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

ALYSSON MILLS, IN HER CAPACITY AS RECEIVER FOR ARTHUR LAMAR ADAMS AND MADISON TIMBER PROPERTIES, LLC	**PLAINTIFF**
vs.	**ACTION NO. 3:20-CV-232-CWR-FKB**
JON DARRELL SEAWRIGHT	**DEFENDANT**

JON DARRELL SEAWRIGHT'S MOTION TO STAY, OR IN THE ALTERNATIVE CONSOLIDATE FOR DISCOVERY PURPOSES WITH RELATED CIVIL ACTION

Pursuant to Bankruptcy Rules 7026 and 7042 and Federal Rules of Civil Procedure 26(c) and 42(a), Chapter 7 Bankruptcy Debtor/Defendant Jon Darrell Seawright ("Seawright") moves the Court to stay this action pending resolution of the Receiver's civil suit against Seawright, *Mills v. Butler Snow, et al.* (Civil Action No. 3:18-cv-866-CWR-BWR) (the "Civil Action"). In the alternative, Seawright moves the Court to consolidated pretrial proceedings in this action with those in the Civil Action. In support, Seawright relies on the arguments and authorities set forth in his accompanying Memorandum of Law, filed with this Motion. Seawright requests such other and further relief as the Court deems just and appropriate under the circumstances.

Dated: August 3, 2024.

Respectfully Submitted,

HOOD & BOLEN, PLLC

By: */s/ R. Michael Bolen*
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CERTIFICATE OF SERVICE

I, R. Michael Bolen, hereby certify that I have this day, August 3, 2024, caused the foregoing pleading to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record and registered participants.

/s/ R. Michael Bolen
R. Michael Bolen

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ALYSSON MILLS, IN HER CAPACITY AS RECEIVER FOR ARTHUR LAMAR ADAMS AND MADISON TIMBER PROPERTIES, LLC	**PLAINTIFF**
vs.	**ACTION NO. 3:20-CV-232-CWR-FKB**
JON DARRELL SEAWRIGHT	**DEFENDANT**

JON DARRELL SEAWRIGHT'S MEMORANDUM IN SUPPORT OF MOTION TO STAY, OR IN THE ALTERNATIVE CONSOLIDATE FOR DISCOVERY PURPOSES WITH RELATED CIVIL ACTION

In this action, which originated as an adversary proceeding in bankruptcy court, the Receiver seeks a determination that her claim pending against Jon Darrell Seawright in *Mills v. Butler Snow, et al.* (Case No. 3:18-cv-866) (the "Civil Action") is not dischargeable through bankruptcy. The Receiver agrees this dischargeability case is "intertwined" with the Civil Action on which it depends. ECF No. 1-3 at 7. She acknowledges that "[d]etermination of this adversary proceeding involves factual and legal determinations required" in the civil case, and that "similar—if not the exact same—evidence will be required" in both cases. *Id.* at 7, 14. That is because the Receiver's dischargeability claim concerns a "debt" that Seawright will owe only if he is held liable in the Civil Action, and it depends on a showing that Seawright committed fraud on investors in the Madison Timber Ponzi scheme, which also is alleged in the Civil Action.

Seawright thus respectfully requests the Court stay this action until the judge or jury in the Civil Action determines the threshold question of whether Seawright actually owes the Receiver any debt—and, if so, on what basis. In the alternative, Seawright requests the Court consolidate the

two actions for purposes of discovery. It would be inefficient and unfair for the overlapping discovery in these cases to proceed on separate, duplicative tracks.

BACKGROUND

Arthur Lamar Adams "operated a Ponzi scheme that defrauded hundreds of investors." ECF No. 1-3 at 22. On December 19, 2018, the Receiver filed the Civil Action alleging Seawright is liable for the debts the Receivership Estate owes to investors. *See* Compl., ECF No. 1 (*Mills v. Butler Snow, et al.*, Case No. 3:18-cv-866). The Receiver alleges (i) Seawright knew about Adams' scheme and conspired with him to perpetrate it; or, in the alternative, (ii) Seawright was negligent for failing to use his "advantageous position[] to discover Adams's fraud" and overlooking "numerous red flags[.]" Amend. Compl., ECF No. 57, ¶ 152 (*Mills v. Butler Snow, et al.*, Case No. 3:18-cv-866).

On November 3, 2019, Seawright filed for Chapter 7 Bankruptcy. *See* ECF No. 1-3 at 9. He disclosed the Receiver's claims in the Civil Action as a disputed, contingent, unliquidated claim. Sched., ECF No. 3 at 15 (*In re Seawright*, Bankr. S.D. Miss., Case No. 19-3921).

On February 7, 2020, the Receiver filed this action as an adversary complaint in the bankruptcy action, arguing that any debt owed her from the Civil Action is not dischargeable through bankruptcy, at least insofar as she alleges that Seawright "committed actual fraud" and that her debts arose from actual fraud. Compl., ECF No. 1, ¶ 72 (*Mills v. Seawright*, Bankr. S.D. Miss., Case No. 20-11). On March 16, 2020, the Receiver moved to withdraw the reference from the bankruptcy court, that motion was granted, and this action was filed in the district court on March 31, 2020. *See Mills v. Seawright*, Case No. 3:20-cv-232.

On July 6, 2021, the Court stayed this action "pending resolution of the criminal proceedings against Brent Alexander and Jon Seawright in Cause Number 3:20-cr-31-CWR-LGI."

The stay was lifted on December 19, 2023. Meanwhile, the Civil Action against Seawright was also stayed pending the criminal proceedings, and the stay was subsequently lifted.

Seawright now files this motion in advance of the Case Management Conference scheduled for August 13, 2024.

ARGUMENT

Staying this action will best serve the parties' interests and conserve judicial resources. In the alternative, consolidating discovery in this action with the Civil Action would reduce duplication and the risk of inconsistency between the two interrelated actions.

I. The Court Should Stay This Case.

"'The District Court has broad discretion to stay proceedings as an incident to its power to control its own docket.'" *Thompson-Groves v. St. John-Taylor Properties, LLC*, 2020 WL 1678251, at *1 (S.D. Miss. Apr. 6, 2020) (quoting *Clinton v. Jones*, 520 U.S. 681, 706 (1997)).

Courts issue stays based on a showing of good cause. *See* Fed. R. Civ. P. 26(c); *see also Landry v. Air Line Pilots Ass'n Int'l AFL-CIO*, 901 F.2d 404, 435 (5th Cir. 1990). "When considering whether to stay a matter pending resolution of a separate action, the Fifth Circuit has considered (1) the potential prejudice to the moving party if a stay is denied; (2) the potential prejudice to the non-moving party if a stay is granted; and (3) other "difficulties inherent in the general situation, including potential judicial inefficiency[.]'" *Stanford v. Liberty Mut. Grp. Inc.*, 2019 WL 4418532, at *4 (N.D. Miss. Sept. 16, 2019) (quoting *Wedgeworth v. Fireboard Corp.*, 706 F.2d 541, 545–46 (5th Cir. 1983)); *see also U.S. ex rel. Monsour v. Performance Accts. Receivable, LLC*, 2021 WL 11707656, at *1 (S.D. Miss. Sept. 29, 2021) (stays protect the "economy of time and effort for itself, for counsel, and for litigants").

Seawright respectfully requests the Court uses its discretion to stay these proceedings for at least four reasons.

First, the question before the Court in this action is not ripe—and will not be ripe—until the Civil Action is resolved. The Receiver's only claim in this case is Seawright's debt is not dischargeable. But Seawright does not currently owe any debt to the Receiver. She has only a disputed, contingent, unliquidated claim for civil liability, which she has asserted in the Civil Action. Because "no determination of the amount of [the Receiver's] claim, if any, has yet been made," she must first "proceed against the debtor in the appropriate [] court to liquidate [her] claim for reimbursement." *In re LeJeune*, 283 B.R. 398, 403 (Bankr. E.D. La. 2002). Until she does so, the question of dischargeability "is not ripe for adjudication." *Id.*

Second, that predicate question of liability—and the amount of debt, if any—cannot be resolved in this action. On a reference withdrawn from the Bankruptcy Court, this Court sits in equity as the finder of fact. *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206 (1988). But in the Civil Action, Seawright has a right to a jury trial, which is unavailable here. *See* ECF No. 1-3 at 14 ("The Receiver has not demanded a jury trial in the Adversary Proceeding, as there is generally no right to a jury trial on dischargeability."). Unless earlier resolved on summary judgment, the jury will determine questions of liability and damages. And, importantly for the dischargeability question in this action, the jury will decide whether any such debt was the result of the Receiver's theories of negligence or "fraud." In circumstances like these, it is the "jury [that] determines issues pertinent to an equitable cause," and "the court [that] decides whether equitable relief is called for on the basis of the jury's findings of fact." *Thermo-Stitch, Inc. v. Chemi-Cord Processing Corp.*, 294 F.2d 486, 490 (5th Cir. 1961).

Third, staying this action would conserve judicial resources and avoid duplicative proceedings. The two cases are "intertwined," and the "[d]etermination of this adversary proceeding involves factual and legal determinations required" in the Civil Aase. ECF No. 1-3 at 7, 14. In the Receiver's view, "similar—if not the exact same—evidence will be required" in both

cases. *Id.* at 7, 14. The Court need not expend its time to supervise discovery of the same issues and evidence on two dockets.

Fourth, staying this action will not prejudice the Receiver. If anything, a stay will benefit the Receiver and Seawright alike by avoiding unnecessary litigation expenses. It would be wasteful to spend funds litigating this contingent case, when the Civil Action may resolve some of the issues in this action or could moot this action altogether. This is especially important to Seawright, as he has already paid Court-ordered restitution, has filed personal bankruptcy, and is in the process of serving his criminal sentence. And again, a stay of this action will in no way impact the Receiver's ability to pursue discovery in the Civil Action.

II. In the Alternative, the Court Should Coordinate This Action with the Civil Action.

Although a stay would best serve the interests of the parties and reduce judicial burden, consolidating the actions for discovery and pretrial purposes only should minimize the harm of the two Actions proceeding in parallel. "If actions before the court involve a common question of law or fact, the court may . . . consolidate the actions[] or . . . issue any other orders to avoid unnecessary cost or delay." Fed. R. Civ. P. 42(a), (a)(2), (a)(3). "Consolidation does not merge the suits into a single action or change the rights of the parties; rather, consolidation is 'intended only as a procedural device used to promote judicial efficiency and economy' and 'the actions maintain their separate identities.'" *Lay v. Spectrum Clubs, Inc.*, 2013 WL 788080, at *2 (W.D. Tex. Mar. 1, 2013) (quoting *Frazier v. Garrison I.S.D.*, 980 F.2d 1514, 1532 (5th Cir. 1993)); *see also* 9A Wright & Miller, *Federal Practice and Procedure* § 2382 (3d ed. June 2024 update) (same). A court thus may "combin[e] . . . two cases for discovery and pretrial purposes." *Lay*, 2013 WL 788080, at *2. "The trial court's managerial power is especially strong and flexible in matters of consolidation." *Ctr. for Biological Diversity, Inc. v. BP Am. Prod. Co.*, 704 F.3d 413, 432 (5th Cir. 2013) (quotation omitted).

The stay and consolidation inquiries involve similar considerations. "District courts in this Circuit consider a variety of factors when addressing a motion to consolidate, including; (1) whether the actions are pending before the same court, (2) whether common parties are involved in the cases, (3) whether there are common questions of law and/or fact, (4) whether there is a risk of prejudice or confusion if the cases are consolidated, and if so, is the risk outweighed by the risk of inconsistent adjudications of factual and legal issues if the cases are tried separately, (5) whether consolidation will conserve judicial resources, (6) whether consolidation will result in an unfair advantage, [and] (7) whether consolidation will reduce the time for resolving the cases[.]" *Kodaco Co., LTD. v. Valley Tool, Inc.*, 2023 WL 7663438, at *1 (N.D. Miss. Nov. 14, 2023) (collecting citations). Each factor counsels in favor of coordination here.[1]

First, the Actions are pending before the same court and, indeed, the same district judge and magistrate judge.

Second, Seawright and the Receiver are parties in both actions.

Third, there are common questions of law and fact. The reason this action is pending before the Court and not in the Bankruptcy Court is because "[d]etermination of this adversary proceeding involves factual and legal determinations required in the Receiver's action against Seawright that is currently pending before the District." ECF No. 1-3 at 7.

Fourth, there is no risk of prejudice or confusion if the cases are coordinated. Indeed, because Seawright proposes coordinating only the discovery and pretrial proceedings, there is no prospect of jury confusion.

[1] Courts also consider "whether consolidation will reduce the cost of trying the cases separately," *Kodaco Co.*, 2023 WL 7663438, at *1. Because Seawright proposes coordinating the matters for discovery only—not for trial—this factor does not apply.

Fifth, consolidation will conserve judicial resources by avoiding separate pretrial proceedings and separate discovery on the exact same issues.

Sixth, consolidated discovery will not result in any unfair advantage. Because the actions so closely overlap, integrating them will not differentially affect any party in a material way.

Finally, consolidation will not delay the resolution of this case. Indeed, this action cannot be resolved until the questions of liability and debt (if any), along with the Receiver's claims of fraud, are decided in the Civil Action.

CONCLUSION

For these reasons, Seawright respectfully requests the Court stay this case until the conclusion of the Civil Action or, in the alternative, coordinate discovery and pretrial proceedings between them.

Dated: August 3, 2024.

Respectfully Submitted,

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