IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

DEBORAH BRUMIT and ANDREW SIMPSON, *Plaintiffs,* v. THE CITY OF GRANITE CITY, ILLINOIS, *Defendant.*	Case No. 3:19-cv-01090-SMY

PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION TO STAY (ECF 30)

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INTRODUCTION

The City's motion to stay should be denied for much the same reasons its request to stay the parallel *Barron* case should be denied. *See* Pls.' Resp. Def.'s Mot. Stay (*Barron*) (ECF 47). "[I]f there is even a fair possibility that the stay . . . will work damage to someone else," the moving party "must make out a clear case of hardship or inequity in being required to go forward." *United States v. Faris*, No. 17-cv-295-SMY-DGW, 2018 WL 4737212, at *1 (S.D. Ill. Oct. 2, 2018) (citation omitted). As in *Barron*, the City's motion fails even to acknowledge that burden, much less meet it. And, again as in *Barron*, a stay here would come with real costs. It would disadvantage Plaintiffs in rebutting the City's latest motion to dismiss, which relies entirely on new factual assertions. Worse, a stay would injure non-parties also: Even as the City tries to slow-walk this case, it is forging ahead with more coercive evictions. At last count, the City has issued at least eighteen new compulsory-eviction demands since the related *Barron* case began.

As against all this, the City has shown no hardship or inequity (or even good cause) to justify a stay. With no scheduling order in place, moreover, its stay request is also premature. At bottom, the just, speedy, and inexpensive determination of this action favors aligning it with *Barron* and letting Plaintiffs build their factual record.

BACKGROUND

1. This challenge to Granite City's compulsory-eviction law parallels another case pending before this Court, *Barron v. City of Granite City*, No. 3:19-cv-00834-SMY. *Barron* has been pending since August and is now over three months into discovery. *See* Pls.' Resp. Def.'s Mot. Stay (*Barron*) 4 (ECF 47). This case was filed two months after *Barron*, in early October. Plaintiffs in both cases moved to consolidate them, and the City agreed. *See, e.g.*, Mot.

Consolidate (ECF 5); Resp. Mot. Consolidate (ECF 17). On October 9, the Court consolidated the two cases for purposes of a preliminary-injunction hearing. Order (ECF 13). Beyond that, the Court stated, it would "hold its ruling on full consolidation in abeyance until the issue has been fully briefed by the parties." *Id.* The consolidation question has not yet been resolved.

Nor, in this case, has discovery begun. As Plaintiffs noted in November, a scheduling conference has not yet been calendared and a scheduling and discovery order has not yet been entered. *See* Mot. Scheduling Conference 1 (ECF 20). In their November motion, Plaintiffs stressed that they "stand ready to comply with their obligations under Rule 26(f)." *Id.* 2. Given the District's scheduling conventions, however, Plaintiffs also noted that "a Rule 26(f) conference would not appear to be productive until after a presumptive trial date is announced and a scheduling conference set." *Id.* For its part, the City has declined to participate in a 26(f) conference. Gedge Decl. Ex. 1, at 1. As a result, Plaintiffs have not yet been able to start discovery. *See generally* Fed. R. Civ. P. 26(d)(1) ("A party may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except . . . when authorized by these rules, by stipulation, or by court order.").

In the parallel *Barron* case, by contrast, discovery is well-advanced. *See* Pls.' Resp. Def.'s Mot. Stay (*Barron*) 4-7 (ECF 47). Given the similarity of issues between the *Barron* case and this one, Plaintiffs anticipate that their discovery needs here will overlap substantially with those of the plaintiffs in *Barron*.

2. On December 17, the City enacted minor amendments to its compulsory-eviction law. Twenty-four hours later, it moved to dismiss both this case and the *Barron* case as moot. A day after that, it asked to stay "all proceedings" in both cases while its new motions to dismiss are briefed and decided.

ARGUMENT

Granite City has not met its burden of showing that this case should be stayed.

Granite City's motion to stay should be denied for much the same reasons its motion in *Barron* should be denied. "A party seeking a stay bears the burden of proving that the court should exercise its discretion in staying the case." *Williamson v. S.A. Gear Co., Inc.*, No. 15-cv-365-SMY-DGW, 2016 WL 11467772, at *1 (S.D. Ill. Aug. 31, 2016). And as in *Barron*, the City has failed to carry (or even acknowledge) its burden. On top of that, its stay motion is premature because discovery has yet to begin. Judicial economy thus favors denying the City's stay motion, aligning this case with *Barron*, and allowing the two sets of plaintiffs to proceed together.[1]

A. The City's stay motion suffers from many of the same shortcomings as its stay motion in *Barron*.

The City's request for a stay should be denied for many of the same reasons advanced by the plaintiffs in *Barron*. At minimum, a party seeking to stay discovery "must show good cause." *E.E.O.C. v. Fair Oaks Dairy Farms, LLC*, No. 11-cv-265, 2012 WL 3138108, at *2 (N.D. Ind. Aug. 1, 2012). And "[i]f there is even a fair possibility that the stay . . . will work damage to someone else," the bar is even higher: The movant must "make out a clear case of hardship or inequity in being required to go forward." *United States v. Faris*, No. 17-cv-295-SMY-DGW, 2018 WL 4737212, at *1 (S.D. Ill. Oct. 2, 2018) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936)). The City has not carried its burden. As in *Barron*, a stay would prejudice Plaintiffs' ability to rebut the City's most recent motion to dismiss. Also as in *Barron*, a stay would harm non-parties: Even as the City slow-walks this case, it is proceeding apace with more coercive

[1] The City appears to seek relief, at least in part, under Rule 26(c). Mot. 2; *Williamson v. S.A. Gear Co., Inc.*, No. 15-cv-365-SMY-DGW, 2016 WL 11467772, at *1 (S.D. Ill. Aug. 31, 2016). Given that rule's conferral requirement, the City's choice not to "confer[] or attempt[] to confer" with Plaintiffs before filing its motion is an independent basis for denial. *See Syngenta Seeds, Inc. v. BTA Branded, Inc.*, No. 5-cv-6673, 2007 WL 3256848, at *1 (N.D. Ill Nov. 1, 2007).

evictions. At the same time, the City has shown no hardship, inequity, or even good cause sufficient to justify a stay.

1. A stay would tactically disadvantage Plaintiffs and disrupt the orderly progress of this case.

As in *Barron*, the City asserts that its stay would not "unduly prejudice" or "tactically disadvantage" Plaintiffs. *See* Mot. 4. As in *Barron*, however, a stay would disadvantage Plaintiffs in rebutting the City's new motion to dismiss. In claiming that "changed circumstances have mooted the Plaintiffs' claims," the City's new motion relies entirely on new facts. Mem. Supp. Second Mot. Dismiss 1 (ECF 29). The City invites the Court to "view whatever evidence has been submitted." *Id.* 4. It says that its hasty changes to the compulsory-eviction law responded, not to this lawsuit, but to a state statute that says nothing about compulsory-eviction laws. *Id.* 7. It vows that those changes "are not in bad faith." *Id.* 12. And so on.

As our response to the motion to dismiss will explain, these factual claims come nowhere near meeting the City's "heavy burden" of proving mootness. *City of Chicago v. Barr*, 405 F. Supp. 3d 748 (N.D. Ill. 2019). They do, however, reinforce Plaintiffs' right to discovery. The City has mounted a textbook "factual challenge" to the Court's jurisdiction. *Guillemette v. Colvin*, No. 15-cv-6445, 2016 WL 5477538, at *2 (N.D. Ill. Sept. 29, 2016). It has introduced all manner of factual assertions about its own behavior. In turn, Plaintiffs "plainly [are] entitled to the opportunity to discovery so that [they] may respond to th[ose] averments." *Chevere v. Chicago Transit Auth.*, No. 90-cv-4152, 1990 WL 205267, at *1 (N.D. Ill. Dec. 5, 1990) (Rovner, J.).

Without a chance for discovery, in fact, the City's new motion to dismiss is ungrantable. A defendant's "submission of evidence in support of a Rule 12(b)(1) motion" is of course "not improper." *Barker v. Kapsch TrafficCom USA, Inc.*, No. 19-cv-987, 2019 WL 2524247, at *1

(S.D. Ind. June 18, 2019). But "it would be wholly inappropriate for [a] Court to allow Defendants to submit such evidence while denying Plaintiff the opportunity to conduct discovery in response thereto." *Id.*; *see also Lester-Washington v. Wal-Mart Stores, Inc.*, No. 11-cv-568-MJR, 2011 WL 4738529, at *2 (S.D. Ill. Oct. 7, 2011) ("[F]ailure to permit such discovery would be treated as reversible error.") (citation omitted). Faced with a battery of late-breaking factual claims, Plaintiffs have the right to explore them through discovery. Indeed, many of those factual claims relate closely to other topics on which Plaintiffs intend to seek discovery: for instance, how the compulsory-eviction law is construed and enforced. For this reason, the "just, speedy, and inexpensive" determination of the action favors aligning this case with *Barron* and letting Plaintiffs build their factual record. Fed. R. Civ. P. 1.

2. By delaying final judgment, a stay would harm current and future targets of the City's ongoing eviction campaign.

The City's stay promises broader harms as well. In the City's telling, "some degree of delay" is of no consequence. Mot. 4. But here, delay comes with real costs. Debi Brumit and Andy Simpson, of course, face no present danger of compulsory eviction; the preliminary injunction sees to that. For everyone else in Granite City, though, it's business as usual: Since the related *Barron* case began, the City has issued at least eighteen new compulsory-eviction demands—and counting. It issued one on August 2. Gedge Decl. Ex. 2, at 1-3. Another on August 5. *Id.* at 4-6. More on August 13, and August 14, and September 9. *Id.* at 7-15. Two more on September 12. *Id.* at 16-21. More on September 18, and September 24, and September 25, and October 1, and October 4. *Id.* at 22-36. Two more on October 11—two days after the Court entered the TRO here. *Id.* at 37-42. Another on October 14. *Id.* at 43-44. Another on October 18, the day the preliminary injunction issued. *Id.* at 45-47. Another on November 12. *Id.* at 48-50.

Another on November 13. *Id.* at 51-53. And for each, the City targets not just the alleged lawbreaker but "ALL KNOWN AND UNKNOWN OCCUPANTS" of the home. *E.g.*, *id.* at 1.

There is at least "a fair possibility" that a stay would "work damage" to these (and future) victims of the City's ongoing eviction campaign. *See Faris*, 2018 WL 4737212, at *1. Every week that the City slow-walks this case, it is buying time to "irreparabl[y] harm" more people. *See* Mem. & Order 3 (ECF 12). And the recent tweaks to its compulsory-eviction law promise more of the same. *See* Ex. 2 to Second Mot. Dismiss, at 6-7 (ECF 29-2) (continuing to mandate evictions for innocent people). Seemingly, nothing short of a final judgment will induce Granite City officials to honor the rights, dignity, and homes of their most vulnerable citizens. "[T]he judicial system and society as a whole would be prejudiced" by letting the City delay that judgment for even a day while it persists in making innocent families homeless. *United States ex rel. Robinson v. Ind. Univ. Health Inc.*, No. 13-cv-2009, 2015 WL 3961221, at *7 (S.D. Ind. June 30, 2015).

3. The City has made no showing that allowing the case to proceed would cause hardship or inequity.

Given the harms detailed above, the City's burden to prove "a clear case of hardship or inequity" is a heavy one. *Faris*, 2018 WL 4737212, at *1. The City has not carried that burden.

First, the City asserts that "[b]oth parties will suffer harm by the burden of unnecessary litigation" and that a stay would curtail "unnecessary discovery, costs and expenses." Mot. 7. But those are precisely the type of "unsupported statements of counsel" that courts of this Circuit reject as "insufficient" for a stay. *Red Barn Motors, Inc. v. Cox Enterprises, Inc.*, No. 14-cv-1589, 2016 WL 1731328, at *3 (S.D. Ind. May 2, 2016); *see also Fair Oaks Dairy Farms, LLC*, 2012 WL 3138108, at *3 ("[The moving defendant] simply states that the discovery would be

burdensome and expensive without greater detail.").[2] The City does not identify any aspect of discovery that it believes will be unusually burdensome. As a practical matter, moreover, we anticipate that Plaintiffs' discovery needs here will overlap substantially with those of the plaintiffs in the *Barron* case.

Second, the City suggests that a discovery stay is "often appropriate where [a] motion to dismiss can resolve the case." Mot. 3. That is wrong. Contrary to the City's view, it is not enough that a motion would, if granted, resolve "the entirety of th[e] litigation." Mot. 7. After all, that's "true any time a dispositive motion is filed." *Syngenta Seeds, Inc. v. BTA Branded, Inc.*, No. 5-cv-6673, 2007 WL 3256848, at *2 (N.D. Ill. Nov. 1, 2007). And the "general rule" is that "a pending garden-variety motion to dismiss does not warrant a stay of discovery." *Tamburo v. Dworkin*, No. 4-cv-3317, 2010 WL 4867346, at *2 (N.D. Ill. Nov. 17, 2010). That is why courts of this Circuit often will not even entertain a stay motion unless the moving party has raised one of a narrow set of "threshold" issues—typically either standing or qualified immunity. *See, e.g.*, *Cloverleaf Golf Course, Inc. v. FMC Corp.*, No. 11-cv-190-DRH, 2011 WL 2838178, at *2 (S.D.

[2] *See also Beatty v. Accident Fund Gen. Ins. Co.*, No. 17-cv-1001-NJR-DGW, 2018 WL 806581, at *2 (S.D. Ill. Feb. 9, 2018) ("[T]here is no showing that the burden on each individual Defendant is actually onerous."); *Fields v. Alcon Labs., Inc.*, No. 13-cv-197-DRH-DGW, 2013 WL 12173239, at *1 (S.D. Ill. June 24, 2013) ("Defendants have not identified any particular discovery requests that would be burdensome."); *United States ex rel. Robinson v. Ind. Univ. Health Inc.*, No. 13-cv-2009, 2015 WL 3961221, at *5 (S.D. Ind. June 30, 2015) ("Defendants . . . have not demonstrated with specificity that they would face any undue burden in responding to Relator's requests, and the Court accordingly will not stay discovery on the basis of this alleged burden."); *New England Carpenters Health & Welfare Fund v. Abbott Labs.*, No. 12-cv-1662, 2013 WL 690613, at *3 (N.D. Ill. Feb. 20, 2013) ("[The defendant] provides no clear showing of its burden or cost with any anticipated discovery. Therefore, Defendant's motion to stay discovery is denied.") (citation omitted); *Bianchi v. Tonigan*, No. 12-cv-364, 2012 WL 5906536, at *2 (N.D. Ill. Nov. 26, 2012) ("Nowhere does the defendant argue the burden of th[e] pending discovery."); *Castrillon v. St. Vincent Hosp. & Health Care Ctr., Inc.*, No. 11-cv-430, 2011 WL 4538089, at *2 (S.D. Ind. Sept. 29, 2011) ("[The defendant's] motion for stay does not identify any specific discovery requests that impose an undue burden or expense . . . .").

Ill. July 15, 2011); *see also New England Carpenters Health & Welfare Fund v. Abbott Labs.*, No. 12-cv-1662, 2013 WL 690613, at *1 (N.D. Ill. Feb. 20, 2013) ("[I]n most cases the existence of a dispositive motion is not the sole reason for granting the stay.").

The City does not appear to contend that its motion presents any such "threshold" issue. *See* Mot. 3 (noting without elaboration that discovery stays "are often appropriate . . . where the issue is a threshold one, such as jurisdiction, standing, or qualified immunity"). For good reason: Invoking mootness differs in material ways from challenging standing or claiming immunity. For example, standing and qualified immunity arise by design "very early in the proceedings." *Methodist Health Servs. Corp. v. OSF Healthcare Sys.*, No. 13-cv-1054, 2014 WL 1797674, at *2 (C.D. Ill. May 6, 2014).[3] Claims of mootness, by contrast, can surface at any point "during the course of the proceedings" and even "on appeal." *United States v. Quattrone*, 402 F.3d 304, 308 (2d Cir. 2005) (Sotomayor, J.). There are other differences too. For questions of standing or qualified immunity, for instance, the burden rests with the plaintiff to show that the litigation should proceed. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992); *Leiser v. Kloth*, 933 F.3d 696, 701 (7th Cir. 2019). For mootness, a "heavy burden" rests with the defendant to prove that it should not. *City of Chicago*, 405 F. Supp. 3d 748. Also unlike standing or qualified immunity, claims of mootness often introduce new facts—calling for more discovery, not less. *See* pages 6-7, above. For all these reasons, the City's mootness motion presents none of the considerations

[3] *See also Milwaukee Police Ass'n v. Bd. of Fire & Police Comm'rs*, 708 F.3d 921, 928 (7th Cir. 2013) ("Standing is evaluated at the time suit is filed."); *Cloverleaf Golf Course, Inc. v. FMC Corp.*, No. 11-cv-190-DRH, 2011 WL 2838178, at *2 (S.D. Ill. July 15, 2011) ("The basic thrust of the . . . qualified-immunity doctrine is to free officials from the concerns of litigation, including avoidance of disruptive discovery.") (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 685 (2009)).

that might favor a stay in other contexts. As in *Barron*, in fact, the City has pointed to no instance in which a court of this Circuit has ever stayed a case like this one.

B. The City's motion to stay is premature.

Separately, a stay would also be procedurally unsound. As Plaintiffs noted in November, a scheduling and discovery order has yet to be entered in this case. Pls.' Mot. Scheduling Conference 1 (ECF 20). Seemingly for that reason, the City has declined to participate in a 26(f) conference, Gedge Decl. Ex. 1, at 1, meaning that discovery has yet to commence, *see* Fed. R. Civ. P. 26(d)(1). That makes the City's stay motion premature and subject to summary denial. *See Eastman v. Larson*, No. 18-cv-543-DRH-DGW, 2018 WL 4002601, at *2 (S.D. Ill. Aug. 22, 2018) ("[N]o scheduling or discovery order has been entered in this case. Therefore, at this time [the plaintiff's] motion to stay is premature.") (citation omitted).

C. Because there is no basis to stay the related *Barron* case, this case should not be stayed either.

There is a final, practical reason for denying the City's motion. As the *Barron* plaintiffs explained in a brief filed earlier today, a stay in that case would prejudice the plaintiffs, the public, and the orderly progress of the litigation. Pls.' Resp. Def.'s Mot. Stay (*Barron*) 8-13 (ECF 47). Given the similarity between the two cases, all parties appear to agree that judicial economy would be best served by consolidating them. Mot. Consolidate (ECF 5); Resp. Mot. Consolidate (ECF 17). If the Court denies the City's stay request in *Barron*, it should thus do the same here as a matter of course.

CONCLUSION

For the foregoing reasons, Granite City's motion to stay should be denied.

Dated: January 2, 2020.

Respectfully submitted,

s/Samuel B. Gedge

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CERTIFICATE OF SERVICE

I hereby certify that on January 2, 2020, I electronically filed this Plaintiffs' Response to Defendant's Motion to Stay (along with the accompanying declaration and exhibits) using the CM/ECF system, which will send notification of such filing to the following:

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