

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 ELSEN; TAMMIE ELSEN;
COURTNEY HERRING; DIANE LOFTON;
CHANDLER WESTOVER; RAWLINGS &
MACINNIS, PA; TAMMY VINSON; and
JEANNIE CHISHOLM,

Defendants.

Case No. 3:19-cv-00364

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

RECEIVER’S OPPOSITION TO MOTION TO STAY

Alysson Mills, in her capacity as the court-appointed receiver for Arthur Lamar Adams and Madison Timber Properties, LLC (the “Receiver”), through undersigned counsel, respectfully opposes the motion to stay case filed by defendant The UPS Store, Inc. (“UPS”) [Doc. 148] and joined by defendants Rawlings & MacInnis, P.A., Tammy Vinson, and Jeannie Chisholm [Doc. 150] and Herring Ventures, LLC, Austin Elsen, Courtney Herring, Diane Lofton, and Chandler Westover [Doc. 151].

UPS is correct that this Court has the discretion to stay proceedings. The Receiver does not dispute the numerous legal authorities that UPS cites for that broad proposition.

The Receiver opposes a stay of these proceedings because it does not serve the interests of judicial economy and justice.

UPS asks the Court to stay these proceedings pending a ruling on its recently filed motion to dismiss, its second such motion. UPS calls its motion's arguments "substantial." [Doc. 149 at 4]. If the arguments are so substantial, why did UPS fail to make the arguments in its initial motion to dismiss? Why did it wait almost a full year after its initial motion to dismiss was denied to make the arguments in a second motion? The arguments, whatever their merits, were not unheard of. Other defendants made the same arguments in their initial motions to dismiss filed pursuant to Rule 12(b)(6). UPS could have made the arguments at any time, but instead chose to wait to make them now, when a scheduling order is in place and in the middle of discovery,¹ apparently to obtain a further delay of the parties' trial date. *E.g. James v. Cleveland Sch. Dist.*, No. 4:19-cv-66-DMB-RP, 2020 WL 4370608, at *4 (N.D. Miss. July 30, 2020) (finding no good cause under Rule 16 to upend case management deadlines when it was apparent that "defendants simply do not want to engage in discovery"). If UPS's concern was judicial economy, it would have made the arguments more than a year ago.

UPS complains it "should not be forced to go through the hardship and expense of discovery and other proceedings just to have this case dismissed outright." [Doc. 149 at 4]. But this Court already rejected UPS's primary arguments for dismissal more than a year ago. [Doc. 49]. At that time, this Court ordered the parties to commence discovery, observing that discovery "in a case about notarization should not be overly complex." [Doc. 49]. UPS wants to treat the Receiver's cases as one and the same. They are not. Whatever similarities the Receiver's other

¹ Discovery is already well underway—there are a notable 62 docket entries for notices of service of discovery requests and responses.

cases share, the Receiver's case against UPS is distinct in its simplicity. This is a case about fake notarizations.

UPS presumes the Receiver's other cases are stayed because defendants in those cases have made the same standing argument UPS makes in its recently filed motion to dismiss. UPS presumes an overlap that either does not exist, or at least does not exist to the extent UPS urges. UPS overlooks that defendants in the Receiver's other cases have made *numerous* arguments depending on the facts alleged in those complaints. There is some overlap in the Receiver's theories: for example, in both *Mills v. Butler Snow et al.* and *Mills v. BankPlus et al.* the Receiver alleges defendants aided and abetted the Madison Timber Ponzi scheme by lending their influence, professional expertise, and clients to Lamar Adams. But by contrast here the Receiver alleges UPS aided and abetted the Madison Timber Ponzi scheme simply by notarizing fake timber deeds.

Proceedings in *Mills v. Butler Snow et al.* currently are stayed pending resolution of defendant Butler Snow's appeal from the denial of its *motion to compel arbitration*. [Doc. 20, *Mills v. Butler Snow et al.*, No. 3:18-cv-866 (S.D. Miss.); *see also* September 30, 2020 Text Order ("staying case pending resolution of Butler Snow's interlocutory appeal" of the denial of its motion to compel arbitration)]. In the same case, defendant Baker Donelson filed a Rule 12(b)(6) motion to dismiss on the merits. [Doc. 59, *Mills v. Butler Snow et al.*, No. 3:18-cv-866 (S.D. Miss.)]. That motion to dismiss overlaps with Rule 12(b)(6) motions to dismiss filed by defendants in *Mills v. BankPlus et al.* Proceedings in *Mills v. BankPlus et al.* currently are stayed pending resolution of defendant Baker Donelson's motion to dismiss. [March 31, 2020 Text Order, *Mills v. BankPlus et al.*, 3:19-cv-196 (S.D. Miss.)]. If proceedings in *Mills v. Trustmark et al.* are stayed, it is likely because, like Butler Snow, defendant Jud Watkins filed a *motion to compel arbitration*. [Doc. 35, *Mills v. Trustmark National Bank et al.*, 3:19-cv-941 (S.D. Miss.); *see also* May 4, 2020 Text

Order (staying discovery “pending a decision on the Motion to Compel Arbitration”)]. All this is to say, there are reasons the Receiver’s other cases are stayed that have nothing to do with UPS or any argument UPS makes in its second motion to dismiss. It is not unfair to require UPS to answer discovery relating to the unique facts of its case.

UPS contends that the Receiver “herself has consistently caused delays and unnecessary expense in this action.” [Doc. 149 at 5]. Presumably UPS refers to the Receiver’s motion for protective order, which sought to protect victims’ names and identifying information from public disclosure. [Doc. 57]. Surely no one faults the Receiver for taking victims’ privacy so seriously.

UPS contends that the Receiver has not offered “any potential prejudice that she, nor the estates she represents, would suffer as a result of a stay.” [Doc. 149 at 5]. Respectfully, the prejudice from a further delay ought to be obvious, but in any event the Receiver has made no secret of the urgency of these cases. As she wrote in her last report, she speaks with victims regularly, and many are hurting badly right now.

As the Receiver observed in her opposition to UPS’s pending motion to dismiss, the motion is distinct from other pending motions in that it is the only such motion that raises the discrete standing issue by itself. The motion thus gives this Court the opportunity to decide the standing issue neatly. Deciding the issue now would make the stay, and delay, UPS seeks unnecessary.

October 12, 2020

Respectfully submitted,

/s/ Lilli Evans Bass

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CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of Court using the ECF system which sent notification of filing to all counsel of record.

Date: October 12, 2020

/s/ Kristen D. Amond