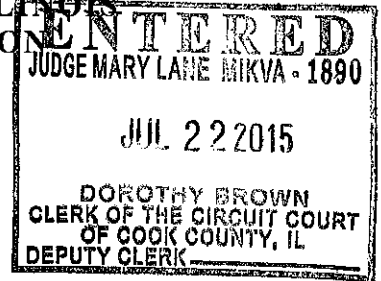


IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION



SHELDON LANGER, RONALD M.  
YERMACK, and LANCE R. GOLDBERG,  
individually on behalf of themselves and  
all others similarly situated,

*Plaintiffs,*

v.

CME GROUP, INC., a Delaware Corporation,  
and THE BOARD OF TRADE OF THE CITY  
OF CHICAGO, INC., a Delaware  
Corporation,

*Defendants.*

No. 14 CH 829

Judge Mary L. Mikva

Calendar 6

**ORDER AND OPINION**

This case comes before the Court on Defendants CME Group, Inc. and The Board of Trade of the City of Chicago, Inc.'s (collectively "Defendants") Motion to Stay Discovery Pending Resolution of Defendants' Combined Motion to Dismiss and Motion for Summary Judgment. For the following reasons, the Court DENIES Defendants' Motion.

1. It is apparent from a review of Defendants' current Motion and their underlying Motion for Summary Judgment, as well as Plaintiffs' response to the Motion to Stay, that resolution of the parties' dispute will turn on the interpretation of the Plaintiffs' core rights relative to Globex. At the risk of oversimplifying the issue, the Court contemplates that Plaintiffs will seek to convince the Court to take an expansive view of those rights and Defendants will seek to do the opposite—to convince the Court that those rights are narrowly and specifically defined.
2. In seeking a stay, the Defendants are asking the Court to make a determination, in advance of the full briefing on the merits and without providing Plaintiffs with discovery, that because the Charter contains no language expressly granting Plaintiffs such rights, Plaintiffs' core rights do not include either exclusive or the "best and most proximate" access to Globex, and that the Charter does not limit Defendants' right to make changes that will impact Plaintiffs' access to Globex.

3. While Defendants may win in their quest for a narrow and literal interpretation of the Charter, Defendants' request that the Court bar Plaintiffs' access to discovery that they assert they need to respond to Defendants' Motion for Summary Judgment is not appropriate. As Plaintiffs point out, that discovery includes, but is not limited to, information regarding the meaning of the core rights at the time of demutualization and the meaning and scope of the "open access" to Globex that Defendants claim was in place at the time of demutualization.
4. Defendants provide no convincing precedent for denying Plaintiffs discovery before this Court rules on the pending Motion for Summary Judgment. The one case that Defendants cite regarding limiting discovery sought to respond to a motion for summary judgment is quite different from this case. In *Mutlu v. State Farm Fire & Casualty Co.*, the court's ruling turned on the meaning of terms in an insurance policy. 337 Ill. App. 3d 420, 434 (1st Dist. 2003). In that context, the appellate court held that the failure of the trial 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. *Id.* The court in *Mutlu* rested on the broad discretion given to trial courts over discovery matters and in no sense suggests that limiting discovery before a motion for summary judgment is generally appropriate. *Id.* Moreover, the contract terms at issue in the case before this Court are not standard terms of an insurance contract; rather, they are terms unique to the unusual situation in which they were negotiated. While the terms of the Charter may, ultimately, be unambiguous, they must be read in context.
5. As Plaintiffs recognize in their Opposition to the Motion to Stay, Defendants' Motion for Summary Judgment is in the nature of a *Celotex*-type motion, in that Plaintiffs have the burden of proof and Defendants seek summary judgment on the basis that Plaintiffs will not be able to show any breach, rather than on the basis of some affirmative defense. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). Such a motion should seldom be decided without some discovery provided to the party with the burden of proof. *Williams v. Covenant Med. Ctr.*, 316 Ill. App. 3d 682, 691 (4th Dist. 2000).
6. The Court also agrees with Plaintiffs that, at this early stage, they should not have the burden of justifying any discovery they need by way of an affidavit under Illinois Supreme Court Rule 191(b). *Jiotis v. Burr Ridge Park Dist.*, 2014 IL App (2d) 121293,

¶ 29 (“[T]o demand strict compliance with Rule 191(b) before adequate discovery— before a party even knows the identity of witnesses who can provide material facts— turns Rule 191(b) from a procedural safeguard for the nonmovant into a tactical weapon for the movant.”). Thus, Plaintiffs are allowed to proceed with discovery for a reasonable period of time with the understanding that the discovery should be focused on what is necessary to respond to Defendants’ Motion for Summary Judgment. To the extent that Defendants believe that Plaintiffs are operating outside of that parameter, they may bring a Motion for a Protective Order.

This case remains set for hearing on September 1, 2015 at 2:00 p.m. The parties should be prepared to discuss the status of discovery at that time.

ENTERED:

*Mary L. Mikva 1890*

Judge Mary L. Mikva, #1890  
Circuit Court of Cook County, Illinois  
County Department, Chancery Division

