s motion. *See* Joiners [140 & 141].

Judge Ball initially entered a text-only order staying discovery pursuant to L.U.Civ.P. 16(b)(3)(B) pending a ruling on the Motion to Dismiss. *See* Text-Only Order dated August 27, 2020. On September 2, 2020, Judge Reeves entered a text-only order lifting the stay in light of L.U.Civ.P. 16(b)(3)(A). *See* Text-Only Order dated September 2, 2020. Defendants subsequently proposed a stay of discovery to the Receiver, but the Receiver objected to any such stay. A discovery conference was held on the issue on September 18, 2020, *see* Minute Entry, and Judge Ball granted TUPSS, Inc.'s request to file this motion.

### **ARGUMENT AND AUTHORITIES**

The Court should stay discovery and other proceedings in this case while Defendants' Motion to Dismiss is pending. Although a stay may not be *mandatory* under the local rules in the circumstances present here, the Court has clear authority to grant one, and TUPSS, Inc. submits that it is firmly in the interest of judicial economy and justice to do so.

A “[d]istrict [c]ourt has broad discretion to stay proceedings as an incident to its power to control its own docket.” *Clinton v. Jones*, 520 U.S. 681, 684 (1997); *see also In re Ramu Corp.*, 903 F.2d 312, 318 (5<sup>th</sup> Cir. 1990) (“The stay of a pending matter is ordinarily within the trial court's

wide discretion to control the course of litigation, which includes authority to control the scope and pace of discovery. This authority has been held to provide the court the general discretionary power to stay proceedings before it in control of its docket and in the interests of justice.”). District courts in the Fifth Circuit routinely stay proceedings pending resolution of challenges to subject matter jurisdiction. *See, e.g., L&F Homes & Dev., LLC v. City of Gulfport*, No. 1:10cv387-HSO-JMR, 2011 U.S. Dist. LEXIS 21468, \*4 (S.D. Miss. 2011) (staying case “pending resolution of the question of this Court's subject matter jurisdiction” while nine motions—including Plaintiff’s motion to compel and motion in limine—were pending); *Rick Bounds Auto Sales, Inc. v. Western Heritage Ins. Co.*, No. 1:09CV65-HSO-JMR, 2009 U.S. Dist. LEXIS 16363, \*5 (S.D. Miss. 2009) (“[D]iscovery and briefing on the pending Motion for Summary Judgment should be and hereby are stayed pending a decision on this Court's subject matter jurisdiction over this case”); *Lazarou v. Miss. State Univ. & Bd. of Trs.*, No. 1:07-CV-00060-GHD-DAS, 2012 U.S. Dist. LEXIS 54116, \*2 (N.D. Miss. 2012) (staying case pending resolution of motion to dismiss pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure). The Fifth Circuit also routinely affirms such stays. *See, e.g., Smith v. Potter*, 400 F. App’x 806, 813 (5th Cir. 2010) (finding no abuse of discretion in District Court for the Southern District of Mississippi staying discovery where “the issues to be examined in the motion to dismiss for lack of jurisdiction or in the alternative for grant of summary judgment were largely legal rather than factual in nature.”). Moreover, district courts are “vested with broad discretion regarding discovery.” *Seiferth v. Helicopteros Atuneros, Inc.*, 472 F.3d 266, 270 (5th Cir. 2006). In short, this Court has ample authority to stay discovery and other proceedings in this litigation.

A stay in this case would serve the interests of judicial economy and justice. TUPSS, Inc. has not raised a mere pleading error that the Receiver could correct through an additional



amendment to the Amended Complaint. The Receiver lacks standing to assert these claims and damages at all. Therefore TUPSS, Inc. should not be forced to go through the hardship and expense of discovery and other proceedings just to have this case dismissed outright. *See Bufkin v. Scottrade, Inc.*, 812 F. App'x 838, 841 (11th Cir. Apr. 28, 2020) (“[F]acial challenges to the legal sufficiency of a claim or defense . . . should . . . be resolved before discovery begins.”) (quoting *Chudasma v. Mazda Motor Corp.*, 123 F.3d 1353, 1367 (11th Cir. 1997)); *Beard v. Caesars Entertainment Corp.*, 2016 WL 9558932, \*1 (D. Nev. 2016) (“[W]here a dispositive motion raises issues of jurisdiction, venue, or immunity, Courts in the District of Nevada often determine that staying discovery is appropriate pending resolution of these threshold issues.”).

That a stay would serve the interests of judicial economy and justice is further supported by this Court’s stay orders in three other virtually identical cases brought by the Receiver. *See Mills v. Butler Snow, LLP*, No. 3:19-cv-866 (S.D. Miss.); *BankPlus*, No. 3:19-cv-196 (S.D. Miss.); *Mills v. Trustmark Nat’l Bank*, No. 3:19-cv-941 (S.D. Miss.). In two of those cases, the defendants have filed motions to dismiss challenging the Receiver’s standing on the same bases raised by TUPSS, Inc. *See* Motion and Memorandum of Law in Support of Baker Donelson’s Motion to Dismiss the Amended Complaint, *Mills v. Butler Snow LLP*, No. 3:18-cv-866 (S.D. Miss.), ECF Nos. 59-60; Motion and Memorandum in Support of Trustmark’s Motion to Dismiss, *Mills v. Trustmark Nat’l Bank*, No. 3:19-cv-00941 (S.D. Miss.), ECF Nos. 39-40.) The fact that no decision has been issued in either case shows that the argument is substantial.<sup>1</sup> In all three of those cases, discovery is currently stayed. In *BankPlus*, the Court on its own motion stayed the case pending resolution of the outstanding motions in *Butler Snow*, after recognizing the similarity of

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<sup>1</sup> Baker Donelson’s Motion to Dismiss has been pending since December 20, 2019. *See* Motion and Memorandum of Law in Support of Baker Donelson’s Motion to Dismiss the Amended Complaint, *Mills v. Butler Snow LLP*, No. 3:18-cv-866 (S.D. Miss.), ECF Nos. 59-60.

the legal issues raised – even though the defendants in *BankPlus* did not even raise subject matter jurisdiction. (See Receiver’s Report at 7, *SEC v. Adams*, No 3:18-cv-00252 (S.D. Miss. Apr. 27, 2020), ECF No. 209; Text-Only Order, *BankPlus*, No. 3:19-cv-196 (S.D. Miss. Mar. 31, 2020).) Discovery in *Butler Snow* and *Trustmark* is likewise stayed.<sup>2</sup> Thus, the only parties in any of these related cases who are dealing with discovery while subject matter jurisdiction is under review are the parties in this action.

The Receiver addresses the request for a stay in her opposition to TUPSS, Inc.’s Motion to Dismiss. See Doc. No. 147 at pp. 2-3. She makes only one argument against a stay: that TUPSS, Inc. should have challenged the Receiver’s standing sooner. *Id.* Yet, as she acknowledges, “standing is an issue that may be raised at any time.” *Id.* at 2. Indeed, challenges to standing cannot be waived. See *Va. House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945, 1951 (2019) (“As a jurisdictional requirement, standing to litigate cannot be waived or forfeited.”). Standing can even be challenged for the first time on appeal. See, e.g., *Public Citizen v. Bomer*, 274 F.3d 212, 217 (5th Cir. 2001).

Notably, the Receiver—who herself has consistently caused delays and unnecessary expense in this action—did not address any potential prejudice she, nor the estates she represents, would suffer as a result of a stay.

If the Court rules that the Receiver lacks standing in any of the Receiver’s four cases stemming from Adams/Madison Timber’s Ponzi scheme (where she pursues the same claims and the same alleged damages), this action will have to be dismissed for lack of subject matter jurisdiction. It makes no sense – for the Court, Defendants, or the Receiver – to spend time and

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<sup>2</sup> TUPSS, Inc. acknowledges that in both *Butler Snow* and *Trustmark*, a motion to compel arbitration was filed and the stay was granted at least partially on those grounds. However, in *Butler Snow* the motion to compel arbitration was denied, yet the stay remains. Additionally, as noted, in *BankPlus*, the Court ordered a stay based only on the motion to dismiss.

money on discovery or other proceedings until the serious question of the Court's jurisdiction is resolved. *See Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936) (“[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”).

### CONCLUSION

For the foregoing reasons, TUPSS, Inc. respectfully requests that the Court enter a stay of discovery and other proceedings while its Motion to Dismiss remains pending.

Respectfully submitted,

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I, LaToya C. Merritt, do hereby certify that on September 28, 2020, I electronically filed the foregoing *MEMORANDUM* with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following counsel of record:

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THIS, the 28th day of September, 2020.

*/s/ LaToya C. Merritt*

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