

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

BLACK & DECKER US INC.,

Plaintiff,

v.

No. 08-1002

**TECHTRONIC INDUSTRIES CO., LTD.,
TECHTRONIC INDUSTRIES NORTH
AMERICA, INC., ONE WORLD
TECHNOLOGIES, INC., OWT INDUSTRIES,
INC., and CHARLES IRWIN,**

Defendants.

**ORDER DENYING DEFENDANTS' JOINT MOTION TO STAY DISCOVERY OF
PLAINTIFF'S SCUTPA CLAIM AND CIVIL CONSPIRACY CLAIM PENDING
DISPOSITION OF DEFENDANTS' MOTIONS TO DISMISS**

Before the Court is Defendants' Joint Motion to Stay Discovery of Plaintiff's South Carolina Unfair Trade Practices Act ("SCUTPA") Claim and Civil Conspiracy Claim Pending Disposition of Defendants' Motions to Dismiss. (D.E.# 206). Defendants assert that the Court should make a legal determination of whether the claims may proceed before discovery is taken, and Defendants assert that a stay of discovery related to these claims would preserve judicial economy and avoid the burdens of engaging in unnecessary discovery. Plaintiff responds that Defendants have failed to demonstrate good cause and reasonableness for a stay of discovery and have failed to show that the burden of proceeding with discovery outweighs the prejudice to Plaintiff. The instant motion was referred to United States Magistrate Judge Charmiane G. Claxton for determination. For the reasons set forth herein, Defendants' Motion is DENIED.

I. Introduction

This case arises from allegations that Defendants, Techtronic Industries Co., Ltd. (“TTI Ltd.”), Techtronic Industries North America, Inc., (“TTI NA”), One World Technologies, Inc., (“OWT Inc.”), and OWT Industries, Inc. (“OWT Indus.”) (collectively “TTI”) and Charles Irwin (“Irwin”), an agent of TTI, recruited and hired away Timothy C. Smith (“Smith”), an engineer with Plaintiff Black & Decker (U.S.), Inc. (“B&D” or “Plaintiff”). On July 11, 2008, Plaintiff filed its Second Amended Complaint alleging that Smith “surreptitiously copied and downloaded onto at least one external computer storage device a large portfolio of B&D Protected Information, including product design and other competitively sensitive information, with the specific intent of using that information in connection with his new job at TTI.” Pl.’s Compl. ¶ 11. Plaintiff further alleges that, over his employment period, Smith referred to at least forty-seven files of B&D Protected Information and that TTI imaged and/or placed a copy of B&D’s Protected Information on one of its corporate servers. Id. ¶¶ 11-12.

The Second Amended Complaint seeks damages for violations of the South Carolina Trade Secrets Act (Count 1), the Computer Fraud and Abuse Act (Count 3), the South Carolina Unfair Trade Practices Act (Count 9), conversion (Count 2), tortious interference with contractual relations (Count 4), unjust enrichment (Count 5), and civil conspiracy (Count 7), and requests that a constructive trust be imposed (Count 6). On August 4 and 11, 2008, TTI and Irwin filed respective Motions to Dismiss B&D’s Second Amended Complaint. On October 21, 2008, Plaintiff filed a Third Amended Complaint, containing the same causes of action and claims for relief. On November 3, 2008, Irwin filed a Renewed Motion to Dismiss Plaintiff’s Third Amended Complaint.

On February 10, 2009, Defendants filed the instant Joint Motion to Stay Discovery of

Plaintiff's SCUTPA and Civil Conspiracy Claims Pending the Resolution of Defendants' Motion to Dismiss, in advance of the commencement of Phase 2 of discovery, which would allow discovery to begin on the SCUTPA and civil conspiracy claims.

On March 11, 2009, United States District Judge J. Daniel Breen entered an Order Granting in Part and Denying in Part Defendants' three respective Motions to Dismiss. In this Order, the Court dismissed Plaintiff's SCUTPA claim but refused to dismiss Plaintiff's civil conspiracy claim. On March 17 and 23, 2009, Irwin and B&D filed respective Motions for Reconsideration of the Order Granting in Part and Denying in Part Defendants' Motions to Dismiss. In Irwin's Motion for Reconsideration, he asserts that the civil conspiracy claim must be dismissed as a matter of law and, in the alternative, requests the Court to certify this issue for interlocutory appeal to the United States Court of Appeals for the Sixth Circuit. In B&D's Motion for Reconsideration, it asserts that the SCUTPA claim should not have been dismissed and, in the alternative, requests that this Court certify the question of law to the South Carolina Supreme Court. Both Motions for Reconsideration are currently pending before the District Court.

II. Analysis

The sole issue presented in the instant motion is whether the Court should stay discovery of Plaintiff's SCUTPA and civil conspiracy claims. At the time the instant motion was filed, Defendants requested a stay until the Motions to Dismiss were determined. The Court has since entered its ruling upon the Motions to Dismiss, which allowed Plaintiff to proceed with its civil conspiracy claim but dismissed Plaintiff's SCUTPA claim. Thus, Defendants' motion to stay pending the resolution of the motions to dismiss must be deemed as moot.

Even if the Court were to construe the instant motion as one to stay discovery pending the Motions for Reconsideration, the Court is persuaded that Order Granting in Part and Denying in Part

Defendants' Motions to Dismiss provides ample guidance for a resolution of the issue. While it is true that courts possess the inherent power to stay discovery, a court should only grant such a stay upon the moving party's showing of good cause and reasonableness. See, e.g. Simpson v. Specialty Retail Concepts, Inc., 121 F.R.D. 261, 263 (M.D. N.C. 1988). "In ruling upon a motion to stay, the Court is required to weigh the burden of proceeding with discovery upon the party from whom the discovery is sought against the hardship which would be worked by a denial of discovery." Nabi Biopharm. v. Roxane Labs., Inc., No. 2:05-cv-0889, 2006 U.S. Dist. LEXIS 76514, at *3 (S.D. Ohio Oct. 20, 2006).

In the instant case, the Court has already determined that Plaintiffs civil conspiracy claim is appropriate but that Plaintiffs SCUTPA claim should be dismissed. Although the Court is currently considering the Motions for Reconsideration on these issues, the Court finds that sufficient resolution of the issues exists to allow discovery to proceed according to the Scheduling Order. In light of the Court's Order Granting in Part and Denying in Part Defendants' Motions to Dismiss, the Court finds that the hardship that would be created by permitting a stay of discovery greatly outweighs any burden to Defendants of proceeding with discovery. Accordingly, the Court finds that no good cause exists for the stay, and Defendants' Joint Motion to Stay is hereby DENIED.

III. Conclusion

For the reason set forth herein, Defendants' Joint Motion to Stay Discovery of Plaintiff's SCUTPA and Civil Conspiracy Claims Pending Disposition of Defendants' Motion to Dismiss is hereby DENIED.

IT IS SO ORDERED this 22nd day of June, 2009.

s/ Charmiane G. Claxton
CHARMIANE G. CLAXTON
UNITED STATES MAGISTRATE JUDGE