

Not Reported in F.Supp., 1997 WL 150114 (D.Kan.)
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United States District Court, D. Kansas.
SITHON MARITIME COMPANY, Plaintiff,
v.
HOLIDAY MANSION, et al., Defendants.
No. CIV.A. 96-2262-EEO.

March 26, 1997.

[Lee M. Smithyman](#), [Smithyman & Zakoura, Chtd.](#), Overland Park, KS, [Michael G. Chalos](#), [Richard M. Ziccardi](#), [George J. Tsimis](#), New York City, for **Sithon Maritime Co.**

[Norman R. Kelly](#), Norton, Wasserman, Jones & Kelly, Salinas, KS, [Anthony F. Rupp](#), [Andrew M. DeMarea](#), Shughart, Thomson & Kilroy, Overland Park, KS, for **Holiday Mansion**.

[John C. Aisenbrey](#), Stinson, Mag & Fizzell, P.C., Kansas City, MO, [Alex B. Marconi](#), [Patrick X. Fowler](#), Snell & Wilmer, L.L.P., Phoenix, AZ, for Mercury Marine.

MEMORANDUM AND ORDER

[RUSHFELT](#), Magistrate Judge.

*1 The court has before it Mercury Marine's Motion for Protective Order Staying Discovery (doc. 69). Pursuant to [Fed.R.Civ.P. 26\(c\)](#), it asks for a stay of all discovery until the court has ruled upon a pending motion for summary judgment which defendant Mercury Marine filed March 24, 1997. If granted, the stay would postpone ten depositions now set for various dates in April 1997 in Belgium, Greece, and Overland Park, Kansas. Defendant Mercury Marine suggests that a stay of discovery would reduce for it the expense of unnecessary discovery and thus promote the aims of Rule 1. It argues that its motion for summary judgment will dispose of all claims which plaintiff has directed against it. Plaintiff opposes the motion for protective order, on the other

hand, upon grounds of untimeliness and failure of the defendant to show good cause for it. Defendant **Holiday** has not responded to the motion.

A motion for protective order addresses the discretion of the court. The arguments of the parties raises competing priorities either to avoid unnecessary expense at the risk of delay or to preserve the integrity of a schedule which will allow this case to proceed to trial on October 6, 1997. The court tries to balance these competing interests to achieve the fairest result for all the parties.

As plaintiff has noted, the court has developed a general policy not to stay discovery because dispositive motions are pending. A different policy would lead to a large number of unnecessary delays, particularly when many dispositive motions are denied either in whole or in part. A party seeking a protective order for any reason, of course, carries the burden to show good cause for such request. [Fed.R.Civ.P. 26\(c\)](#).

Plaintiff filed its complaint June 3, 1996. On August 26, 1996, the court conducted a scheduling conference. It adopted a schedule for discovery and other pretrial procedures consistent with a report of the earlier planning meeting of counsel and their further requests for some extended deadlines. The court incorporated these deadlines into its Scheduling Order of September 5, 1996, as follows: June 16, 1997, for completion of discovery; May 15, 1997, for final lists of witnesses and exhibits; July 2, 1997, for dispositive motions. It also set the final pretrial conference for July 22 and trial for October 6, 1997.

The court notes the motion for summary judgment, filed by defendant Mercury Marine on March 24, 1997. It addresses all nine counts of the complaint. If the court were to grant summary judgment to Mercury Marine, the claims of plaintiff would nevertheless remain against the co-defendant **Holiday Mansion**. The parties should be accorded the opportunity to complete discovery and to file final lists of witnesses and exhibits and any other dispositive motions within the deadlines set by the Scheduling Order.

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Mercury Marine itself would still remain in the case as defendant to the crossclaim of **Holiday Mansion**, moreover, even if its motion for summary judgment were granted. That crossclaim asks for judgment against Mercury Marine upon several theories. It seeks relief for breach of an express warranty and for negligence. It also asks for indemnity for breaches of warranties and “other contractual duties.”

*2 The court finds that defendant Mercury Marine has not met its burden to show good cause for a protective order, as required by [Fed.R.Civ.P. 26\(c\)](#). It further finds that fairness to all three parties will more likely be achieved by denying the requested stay. For the foregoing reasons the court overrules Mercury Marine's Motion for Protective Order Staying Discovery (doc. 69). The court finds it would be unjust to award expenses; inasmuch as defendant did file its dispositive motion well in advance of the deadline for such a motion and has a legitimate cause in trying to avoid or reduce what will probably be fairly costly discovery.

IT IS SO ORDERED.

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Sithon Maritime Co. v. Holiday Mansion, a Div. of
Mohawk, Inc.
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