

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

VITO J. FENELLO, JR.)	
and BEVERLY H. FENELLO,)	
)	
Plaintiffs,)	
)	CIVIL ACTION FILE
)	NO. 1:11-cv-04139-WSD
v.)	
)	
SHUPING, MORSE & ROSS, LLP;)	
BANK OF AMERICA, N.A., and)	
THE BANK OF NEW YORK MELLON)	
(as Trustee for CWALT, Inc.),)	
)	
Defendants.)	
_____)	

MOTION TO STAY PRETRIAL DEADLINES AND DISCOVERY

Defendants Bank of America, N.A. (“BANA”), and The Bank of New York Mellon, as Trustee for CWALT, Inc. (“BNYM”) (collectively “Defendants”) respectfully move the Court for an Order staying certain pretrial deadlines and initiating the discovery period set forth in the Federal Rules of Civil Procedure and the Local Rules for the United States District Court for the Northern District of Georgia, pending a ruling on Defendants’ Motion to Dismiss (“Motion to Dismiss”) filed on December 7, 2011. In support of this motion, Defendants submit the accompanying Memorandum of Law.

This 7th day of December, 2011.

/s/ Andrew G. Phillips

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N.A. and The Bank of New York Mellon as
Trustee for the Certificate Holders of
CWALT, Inc.*

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CERTIFICATE OF SERVICE, FONT AND MARGINS

I hereby certify that on December 7, 2011, I electronically filed the foregoing *Motion to Stay Pretrial Deadlines and Discovery* with the Clerk of the Court using the CM/ECF System and served a true and correct copy of same on *Pro Se* Plaintiffs via First-Class Mail, postage prepaid, addressed to:

Vito J. Fenello, Jr.
Beverly H. Fenello
289 Balaban Circle
Woodstock, Georgia 30188

I further certify that I prepared this document in 14 point Times New Roman font and complied with the margin and type requirements of this Court.

/s/ Andrew G. Phillips
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**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO STAY
PRETRIAL DEADLINES AND DISCOVERY**

Defendants Bank of America, N.A. (“BANA”), and The Bank of New York Mellon, as Trustee for CWALT, Inc. (“BNYM”) (collectively “Defendants”) move the Court to stay certain pretrial deadlines and discovery pending a ruling on the Motion to Dismiss (“Motion to Dismiss”) filed on December 7, 2011.

I. PROCEDURAL HISTORY

Plaintiffs Vito J. Fenello, Jr. and Beverly H. Fenello (“Plaintiffs”) filed this lawsuit against Defendants BANA, BNYM and Shuping, Morse & Ross, LLP in the Superior Court of Cherokee County, State of Georgia on October 21, 2011.

Defendants BANA and BNYM timely removed this matter to the United States District Court for the Northern District of Georgia on November 30, 2011 based upon federal question jurisdiction. Because the parties have not consented to begin discovery prior to the thirty (30) day period following the appearance of a defendant by answer to the complaint, the discovery period has not yet commenced. See LR 26.2(A), NDGa (discovery period commences “thirty (30) days after the appearance of a defendant by *answer to the complaint*” (emphasis added)).

II. ARGUMENT AND CITATION OF AUTHORITY

The Court has “broad discretion to stay discovery until the district court rules on a pending dispositive motion.” Panola Land Buyers Ass’n v. Shuman, 762 F.2d 1550, 1560 (11th Cir. 1985); see also LR 26.2B, NDGa. (“The court may, in its discretion, shorten or lengthen the time for discovery.”); Patterson v. U.S. Postal Serv., 901 F.2d 927, 929 (11th Cir. 1990) (holding that district court did not abuse its discretion in staying discovery because the court had “sufficient information before it upon which to rule”).

Defendants have moved to dismiss all of the claims set forth in the Complaint. Because the Court’s ruling on the Motion to Dismiss could potentially dispose of this action in its entirety, compliance with the discovery obligations set

forth in the Federal Rules and Local Rules is premature at this juncture. The time and resources that the parties would expend in drafting initial disclosures, drafting a joint preliminary planning report and discovery plan, conducting a Rule 26(f) conference, and conducting discovery will have been spent unnecessarily if the Court were to find that Plaintiffs' Complaint should be dismissed. Moreover, if the Court should decide that Plaintiffs have stated a viable claim, Plaintiffs will not be prejudiced by a short delay in the start of the discovery period.

Therefore, Defendants request that the Court temporarily stay all deadlines required under the Local Rules or the Federal Rules of Civil Procedure pending the resolution of the Motion to Dismiss. A proposed order granting the relief sought herein is attached.

This 7th day of December, 2011.

/s/ Andrew G. Phillips

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[PROPOSED] ORDER

This matter is before the Court pursuant to a Motion filed by Defendants Bank of America, N.A., and The Bank of New York Mellon, as Trustee for CWALT, Inc. (hereinafter “Defendants”) seeking to stay pretrial deadlines and discovery proceedings pending a resolution for the Motion to Dismiss filed by Defendants. For good cause shown, and in light of this Court’s finding that a Stay of Pretrial Deadlines and Discovery proceedings will not prejudice Plaintiffs, it is hereby ORDERED that all discovery in the above-captioned civil action shall be

stayed until this Court enters an Order resolving the Motion to Dismiss filed by Defendants or until further Order of this Court.

It is further ORDERED that the Clerk is directed to mail a copy of this Order to counsel of record for Defendants, and to Plaintiffs Vito J. Fenello, Jr. and Beverly H. Fenello.

SO ORDERED, this _____ day of December, 2011

William S. Duffey, Jr.
Judge, United States District Court