

STATE OF NEW MEXICO
THIRTEENTH JUDICIAL DISTRICT
COUNTY OF VALENCIA

SOCORRO ELECTRIC COOPERATIVE, INC.,

Plaintiff,

v.

CHARLENE WEST, et al.,

No. D1314-CV-2010-0849

Judge: Mitchell

Defendants,

And

**CHARLES WAGNER, individually and
on behalf of those similarly situated, et al.,
Cross-Claim Plaintiff,**

v.

**SOCORRO ELECTRIC COOPERATIVE, INC.,
et al.,**

Cross-Claim Defendants.

PLAINTIFF'S MOTION TO STAY DISCOVERY

Cross Claim Defendants Socorro Electric Cooperative, Inc., *et al*, by and through their counsel of record, Kennedy & Han, P.C., hereby brings this, their Motion to Stay Discovery.¹

Counsel for Plaintiff Charles Wagner has been contacted regarding the instant Motion, and Plaintiff opposes said Motion.

In support of their Motion, Defendants state as follows:

1) On or about January 25, 2012, filed five separate Motions in the current matter, each seeking dismissal on the pleadings or partial summary judgment as to Plaintiff's claims. By

¹ For purposes of simplicity and ease of reading, Cross Claim Defendants are referred to throughout this Motion as "Defendants." Cross Claim Plaintiff is similarly referred to only as "Plaintiff".

and through their Motions, Defendants have asserted their immunity from suit and Plaintiff's lack of standing, both of which address the Court's subject matter jurisdiction in to consider the current Cross Claim. Defendants have also asserted that the current Cross Claim should be dismissed because it fails to meet the proper pleading requirements established in Rule 1-009(b), NMRA 2011, and that dismissal is proper because an indispensable Defendant (Plaintiff/Trustee Wagner himself) cannot be named in the suit as it is currently postured. Finally, Defendants have sought partial summary judgment as to all claims addressing voting rights, since the subsequent adoption and compliance with amendments to the Cooperative's By-laws has rendered these claims moot.

2) As to at least two of these Motions, various courts have provided explicit discussion of the policies justifying early and prompt dismissal of claims. Where claims are brought against entities or individuals who are immune from suit, as Defendants are under the provisions of New Mexico's Rural Electric Cooperative Act, these claims may be dismissed early, "without the costs of trial or the burdens of broad-reaching discovery." See, *Mitchell v. Forsyth*, 472 U.S. 511, 526, 105 S.Ct. 2806, 2815 (1985).

3) Additionally, courts have justified the heightened pleadings standards for matters based on averments of fraud on the grounds that such claims "raise a high risk of abusive litigation." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 554, 127 S.Ct. 1955, 1973 n. 14 (2007). The heightened pleading rule is intentionally designed to protect defendants from "spurious charges of immoral and fraudulent behavior." *U.S. ex rel. Bledsoe v. Cmty. Health Sys. (Bledsoe II)*, 501 F.3d 493, 509 (6th Cir. 2007). The rule also prevents vindictive plaintiffs from conducting large-scale "fishing expeditions" based on nothing more than generalized allegations. *U.S. ex rel. Atkins v. McInteer*, 470 F.3d1350, 1360 (11th Cir. 2006). Before making public charges of fraud,

parties are required to conduct a greater than normal pre-litigation investigation, “because public charges of fraud can do great harm to the reputation of a business firm or other enterprise (or individual).” *U.S. ex rel. Fowler v. Caremark RX, L.L.C.*, 496 F3d 730, 740 (7th Cir. 2007).

4) By and through their Motions, Defendants have also raised the issue of joinder. Unless and until all the indisputable parties are identified in the current matter, and these individuals are brought into the litigation in the proper capacity, any discovery conducted will necessarily be futile and (at the very least) unnecessarily costly and repetitive. Furthermore, should the Court determine that Mr. Wagner cannot be joined as a Defendant in this matter, the suit must be immediately dismissed and any discovery conducted before such dismissal would represent nothing more than wasted time and expense.

5) By and through their various Motions, Defendants have also directed this Court to Rural Electric Cooperative Act, §62-15-9(H), which expressly permits this Court to stay any action brought against a rural electric cooperative and/or its trustees “as the circumstances reasonably require” so that the cooperative may conduct an investigation of the allegations being made by a member.

6) A stay in this matter will create no undue harm or prejudice to the Plaintiff, who, as of January 30, 2012 has made no effort to conduct *any* written discovery, request the production of *any* documents or evidence, or schedule *any* depositions in this matter.²

7) As to the propriety of a stay of discovery, this Court has the discretion to issue and lift a stay based on its inherent power to manage the cases before it. See, *Murken v. Solv-Ex Corp.*, 2006-NMCA-064, ¶17.

² This statement refers to formal litigation discovery. Plaintiff has apparently been seeking information and evidence based on the Inspection of Public Records Act. This issue is addressed in more detail in Defendants Motion for Protective Order, filed concurrently with the instant Motion. Defendants hereby adopt and incorporate all statements of fact and arguments of law contained in the Motion for Protective Order as if fully set out herein.

8) Considering the nature of the pending Motions, the public policy of limiting burdensome discovery and “fishing expeditions” in claims involving immunity from suit and unspecified allegations of fraud, the serious matter of joinder, and the express provisions of the Rural Electric Cooperative Act, the Court possesses the authority to grant a stay of discovery in this matter until the various issues raised in Defendants’ Motions are resolved.

WHEREFORE, premises considered, Defendants ask this Court to exercise its inherent powers, and the express powers provided to it by the Rural Electric Cooperative Act, and GRANT Defendants’ Motion to Stay Discovery, and ORDER that all discovery deadlines currently pending are VACATED and that no further or additional discovery of any type shall occur until further order by the Court. Defendants further request that the Court GRANT any such other and further relief as it may find to be in the interests of justice.

Respectfully submitted,

KENNEDY & HAN, P.C.

/s/ Darin M. Foster
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CERTIFICATE OF SERVICE:

I certify that a copy of this Motion was served by the Court’s electronic filing system to the following counsel of record on this 1st day of February 2012.

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