

IN THE CIRCUIT COURT FOR THE FIFTEENTH JUDICIAL CIRCUIT,  
IN AND FOR PALM BEACH COUNTY, FLORIDA

CHENEY BROS, INC.,  
a Florida Corporation  
Plaintiff,

vs.

Case No. 2023-CA-001432

WESLEY RICHARDS,  
Defendant.

**MOTION TO STAY DISCOVERY PENDING RESOLUTION OF  
DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

COMES NOW the Defendant, WESLEY RICHARDS, by and through his undersigned counsel, and files this Motion to Stay Discovery and states as follows:

1. Plaintiff served Defendant with a Summons and Complaint on February 21, 2022.
2. In response, Defendant filed a Motion to Dismiss, which, if granted, will be dispositive of the case unless and until such time as Plaintiff is given an opportunity to amend the Complaint and is able to successfully do so.
3. On March 9, 2023 and again on March 10, 2023, counsel for the Plaintiff requested dates of availability in order to schedule Defendant's deposition.
4. On March 10, 2023, Plaintiff also filed a Notice of Production from Non-Parties, First Interrogatories to Defendant and Request for production of Documents to Defendant.
5. Defendant has no objection to Plaintiff issuing the Subpoena Duces Tecum and will not be filing an objection under Fla.R.Civ.P. 1.351(b) to the Notice of Production from Non-Parties.
6. However, Defendant should not be required to respond to the other discovery requests or have his deposition taken until the Court rules on his Motion to Dismiss.

7. Plaintiff will not be prejudiced by the granting of a Motion to Stay Pending Resolution of Defendant's Motion to Dismiss since no trial or pretrial deadlines have been established.
8. Defendant will be prejudiced as he will be required to defend this action prior to a ruling on his Motion to Dismiss.

### **MEMORANDUM OF LAW**

Defendant filed a dispositive Motion to Dismiss which is pending before the Court. This Court has broad discretion in determining the scope and timing of discovery and to stay discovery pending the resolution of dispositive motions. Gross v. Sec. Tr. Co., 453 So. 2d 944 (Fla. 4th DCA 1984). The Court should exercise this discretion until such time it is established that Plaintiff's Complaint states a cause of action. Carrow v. Fla. Bar, 848 So. 2d 1283 (Fla. 2d DCA 2003)(discovery may be stayed until such time as the plaintiff files a legally sufficient complaint).

Since the Florida Rules of Civil Procedure are modeled after the Federal Rules of Civil Procedure, the Federal Rules provide guidance for Florida courts in interpreting Florida's Rules of Civil Procedure. Bailey v. Brenda Lee Beal, 2020 Fla. Cir. LEXIS 15534 citing Gleneagle Ship Management Co. v. Leondakos, 602 So. 2d 1282, 1283-84 (Fla. 1992). The grounds asserted in Defendant's Motion to Dismiss are based solely upon allegations set forth in Plaintiff's Complaint and constitute a direct attack on the sufficiency of those allegations, which can be decided without the need for discovery. Chudasama v. Mazda Motor Corp., 123 F.3d 1353, 1367 (11th Cir. 1997) ("Facial challenges to the legal sufficiency of a claim or defense should be resolved before discovery begins. Such a dispute always presents a purely legal question; there

are no issues of fact because the allegations in the pleadings are presumed to be true.”) (citing Mitchell v. Duval County Sch. Bd., 107 F.3d 837, 838 n.1 (11th Cir. 1997) (per curiam)).

Such a stay will prevent the Defendant from unnecessary expenditure of resources until such time as Plaintiff has established a cause of action. Additionally, granting of the Motion to Stay will also promote efficiency and judicial economy as there will not be discovery issues to be resolved by the Court. Based on the foregoing, the Defendant respectfully requests that this Court order staying discovery until a ruling on Defendant's Motion to Dismiss.

**CERTIFICATION OF CONFERRAL**

Prior to filing this Motion, the undersigned conferred with counsel for the Plaintiff who has authorized me to represent that the Plaintiff opposes a stay of discovery.

Dated: March 20, 2023

Respectfully submitted,

/s/Beth Coke

Beth Coke

Fla. Bar. #70726

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Attorney for Defendant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing document is being filed on March 20, 2023, through the Florida Court E-Filing Portal, which will automatically serve a copy on David S. Tadros , Wyland & Tadros LLP, the attorney for the Plaintiff.

/s/ Beth Coke