

SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

PETER R. NAJAWICZ,

Plaintiff,

vs.

**VIRGIN ISLANDS GOVERNMENT HOSPITALS
and HEALTH FACILITIES CORPORATION d/b/a
SCHNEIDER REGIONAL MEDICAL CENTER,**

Defendant.

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) **CASE NO. ST-09-CV-149**
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MEMORANDUM OPINION AND ORDER

Pending before the Court is the September 24, 2009, Emergency Motion to Quash Deposition Notices of Prospective Witnesses submitted by the Virgin Islands Government Hospital and Health Facilities Corporation ("VIGH"). On October 1, 2009, the Court conducted a telephone hearing and ordered a stay such that no depositions may be taken in this matter for a period of fifteen (15) days from the date of the hearing. This Memorandum Opinion and Order memorializes the October 1, 2009, ruling.

FACTUAL AND PROCEDURAL HISTORY

In a separate pending criminal action, the People of the Virgin Islands (the "People") submitted a one hundred forty-four (144) count Information against Defendants Rodney E. Miller, Sr., Amos W. Carty, Jr., Peter R. Najawicz ("Najawicz"), and June Adams containing charges of embezzlement, CICO violations, and other offenses. See *People of the Virgin Islands v. Rodney Miller, et al.*, Case No. ST-08-CR-427, et al. On March 23, 2009, Plaintiff Najawicz filed this civil action against VIGH

alleging breach of contract and defamation. Subsequently, Najawicz filed notices of deposition and amended notices of deposition seeking to depose several persons. One of these depositions was scheduled for October 2, 2009, and on September 24, 2009, VIGH filed the pending motion. On September 30, 2009, the judge to whom this case had been assigned, the Honorable James S. Carroll III, recused himself. On the same day, the People filed a motion in the criminal case seeking to quash the depositions on the grounds that the witnesses Najawicz seeks to depose in the civil action are all potential witnesses in the People's case in chief in the criminal matter. Because of the immediacy of the first depositions and their potential impact on the criminal case, this Court will temporarily assume jurisdiction over both the civil and criminal actions.¹

ANALYSIS

In a civil proceeding, the scope of discovery is significantly broader than in a criminal matter. See *Kaiser v. Stewart*, 1997 WL 66186, at *1 (E.D. Pa. 1997). In a criminal case, a party may only move to depose a prospective witness in order to preserve testimony for trial. Fed. R. Crim. P. 15(a)(1). A court may grant the motion under "exceptional circumstances" and in the interest of justice. *Id.* Without leave from the court, a criminal defendant "may not discover statements or reports by the government's witnesses or prospective witnesses from the government until after a witness has testified for the government on direct examination." *S.E.C. v. Mersky*, 1994 WL 22305, at *4 (E.D. Pa. 1994). Furthermore, "no party may subpoena a statement of a witness or of a prospective witness ..." Fed. R. Crim. P. 17(h). In addition, a litigant may not use the

¹ Since the writing of this Opinion, the civil action has been reassigned to the Honorable Brenda J. Hollar

liberal civil discovery procedures to obtain testimony and other information for the benefit of his criminal suit that is restricted under the rules of criminal procedure. See *Kaiser, supra*, at 4, citing *Campbell v. Eastland*, 307 F.2d 478, 487 (5th Cir. 1962); see also *Dominguez v. Hartford Financial Services Group, Inc.*, 530 F. Supp. 2d 902, 907 (S.D. Tex. 2008) (“as a matter of equity and public policy, a criminal defendant may not institute a civil action to obtain discovery relating to the criminal case”).

VIGH has filed a motion to quash, and the Court determines that it is appropriate to issue a stay to give the judge to whom this case is assigned an opportunity to conduct a hearing thereon. Courts have the discretion to *sua sponte* stay proceedings. *Government of Virgin Islands v. Lansdale*, 2009 WL 413114, at *3 (D.V.I. 2009). Courts examine four factors to determine if a stay is appropriate:

- (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Nken v. Holder, 129 S.Ct. 1749, 1761 (2009).

The Court makes no determination which of the parties is more likely to succeed on the merits of its case. However, VIGH and the People’s related criminal case may suffer substantial and irreparable harm if the depositions are allowed to go forward as scheduled. If Najawicz is permitted to depose these individuals at this early stage, he would gain advanced notice of the witnesses’ testimony in the criminal prosecution and could have an opportunity to shape his own testimony. In addition, although discovery in

for further proceedings.

civil matters may proceed in any order after the parties have conducted a Rule 26(f) conference, VIGH asserts that Najawicz set these depositions without determining that VIGH's counsel was available on the proposed dates. Najawicz would not be substantially injured if a stay in this matter is issued for a period of fifteen (15) days. Moreover, a brief delay so that the judge to whom this case is assigned may conduct a hearing would not substantially delay this action, which was filed only recently. Finally, the public interest requires that a stay be issued so that a full hearing may be conducted before determination of an issue with such a significant potential impact.


CONCLUSION

The Court being advised in the premises, it is hereby

ORDERED that a stay is entered such that Plaintiff Najawicz may not take depositions in the instant matter for a period of fifteen (15) days from October 1, 2009; and it is

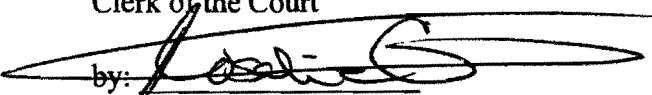
ORDERED that copies of this Order be directed to counsel of record.

Dated: October 5, 2009


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

Attest:

Date: October 7, 2009
Venetia H. Velazquez, Esq.
Clerk of the Court

by: 
Rosalie Griffith
Court Clerk Supervisor

CERTIFIED A TRUE COPY

Date: 10/7/09
Venetia H. Velazquez, Esq.
Clerk of the Court

By: 
Court Clerk