

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 ELSER; TAMMIE ELSER;
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

THE UPS STORE, INC.’S REPLY IN SUPPORT OF MOTION TO STAY CASE

In her opposition to The UPS Store, Inc.’s (“TUPSS, Inc.”) motion to stay, the Receiver admits this Court has broad authority to grant TUPSS, Inc.’s requested stay. She also does not deny the fact that if a motion to dismiss challenging the Receiver’s standing is granted in any of the several cases in which it has been raised (including this one), this case will have to be dismissed. Instead, she repeats her futile argument that TUPSS, Inc. waited too long to file its motion to dismiss. As already addressed, and acknowledged by the Receiver, standing may be raised at any time and a federal court must dismiss an action whenever it concludes Article III standing does not exist. *See Va. House of Delegates v. Bethune-Hill*, 139 S. Ct. 1951 (2019).

The Receiver repeats her arguments that TUPSS, Inc. does not want to engage in discovery, and that TUPSS, Inc. is seeking to delay trial. If this Court agrees with the arguments made by

Defendants in this case, there will be no right to discovery or trial. TUPSS, Inc. and the other Defendants are only trying to avoid costs and expenses while their Motions to Dismiss For Lack of Standing are pending. If those Motions are granted, this case will end. TUPSS, Inc. does not believe it or *any of the parties* should engage in the costs and hardship associated with numerous depositions of the parties—including the investors, the investors’ advisors, potential expert witnesses, and, of course, Arthur Lamar Adams—given that the Receiver lacks standing to bring this suit in the first place.

The only case cited by the Receiver in support of her opposition to the stay is *James v. Cleveland School District*, No. 4:19-cv-66-DMB-RP, 2020 WL 4370608 (N.D. Miss. July 30, 2020), but that case is distinguishable. In *James*, the Defendants had expressly agreed in the Case Management Order that the right to stay upon filing a qualified-immunity defense was waived, the Defendants had submitted numerous new affidavits in support of their motions that the Plaintiff could not explore due to the stay, and the Plaintiffs had already served discovery requests which Defendants had not answered at the time they moved for a stay. *Id.* None of these factors are present here.

Finally, the Receiver attempts to distinguish the other three cases in which her complaints are virtually identical. No matter the manner in which the Receiver claims each entity aided and abetted the Madison Timber Ponzi scheme, the fact remains that, in each case, the Receiver brings claims that belong only to investors and asserts damages allegedly incurred on behalf of investors—not Madison Timber. Moreover, as explained in TUPSS, Inc.’s Motion to Stay Case, the Court’s decision to issue stays in *all three* of the Receiver’s other highly similar cases—including, in one case, after recognizing the similarity of issues raised in another—demonstrates an appreciation for the interests of judicial economy and justice that a stay in this case would serve.

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 for Lack of Subject Matter Jurisdiction remains pending.

Respectfully submitted,

PHELPS DUNBAR, LLP

BY: /s/ LaToya C. Merritt

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CERTIFICATE OF SERVICE

I, LaToya C. Merritt, do hereby certify that on October 19, 2020, I electronically filed the foregoing *REPLY* 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 19th day of October, 2020.

/s/ LaToya C. Merritt

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