IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

HARTHMAN LEASING III, LLLP,	)	
	)	**CASE NO. 3:22-cv-00025**
Plaintiff	)	
v.	)	
	)	
FIRSTBANK PUERTO RICO,	)	
	)	
Defendant	)	
	)	

ATTORNEYS:

KANAAN L. WILHITE, ESQ.
MOORE DODSON RUSSELL & WILHITE, PC
ST. THOMAS, U.S.V.I.
FOR PLAINTIFF HARTHMAN LEASING III, LLLP

CHRISTOPHER A. KROBLIN, ESQ.
KELLERHALS FERGUSON & KROBLIN, PLLC
ST. THOMAS, U.S.V.I.
FOR DEFENDANT FIRSTBANK PUERTO RICO

ORDER

BEFORE THE COURT is the joint motion to stay case pending appeal [ECF 103] filed on September 20, 2024, by Plaintiff Harthman Leasing III, LLLP ("Harthman") and Defendant FirstBank Puerto Rico ("FirstBank") (collectively the "Parties"). Specifically, the Parties state they are involved in a separate action currently on appeal before the Virgin Islands Supreme Court ("VISCT"), with the subject matter of said appeal arising from the "same nucleus of operative facts, with substantial overlap in the facts of the instant case" [ECF 103] at 3. The Parties further anticipate that the decision of the VISCT appeal will have a significant, and potentially dispositive, effect on the Parties' positions in the present matter, thereby warranting a stay of proceedings. They also believe the results of the appeal might facilitate settlement. *Id*. For the reasons stated below, the Court will grant the joint motion to stay.

I. FACTUAL AND PROCEDURAL BACKGROUND

The complaint in this matter was originally filed by Harthman in the Superior Court of the Virgin Islands ("Superior Court") on March 6, 2022 [ECF 1-1]. The matter was removed to this Court on April 9, 2022 [ECF 1], with FirstBank having filed a motion to dismiss on April 21, 2022 [ECF 4-5] and a counterclaim on May 2, 2022 [ECF 6]. On April 20, 2023, the Court granted in part and denied in part FirstBank's motion to dismiss [ECF 43], with the Court subsequently granting Harthman's motion for reconsideration related to same on January 18, 2024.[1] [ECF 73]. Harthman filed a first amended complaint on January 25, 2024 [ECF 74], with FirstBank filing its answer on February 2, 2024 [ECF 75].

It is alleged in the first amended complaint that Harthman has obtained three (3) orders of eviction against FirstBank dispossessing FirstBank of any possessory right to use, occupy or profit from Parcels 17B, 17C, and 17D, Estate Smith Bay (hereinafter "Property") [ECF 74] at 1. First, on March 7, 2016, Harthman was awarded possession of the Property via a judgment entered by the Superior Court of the Virgin Islands Magistrate Division of the Forcible Entry and Detainer Court. *Id*. ⁋ 4. Second, on July 29, 2019, Harthman was awarded possession of the Property via a jury verdict rendered in Superior Court. *Id*. Third, on June 4, 2021 – as amended on November 2, 2021 – Judge Kathleen Mackay of the Superior Court entered findings of fact and conclusions of law as to the jury verdict. *Id*. ⁋⁋ 4, 56, 59. It is the jury verdict and Judge Mackay's orders that have been appealed by FirstBank to the VISCT (hereinafter "Appeal").[2] *Id*. ⁋ 59. Said Appeal was initially filed on July 5, 2021, having been subsequently amended on December 1, 2021, so as to include the subsequent ruling of Judge Mackay. *Id*. The Appeal has been fully briefed, with oral

[1] In the Court's Order granting in part and denying in part FirstBank's motion to dismiss, the Court dismissed four counts (Counts II, IV, V, and VI) with prejudice and one count (Count III) without prejudice [ECF 43]. Harthman's motion for reconsideration [ECF 46] only sought leave to replead one of the four counts that had been dismissed with prejudice.

[2] The VISCT Appeal is captioned *FirstBank Puerto Rico v. Harthman Leasing III, LLLP*, S.Ct. Civ. No. 2021-0026.

argument having been presented on October 11, 2022 [ECF 103] ⁋ 3. All that remains is VISCT's disposition of the Appeal. *Id*.

As for the claims asserted herein, Harthman seeks damages associated with FirstBank's post-eviction possession of the Property (i.e., mesne profits, debt, and unjust enrichment), as well as damages associated with trespass and waste. *Id*. ⁋⁋ 62-93. FirstBank – in its counterclaim – seeks a set off should Harthman prevail in its damages claims for the value of the improvements made to the Property at FirstBank's expense, as well as declaratory judgment as to a fourth parcel (Parcel 17E) [ECF 6]. Finally, from a case management perspective, a trial management order was entered on June 9, 2022 [ECF 19]. Since then, the parties have sought to extend the litigation deadlines on six occasions, with a seventh request currently pending [ECF 32, 56, 66, 77, 85, 94, and 102].[3] Notably, in the fifth amendment to the trial management order, the Court advised the Parties that "[a]dditional requests will not be favorably received" [ECF 78]. In granting a sixth amendment, the Court found that the Parties had failed to demonstrate diligence and that no further extensions would be granted absent extraordinary circumstances [ECF 86]. The latest request seeks to extend FirstBank's expert deadline and all other deadlines to follow, including that of trial [ECF 102-1].

II. LEGAL STANDARD

The district court has broad power to stay proceedings as part of its obligation to manage its docket in an efficient manner.[4] *The W. Indian Co. Ltd. v. Yacht Haven USVI, LLC*, 2022 WL 819453, *2 (D.V.I. Mar. 17, 2022) (citing *Bechtel Corp. v. Laborer's Int'l Union*, 544 F.2d 1207, 1215 (3d Cir. 1976)). "In the exercise of its sound discretion, a court may hold one lawsuit in

[3] Of the seven requests, six have been filed jointly, with one [ECF 94] having been filed unopposed by FirstBank.

[4] Matters of docket control – including decisions to stay proceedings – are non-dispositive and may be determined by a magistrate judge. *See* 28 U.S.C. § 636(b)(1)(A), *see Anglin v. Anglin*, 2020 WL 3496916, *1 (D.N.J. 2020); *see Ainger v. Great Am. Assurance Co.*, 2022 WL 3139079, *5 (D.V.I. 2022).

abeyance to abide the outcome of another which may substantially affect it or be dispositive of the issues." *Bechtel*, 544 F.2d at 1215. The possibility of relief in an alternative forum resolving the issues before the court is sufficient justification to warrant the stay. *Id*.

The court generally weighs several factors in determining whether a stay of proceedings is appropriate. *Yacht Haven*, 2022 WL 819453 at *9. Such relevant factors include: (1) principles of comity, (2) the adequacy of relief available in the alternative forum, (3) promotion of judicial efficiency, (4) the identity of the parties and issues in the two actions, (5) the likelihood of prompt disposition in the alternative forum, (6) the convenience of the parties, counsel, and witnesses, and (7) the possibility of prejudice if the stay is granted. *Id*. at *2, 9. "These factors, however, are rarely weighed by an appellate court because 'the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket …'" *Id*. at *2 (citing *Landis v. N. Am. Co.*, 299 U.S. 254, 254-55 (1936). As such, a district court's decision to stay a matter on its docket is reviewed only for an abuse of the court's sound discretion. *Id*.

III. DISCUSSION

In their joint motion, the Parties advise that: (1) all fact discovery (written and depositions) has been completed, (2) mediation has been conducted, and (3) expert submissions have been (or soon will be) exchanged [ECF 103] ⁋ 4.[5] It is the next phase of the litigation – that of expert depositions, *Daubert* and dispositive motions, and trial – the Parties seek to stay *Id*. ⁋ 5. They contend that the result of the Appeal will likely have a substantial impact one way or the other on the issues in the present matter. Should the Appeal be reversed or remanded, Harthman's claims and damage models will be adversely impacted. *Id*. at 4. Conversely, were the Appeal affirmed, it will negatively impact FirstBank's defense of Harthman's claims. The Parties then note that a total of five (5) experts have been designated amongst them in this matter. They claim that the outcome

[5] Firstbank was to complete its expert submissions by September 30, 2024 [ECF 103] ⁋ 4.

of the Appeal may very well affect the opinions rendered by certain of these experts. This, in turn, might require updated/supplemental reports. Moreover, were the Parties to proceed with expert depositions at this stage, these depositions might need to be revisited following the Appeal. Likewise, the Parties' claim that many of the arguments they would currently raise in dispositive motions may be mooted once the Appeal has been decided. *Id*. Thus, to avoid the significant time and expense associated with deposing and challenging experts, as well as drafting dispositive motions, the Parties submit that the "most logical course of action" is to stay this matter pending the VISCT's decision of the Appeal. *Id*. at 5.

In determining if a stay is appropriate, the Court considers and weighs the relevant factors as set forth *supra*. The first factor, comity, is one of prudence. *Yacht Haven*, 2022 WL 819453 at *9. "Comity is the 'proper respect for state functions,' and recognizes 'the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways.'" *Id*. (citing *Younger v. Harris*, 401 U.S. 37, 44 (1971). In this instance, the Court finds most (if not all) of the claims herein to be dependent upon whether FirstBank had the right to continue to possess the Property following the jury verdict and judgment in the Superior Court. Given that very question is currently before the VISCT in the Appeal – which, notably, predates the present matter – the Court finds the principles of comity support a stay of these proceedings.

The Court further finds the possibility of relief available in the Appeal – which involves the exact same parties and derives from the same nexus of events – could resolve many of the issues and disputes in the present matter. While the claims herein involve alleged damages that occur after the post-eviction judgment, the claims themselves are reliant upon the enforceability of the eviction decision rendered in the Superior Court, the issue of which is currently before the

VISCT. There is certainly no indication that the Appeal will be adjudicated any less promptly than this matter. Likewise, given that expert discovery and motion practice (*Daubert* and dispositive) at this stage might need to be revisited subsequent to the VISCT's decision on Appeal, this too supports the requested stay. The Court's interest in judicial economy is further served with a stay, as it conserves the Court's resources by not litigating issues that are likely to be resolved in the Appeal. It also avoids the potential for there to be conflicting rulings in the two forums. Lastly, as the Parties jointly seek the stay, the issue of prejudice is a non-factor.

Having carefully weighed the relevant factors, the Court will exercise its discretion and will grant the Parties' joint motion for a stay. In doing so, however, the Court cautions the Parties that this stay is not an invitation once the stay is lifted to reopen those litigation deadlines that had expired prior to the joint motion. It is not.

The premises considered, it is hereby

ORDERED that the Court will **GRANT** the Parties' Joint Motion [ECF 103] to Stay Case Pending Appeal.

ORDERED that this matter is **STAYED** pending the VISCT issuing its ruling in *FirstBank Puerto Rico v. Harthman Leasing III, LLLP*, S.Ct. Civ. No. 2021-0026 (i.e., the "Appeal").

ORDERED that the Parties **SHALL FILE** joint notices with this Court every ninety (90) days commencing from the date of this Order, with said notices to provide a status update of the Appeal. Notwithstanding this timeframe, upon the VISCT issuing a ruling on the Appeal, the parties are to advise the Court accordingly no later than seven (7) days from the issuance of said ruling.

ENTER:

Dated: November 12, 2024

/s/ G. Alan Teague
G. ALAN TEAGUE
U.S. MAGISTRATE JUDGE