UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

RESOLUTE FOREST PRODUCTS, INC., *et al*.	)	
	)	
Plaintiffs,	)	CIVIL ACTION FILE
	)	NO. 1:16-cv-00071-JRH-BKE
v.	)	
	)	
GREENPEACE INTERNATIONAL (aka "GREENPEACE STICHTING COUNCIL"), *et al*.	)	
	)	
Defendants.	)	

PLAINTIFFS' REPLY BRIEF IN
SUPPORT OF MOTION TO LIFT STAY OF DISCOVERY

Plaintiffs Resolute Forest Products, Inc., Resolute FP US, Inc., Resolute FP Augusta, LLC, Fibrek General Partnership, Fibrek US, Inc., Fibrek International Inc., and Resolute FP Canada, Inc. (the "plaintiffs" or "Resolute") hereby submit this Reply Brief[1] In Support Of Their Motion To Lift the Discovery Stay entered by this Court on September 22, 2016. (Doc. 66.)

INTRODUCTION

Clear legal precedent dictates that discovery shall proceed notwithstanding the filing of a motion to dismiss unless plaintiff's claims are "so weak" so as to render discovery "a mere futile exercise." (Doc. 78-1 at 3.) Defendants do not contest the presumption in favor of proceeding with discovery. Nor do defendants rebut the black letter law and expert declarations plaintiffs submitted in response to defendants' Motions to Dismiss, Strike, and Transfer Venue, which demonstrate that there is no basis to dismiss any of plaintiffs' well-plead claims at this stage of

[1] Plaintiffs submit this Reply in response to the briefs filed by Stand and Paglia (Doc. 80), Greenpeace International, Greenpeace, Inc., Daniel Brindis, Amy Moas, Matthew Daggett, Rolf Skar (Doc. 82), and Greenpeace Fund, Inc. (Doc. 83).

the proceedings. Because defendants have failed to meet their threshold burden to demonstrate an overwhelming likelihood of success on their motions in order to justify a departure from the presumption set forth in the Federal and Local rules, this Court should lift the discovery stay and direct the parties to proceed with discovery.

ARGUMENT

In its Motion, Resolute demonstrates that the stay of discovery entered by this Court on September 22, 2016 pending resolution of defendants' Motions to Dismiss, Strike, or Transfer Venue should be lifted in light of plaintiffs' November 22, 2016 Response to defendants' Motions and the supporting declarations of renowned scientific experts. (Doc. 78-1.) Defendants fail to address -- let alone rebut -- the legal principles and objective scientific evidence set forth in plaintiffs' Response to defendants' Motions and the declarations of Peter Reich, Ph.D. and Frederick Cubbage, Ph.D. Accordingly, defendants' continued conjectures that their Motions will be case dispositive and render discovery in this action futile have been rendered illusory, and thus defendants cannot justify a departure from the presumptive rule. (Doc. 80 at 2; Doc. 82 at 2-3.)[2]

Faced with settled legal principles and objective scientific evidence that they cannot refute, defendants attempt to shift the burden to plaintiffs to proffer a change of law, newly discovered evidence, or clear legal error to justify lifting the discovery stay in this action. (Doc. 80 at 5; Doc. 82 at 2.) Even assuming *arguendo* that the burden is on plaintiffs to present new

[2] While the presumptive rule allows for discovery of all elements of plaintiffs' claims at this juncture, Stand's and Paglia's contention that plaintiffs failed to seek discovery available under the anti-SLAPP statute at the pleading stage mischaracterizes plaintiffs' Response to Defendants' Motions To Dismiss, Strike or Transfer Venue. (Doc. 80 at n. 3.) While plaintiffs' Response demonstrates that Georgia's anti-SLAPP statute has no application in this case (Doc. 75 at 28-31, 33-39), plaintiffs request that in the event the Court determines that the anti-SLAPP laws applies to certain of plaintiffs' claims, plaintiffs be given the opportunity to take discovery on the issue of actual malice pursuant to O.C.G.A. § 9-11-11.1(b)(2) (2016). (Doc. 75 at 39-40.)

information not before the Court at the time the discovery stay was entered to warrant proceeding with discovery at this juncture, plaintiffs have more than satisfied this burden. At the time the Court entered the stay of discovery in this action, plaintiffs had not yet filed their Response to defendants' Motions. As detailed in plaintiffs' Motion to Lift the Stay of Discovery, plaintiffs' subsequently filed Response to defendants' Motions to Dismiss, Strike, or Transfer Venue, supported by the declarations of Professors Reich and Cubbage, refutes defendants' claim that their conduct amounts to mere advocacy which is protected by the First Amendment and state anti-SLAPP laws. The Response further demonstrates that the detailed allegations of the Complaint more than satisfy the pleading requirements for each of plaintiffs' claims, including each defendant's individual participation in the RICO enterprise. (Doc. 78-1.) Under these circumstances, reconsideration of this Court's prior order staying discovery pending resolution of defendants' Motions is warranted. *See Santiago Manuel A., v. Jamison*, 2015 WL 136038, at *2 (M.D. Fla. Jan. 9, 2015) (granting motion for reconsideration of discovery ruling where moving party presented new information which it did not have the opportunity to present prior to the time the order was issued); *see also Davison v. Nicolou*, 2016 WL 3866573, at *2 (S.D. Ga. July 13, 2016) (vacating discovery stay upon plaintiff's motion for reconsideration).

Other courts in this circuit have rejected defendant's claim that the Court should exercise its discretion to depart from the presumptive rule in favor of discovery pending resolution of defendants' Motions because discovery in this case will be "wide-ranging and invasive." (Doc. 82 at 2.) In *Ray v. Spirit Airlines, Inc.*, the court rejected defendant's "insinuat[ion] that discovery should be stayed simply because this is a complex RICO case, as cases of this kind always involve burdensome and costly discovery," finding that defendants' "arguments . . . are premature and speculative," without a "specific showing of prejudice or burdensomeness." 2012

WL 5471793, at *2-3 (S.D. Fla. Nov. 9, 2012). The *Spirit* court held that, like here, the defendants had "not identified in any specific and tangible way the unreasonable discovery burdens it will face absent a stay" and rejected defendants' "bland generalizations" such as that "the scope and breadth of Plaintiffs' RICO allegations would require a substantial amount of discovery, nearly all of which would be borne by [defendant] and its outside vendors." *Id*. at *3.

Finally, contrary to defendants' contentions, the potential harm to plaintiffs from delay militates in favor of proceeding with discovery at this juncture. The misconduct alleged in the Complaint is ongoing. Immediately following the filing of this Motion, plaintiffs learned that by letter dated December 16, 2016, sent by certified mail to numerous Resolute customers, defendant Amy Moas and enterprise member Shane Moffatt continue to charge Resolute with "destruction of forests in Quebec and Ontario," "adverse impacts . . . on critical endangered species habitat," and suspension of four FSC certificates due to environmental and Indigenous Rights "nonconformances" all of which had been affirmatively rebutted weeks earlier by the expert declarations of Professors Reich and Cubbage. (Exhibit A.)[3] In light of this ongoing misconduct, plaintiffs should be allowed to expeditiously proceed with discovery.[4]

[3] A copy of the letter sent to numerous Resolute customers is attached here as Exhibit A. Recipient information has been redacted.

[4] Defendants attempt to recast plaintiffs' willingness to work with defendants in setting up a briefing schedule on their Motions to Dismiss, Strike or Transfer Venue as justification for not moving forward with discovery. (Doc. 80 at 2 n.1; Doc. 82 at 3.) The professional courtesy demonstrated by counsel for the parties in submitting a consent briefing schedule for the Court's consideration may not be construed as consent to delay proceeding with needed discovery in this case.

CONCLUSION

For the foregoing reasons, this Court should lift the stay of discovery entered on September 22, 2016 (Doc. 66) and direct the parties to proceed with discovery in accordance with the applicable Federal and Local rules.

This 5th day of January, 2017.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

This is to certify that I have this day electronically filed the foregoing **Plaintiffs' Reply Brief In Support of Motion to Lift Stay of Discovery** with the Clerk of Court using the CM/ECF system and served upon counsel of record by electronic filing, as follows:

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This 5th day of January, 2017.

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