

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

SHELDON LANGER, RONALD M.)	No. 2014 CH 00829
YERMACK, LANCE R. GOLDBERG,)	
individually and on behalf of themselves and all)	
others similarly situated,)	Calendar 6
)	
Plaintiffs,)	
)	
v.)	
)	Hon. Mary L. Mikva, Presiding
CME GROUP, INC., a Delaware Corporation;)	
THE BOARD OF TRADE OF THE CITY OF)	
CHICAGO, INC., a Delaware Corporation,)	
)	
Defendants.)	JURY TRIAL DEMANDED

**DEFENDANTS' MOTION TO STAY DISCOVERY PENDING
RESOLUTION OF DEFENDANTS' COMBINED MOTION TO
DISMISS AND MOTION FOR SUMMARY JUDGMENT**

Defendants CME Group Inc., (“CMEG”) and The Board of Trade of the City of Chicago, Inc. (“CBOT”) (collectively, “Defendants”) respectfully move this court to stay discovery pursuant to Supreme Court Rule 201(c)(1) (the “Motion to Stay Discovery”) pending a resolution of CME’s combined motion to dismiss and motion for summary judgment pursuant to Sections 2-615, 2-619.1, and 2-1005 of the Illinois Code of Civil Procedure, filed on July 2, 2015 (the “Combined Motion”). In support of this motion, CME states as follows:

BACKGROUND

1. On September 12, 2014, Plaintiffs Sheldon Langer, Ronald Yermack, and Lance Goldberg (“Plaintiffs”) filed their First Amended Complaint (the “Complaint”) arguing that the Defendants breached the CBOT and CMEG Certificates of Incorporation by modifying

eligibility requirements under which the Class B Plaintiffs and other customers could access the CMEG electronic trading platform, “Globex.”

2. Plaintiffs assert just one count for breach of contract against both Defendants, but allege that the Defendants breached certain Core Rights in their respective Certificates of Incorporation by: (i) allowing non-Class B Plaintiffs direct access to Globex; (ii) failing to provide Class B Plaintiffs with the “best and most proximate access” to Globex for free; (iii) allowing non-Class B Plaintiffs to trade certain products on Globex that Class B Plaintiffs allegedly are not able to trade at all or are not able to trade at the best rates; and (iv) providing non-Class B Plaintiffs with preferential rates. (Compl. ¶¶ 114 – 118.)

3. At a May 1, 2015 status conference, the Court set an initial deadline for Defendants to answer or otherwise respond to the Complaint. When the Plaintiffs asked the Court if they could initiate discovery, the Court instructed Plaintiffs that they could serve discovery on Defendants at any time, and that it would be up to Defendants to move for a stay of discovery if they determined to file a dispositive motion in lieu of answering the Complaint.

4. On May 8, 2015, Plaintiffs served Defendants with 54 broad requests for production of documents (the “RFPs”), many of which contain several subparts. (Ex. A.) The RFP’s generally seek documents “during the TIME PERIOD from January 1, 1999 through the present.” (Ex. A at 2 (Instruction 7).)

5. On June 15, 2015, Defendants served their objections and responses to the RFPs. (Ex. B.) In General Objection 16, Defendants stated that “[d]espite responding to these Requests for Production, Defendants reserve, and do not waive, any right to seek a protective order seeking a stay of discovery pending the outcome of any dispositive motion filed by Defendants.” (Ex. B at 5.)

6. On July 2, 2015, Defendants filed their Combined Motion. Defendants argued that dismissal of Plaintiffs' theories of breach related to the alleged inability to trade new products and the non-Members' alleged receipt of preferential fees is required because Plaintiffs failed to assert any set of facts sufficient to state a claim based on either theory (the "Product and Fee Claims").

7. Defendants also argued that Plaintiffs' theories of breach related to access to Globex are subject to summary judgment because the Plaintiffs' contractual rights under the CMEG and CBOT Charters do not include a right to "exclusive" access to Globex or a right to the "best and most proximate access" to Globex for free (the "Globex Access Claims"). As Defendants explained in their Combined Motion and Memorandum in Support thereof, an examination of the governing documents defining Plaintiffs' "Core Rights," both at the time they were established and currently, demonstrate conclusively that Plaintiffs' Globex Access Claims have no validity.

8. If the Court grants the Combined Motion, it will dispose of Plaintiffs' claims in their entirety and obviate any need for discovery in this case. Defendants therefore respectfully request that the Court stay discovery pending a ruling on the Combined Motion.

ARGUMENT

9. This Court is authorized to enter a protective order to stay discovery pursuant to Illinois Supreme Court Rule 201(c)(1). That Rule allows the Court at "any time on its own initiative, or on motion of any party or witness, [to] make a protective order as justice requires, denying, limiting, conditioning, or regulating discovery to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or oppression." Ill. Sup. Ct. R. 201(c)(1). Trial courts are afforded "great latitude in ruling on discovery matters." *Mutlu v. State Farm Fire and Cas. Co.*, 337 Ill. App. 3d 420, 434 (1st Dist. 2003); *see also Country Mut. Ins. Co. v. Olsak*, 391 Ill. App.

3d 295, 307 (1st Dist. 2009); *Dickie v. Cannondale Corp.*, 388 Ill. App. 3d 903, 908 (1st Dist. 2009).

10. A stay of discovery is warranted here for two main reasons. First, Defendants would be unfairly prejudiced and incur significant, unnecessary expense if required to respond to the expansive discovery issued by Plaintiffs while the Combined Motion is pending.

11. Plaintiffs have issued 54 requests for production pursuant to which they expect each Defendant to produce responsive documents generally dating back to 1999. For certain requests, Plaintiffs have asked that Defendants produce documents as far back as 1987 (Ex. A at 8 (Request 29)) and 1990 (Ex. A at 8 (Request 30)). Undertaking such a production while Defendants' Combined Motion is pending will cost Defendants significant out-of-pocket expenses and an untold amount of time and human resources.

12. Defendants will need to identify custodians – many of which are no longer employed by Defendants – who, over the past sixteen years (and in some cases over even a broader time period), may have documents relevant to Plaintiffs' requests. Defendants will need to find, recall from storage, identify, sort, and scan hard copy documents as well as develop an electronic discovery protocol and collect and harvest electronic documents for the same broad time period. Performing such actions will come at a great cost to Defendants.

13. Further, such a discovery burden may ultimately prove unnecessary and unduly wasteful because Defendants' Combined Motion is dispositive of all of Plaintiffs' theories for breach of contract.¹ If the Court grants Defendants' Combined Motion in full, discovery will be

¹ For discussion of how each of Plaintiffs' theories for breach of contract is insufficient, Defendants refer the Court to Defendants Memorandum of Law in Support of Defendants' Combined Motion to Dismiss and Motion for Summary Judgment. (*See* Memorandum of Law, filed July 2, 2015.) Specifically, Defendants explain why Plaintiffs' claim regarding open access fails at § IV.B, why Plaintiffs' claim regarding "best and most proximate access" fails at § IV.C., why Plaintiffs' claim regarding the inability of Plaintiffs to trade new products fails at § V.A., and why Plaintiffs' claim regarding preferential fees fails at § V.B.

nonexistent. If the Court grants the Combined Motion in part, discovery will be drastically reduced. For that reason, courts routinely grant stays of discovery pending dispositive motions. *See, e.g., Dod Techs. v. Mesirov Ins. Servs., Inc.*, 381 Ill. App. 3d 1042, 1054–56 (1st Dist. 2008) (affirming circuit court’s order staying discovery pending decision on motion to dismiss under section 2–615); *Redelmann v. Claire Sprayway, Inc.*, 375 Ill. App. 3d 912, 926–27 (1st Dist. 2007) (same).

14. Second, this Court should stay discovery pending its decision on Defendants’ Combined Motion because the Court has sufficient information before it to decide the Motion, and no additional discovery will assist Plaintiffs in resisting the Motion. *See, e.g., Mutlu*, 337 Ill. App. 3d at 434 (holding that, where the insurance policy terms were unambiguous, “the failure of the circuit court to order compliance with the plaintiff’s discovery requests prior to ruling on the defendant’s motion for partial summary judgment was not arbitrary or unreasonable”); *Evitts v. DaimlerChrysler Motors Corp.*, 359 Ill. App. 3d 504, 513 (1st Dist. 2005) (affirming circuit court’s stay of the discovery request pending its ruling on the motion to dismiss); *DOD Techs.*, 381 Ill. App. 3d at 1055-56.

15. As an initial matter, no amount of discovery can help Plaintiffs argue that their Complaint meets basic pleading requirements with respect to the Product and Fee Claims. In addition, discovery cannot help Plaintiffs fight off Defendants’ Motion for Summary Judgment on the Globex Access Claims. Plaintiffs’ Core Rights are defined in writing by the Defendants’ Charters, Bylaws, and Rules that existed at the time that the Core Rights were enacted, as well as the constituent documents in effect today.

16. Because Plaintiffs fail to explain this in their Complaint, Defendants were forced to file a motion for summary judgment on Plaintiffs’ Globex Access Claims in order to bring

these core key documents to the Court's attention. These documents demonstrate conclusively that the Core Rights do not include the rights to "exclusive access" or to the "best and most proximate access" to Globex for free. (*See* Memorandum of Law in Support of Defendants' Combined Motion to Dismiss and Motion for Summary Judgment, filed July 2, 2015 at 13-21, 21-26.)

17. Moreover, because the constituent documents of CMEG and CBOT are plain and unambiguous, the Court is required to give them their common and ordinary meaning. *See Thompson v. Gordon*, 241 Ill. 2d 428, 441 (2011). Thus, discovery into extrinsic evidence would not only be unduly burdensome and expensive, but would also be a complete waste of time.

18. The Illinois Appellate Court faced a similar fact pattern in *Mutlu v. State Farm Fire & Casualty Company*. In that case, the plaintiff challenged the trial court's grant of summary judgment in favor of the defendant insurer after the court determined that the policy at issue did not create a duty to defend. The plaintiff argued, in part, that the trial court abused its discretion when it granted summary judgment without first requiring the defendant to respond to discovery requests that the plaintiff alleged would have assisted him in defending the motion. 337 Ill. App. 3d at 434. In rejecting this argument, the court stated that the trial court's decision "turned on the meaning of policy terms that were unambiguous, and therefore, the court was required to give them their plain and ordinary meaning, regardless of what extrinsic evidence the plaintiff's discovery requests might have produced." *Id.*

19. Here, as in *Mutlu*, the Plaintiffs cannot expand their contractual rights through the discovery and introduction of extrinsic evidence. No amount of discovery will alter the plain and unambiguous meaning of the Plaintiffs' Core Rights and create the rights claimed by Plaintiffs. Accordingly, because the Court has all the information it needs to decide the Combined Motion,

the Court should exercise its discretion to stay discovery and stop Plaintiffs' massive fishing expedition.

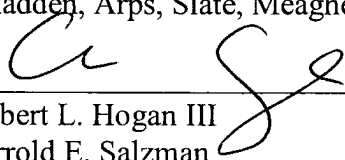
CONCLUSION

For the foregoing reasons, Defendants respectfully request that this Court enter an order staying all discovery pending a resolution of Defendants' Combined Motion.

Dated: July 8, 2015
Chicago, Illinois

Respectfully submitted,

Skadden, Arps, Slate, Meagher & Flom LLP



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CERTIFICATE OF SERVICE

Charles Andrewscavage, an attorney, hereby certifies that on July 8, 2015, I caused true and correct copy of Defendants' Motion to Stay Discovery Pending Resolution of Defendants' Combined Motion to Dismiss and Motion for Summary Judgment to be served by Federal Express and electronic mail on the following counsel:

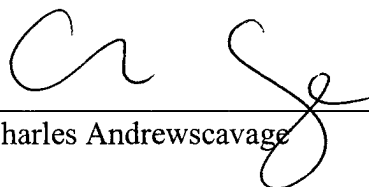
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Dated: July 8, 2015



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