



IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

SPENCER COLLIER,

Plaintiff

v.

ROBERT BENTLEY; *et. al.*

Defendants.

03-CV-2016-900538

**COLLIER'S RESPONSE TO
DEFENDANT REBEKAH MASON'S MOTION TO STAY**

Plaintiff Collier and his attorney acknowledge that there are ongoing criminal and ethics investigations into possible crimes committed by Mason that overlap with the allegations in this civil case. Collier recognizes that Mason is entitled to plead the 5th Amendment, remain silent and not be compelled to provide discovery at this time in this civil case. Based on representations from the attorneys for Defendant RCM, Mason's company, that Mason would be the corporate representative and the person to respond to any discovery, Collier concedes that RCM should not at this time be required to respond to any discovery request by Collier. However, Mason has no legal right to claim that the entire case be stayed. *Ex parte Ebbers*, 871 So.2d 776 (Ala. 2003); *Ex parte Price*, 698 So.2d 111 (Ala. 1997).

The pertinent facts in *Ebbers* are very similar to this case. Bernie Ebbers was the President and CEO of WorldCom and was responsible for WorldCom's collapse. He and several others were sued in the Montgomery County by the Retirement Systems of Alabama. Ebbers, like Mason here, moved to stay the civil case because there were parallel criminal investigations

into his illegal conduct. The Supreme Court ordered that the civil case be stayed as to Ebbers, but refused to stay the entire case. In doing so, the Court stated the following:

While sometimes it is appropriate to stay an entire civil proceeding, rather than just as to the party moving for the stay, there are also situations where the right against self-incrimination can be adequately protected while the civil case proceeds in some limited way. *Price I*, 698 So.2d at 112 (“Certainly, it appears that discovery not requiring [the civil defendant] either to testify or produce documents could continue without putting [the defendant] in a position that might call for him to incriminate himself in order to comply.”); *Oliver*, 864 So.2d at 1067 (“It appears that the trial court balanced the interests of the parties and concluded that the civil action could proceed in a limited way.... Therefore, we cannot say that [the individual defendant, sued along with several entities] has established a clear legal right to the relief requested.”).

Id. at 788.

Similarly, in *Price*, the Supreme Court held “it is clear that [Defendant’s] Fifth Amendment rights can be adequately protected while the case proceeds in some limited way. Certainly, it appears that discovery not requiring [Defendant] either to testify or to produce documents could continue without putting [Defendant] in a position that might call for him to incriminate himself in order to comply.”

There is absolutely no reason why this case cannot proceed forward as it relates to the other Defendants. In fact, discovery has been moving forward without Mason. Specifically, Collier has sought and obtained discovery from Defendant Stabler and Stabler has sought and obtained discovery from Collier. There are several parties and numerous witnesses that need to be deposed which can be done without affecting Mason’s 5th Amendment rights. It is very important in every case and particularly true here that the testimony of the witnesses be recorded as early as possible. Collier should not be required to wait until the criminal cases against Mason are concluded to document the witnesses’ testimony. Defendant Mason’s interests against self-

incrimination can be adequately protected by proceeding with the case without her testimony or production of documents.

Collier respectfully submits that while Mason is entitled to remain silent she is not entitled to stay the entire proceedings.

/s/ Kenneth J. Mendelsohn
Kenneth J. Mendelsohn (MEN 001)
Attorney for Defendant

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CERTIFICATE OF SERVICE

I hereby certify that on this, the 11th day of August, 2016, a true and correct copy of the foregoing pleading has been served via electronic filing and/or email on all parties of record.

/s/Kenneth J. Mendelsohn
OF COUNSEL