IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

DISTRICT OF COLUMBIA, Plaintiff, v. 58th PRESIDENTIAL INAUGURAL COMMITTEE, *et al.* Defendants.	Civil Action No.: 2020 CA 000488 B Judge José López Next Event: Filing Dispositive Motions Date: April 8, 2021

THE DISTRICT OF COLUMBIA'S REPLY TO DEFENDANTS' JOINT OPPOSITION TO THE DISTRICT'S COMBINED MOTION TO EXTEND DISCOVERY DEADLINES AND MOTION FOR LEAVE TO CONDUCT ADDITIONAL DEPOSITIONS

The District of Columbia (the "District") files this Reply to Defendants' Joint Opposition to the District's Combined Motion to Extend Discovery Deadlines and Motion for Leave to Conduct Additional Depositions. Defendants baselessly place blame on the District for allegedly failing to obtain discovery on the recently-added second count in its First Amended Complaint and improperly assert that they will be prejudiced by any further discovery. As explained further below, it is Defendants who are largely to blame for the need for additional discovery, and their arguments are meritless and should be rejected.

I. The District Encountered Delays Beyond Its Control.

Defendants argue that "the District is solely responsible for its delayed pursuit of relevant discovery," Opp. at 8, but this assertion is simply not true. As explained in further detail in its Motion, one source of delay was the District's need to subpoena multiple entities to find the proper custodian of documents for the Loews Madison Hotel, and this process was prolonged because the hotel had suspended business operations as the result of the ongoing pandemic. *See* Mot. at 3. Contending with a business's status of operations during an unprecedented public health crisis creates more complexity than the mere "passage of time." *Saunders v. District of* Columbia, 279 F.R.D. 35, 38 (D.D.C. 2012).[1] Defendants also baselessly take credit for prompting the District's further discovery requests with no knowledge as to the District's own

[1] Defendants' reliance on *Saunders* is simply misplaced. The parties in *Saunders* had hardly engaged in any discovery, having merely "exchange[d] a first round of written discovery requests and responses" without taking a single deposition or exchanging expert disclosures. 279 F.R.D. at 37. Unlike the parties in *Saunders,* the District has been diligent in conducting discovery in this matter, which even Defendants acknowledge. Opp at 3 ("Over this nearly six-month period, the District has taken ten party depositions, split evenly among witnesses associated with the PIC and the Trump Defendants; served nine requests for production of documents, six interrogatories, and two requests for admission; and served six non-party subpoenas for documents.") (footnote omitted); Mot. at 3 (explaining District's efforts to conduct fact discovery on additional count in First Amended Complaint).

efforts to serve requests for documents to the proper entities. In light of the obstacles explained in further detail in its Motion, the District has demonstrated good cause to request a limited extension of the discovery period to issue additional document subpoenas aimed at additional custodians of relevant documents from the Loews Madison in order to form a complete record of the transaction between the hotel and the Trump Organization.

As the District previously argued in its Motion, Defendants themselves also created obstacles to full fact discovery on the Loews Madison contract. Specifically, the Trump Defendants refused to produce relevant communications to the District regarding the Loews Madison contract, then actually prepped at least one witness using these withheld documents, and now oppose the District's efforts to re-open discovery to obtain those documents. This smacks of gamesmanship. As made clear at the February 11, 2021 deposition of Donald Trump, Jr., counsel for the Trump Organization had shown Mr. Trump email communications that provide further context as to why the Trump Organization refused to pay the Loews Madison invoice and why the invoice was sent to the PIC. (*See* Dep. Tr. of Donald Trump, Jr., Ex. C to the District's Motion, 120:20-121:5.) These documents are relevant to the additional count in the District's First Amended Complaint and fall squarely within the ambit of the District's first request for production issued to the Trump Organization, but they were never produced to the District. Although the District made a request on the record during Mr. Trump's deposition for these emails to be produced, counsel for Mr. Trump objected and indicated that such emails could only be obtained through a request for production, but the deadline for issuing discovery requests had lapsed three days before. (*See id.*, 148:22-149:20). Under SCR-Civil 26(e)(1)(A), a party who has responded to a request for production "*must* supplement or correct" its response "in a timely manner if the party learns in some material respect the disclosure or response is

incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing" (emphasis added). Defendants cannot justifiably object to the District's request for limited additional discovery for the very documents that Defendants have failed to supplement under SCR-Civil 26(e)(1)(A).[2] Moreover, since the Trump Organization has represented it will produce these withheld documents in response to further document requests, the most practical path at this point is for the Court to re-open discovery.

II. Defendants Will Not Be Prejudiced by the District's Request for a Brief Extension of Discovery.

Defendants argue that they will be prejudiced because of the approaching deadline to file dispositive motions. However, the date for filing dispositive motions is not the proper benchmark in considering any potential delay to resolution of the case. Rather, courts traditionally look to the dates scheduled for mediation and for trial in considering delay. *See Mizrahi v. Schwarzmann*, 741 A.2d 399, 406 (D.C. 1999) (finding that the plaintiff's request for enlargement of the discovery period should have been granted in part because at the time the

[2] As counsel for the Trump Organization notes in her declaration, the District and the Trump Hotel agreed to custodians and search terms in response to its investigative subpoena at the time it was issued in 2019. However, after the Court denied the Trump Organization's Motion to Dismiss on the grounds that the District did not have personal jurisdiction, on September 15, 2020, the District issued a request for production of documents to the Trump Organization that requested all documents responsive to both pre-suit investigative subpoenas that were issued to the Trump Organization and attached as exhibits to the request for production. The District and the Trump Organization did not discuss **any** limitations on the search terms or custodians for this production of documents, nor does the Trump Organization counsel's declaration indicate that such a subsequent agreement occurred. The documents are specifically responsive to Request No. 6 of the March 1, 2019 subpoena: "all communications in the Trump Organization's possession relating to any negotiations or agreements with, or on behalf of, the Committee, including for any services at the Trump International Hotel." The arrangement between the PIC and the Trump Organization for the PIC to pay the Trump Organization's debt is clearly one such agreement. Moreover, agreement to search terms does not negate a party's obligation to supplement under SCR-Civil 26(e).

plaintiff filed its request, "[s]cheduled mediation remained more than a month away, with actual trial considerably further in the future"); *Dada v. Children's Nat'l Medical Ctr.*, 715 A.2d 904, 909 (D.C. 1998) (finding that plaintiff's motion for enlargement of time filed more than two months before scheduled mediation would not have caused delay); *Hackney v. Sheeskin*, 503 A.2d 1249, 1253, 1254 (D.C. 1986) (finding no prejudice to opposing party in part because no trial date or pretrial date had been set). At the time the District filed its motion to extend discovery, approximately four months remained until scheduled mediation, and no trial date has been set. As such, the District will not "upend the entire case schedule." Opp. at 10. Defendants cannot therefore reasonably argue that the District's request for a brief, limited discovery period will delay resolution of the case and thereby prejudice Defendants. This extension will not delay final resolution of the case and will provide the court further context with which to decide the case on the merits.[3]

III. The District's Discovery Plan Was Adequate.

Defendants are also wrong that the District did not provide a sufficiently specific discovery plan. In addition to the email communications identified above and the PIC emails identified in the Hunter Warfield production, the District requested up to three additional depositions. The District did not identify specific witnesses in its motion as a practical reflection of the fact that its requested additional discovery also includes document productions which may clarify the best specific witnesses. Pending those additional document productions, the District

[3] Defendants also assert that they did not oppose the motion to amend the Complaint because the District represented that there would be no delay. Rather, the District represented that there was no dilatory *motive* in moving to amend the Complaint. The District had already engaged in efforts to obtain discovery on the second count and worked diligently to issue follow-up discovery requests as set in the scheduling order.

intends to depose the following three individuals as part of the limited extension of the discovery period:

- First, the District will depose Allen Weisselberg, the Chief Financial Officer of the Trump Organization and one of three individuals who controlled the trust into which Donald J. Trump's business assets were placed in January 2017. (*See* Dep. Tr. of Donald Trump, Jr., 81:18-82:3.) Heather Martin testified that she communicated with Mr. Weisselberg in the spring of 2017, "a few months after the inauguration," but could not explain why Mr. Weisselberg, who had no known affiliation with the PIC, would request to review the PIC's financials. (Dep. Tr. of Heather Martin, Ex. A to District's Motion, 153:22-155:14.) The PIC provided Mr. Weisselberg with "the full slate of expenses by category." (Dep. Tr. of Richard Gates, Ex. B to District's Motion, 306:8-17.) Upon reviewing the PIC's budget reports, Mr. Weisselberg would have seen that the PIC had funds leftover. The decision for the Trump Organization to punt its debt to the Loews Madison over to the PIC occurred in July 2017, after Mr. Weisselberg had reviewed the PIC's financials. As a *de facto* representative of Donald Trump's business interests during the relevant period, Mr. Weisselberg may have information relevant to why the PIC's funds were used to pay a debt of the Trump family's business.
- Second, the District will depose Gentry Beach, a friend of Donald Trump, Jr. and the individual whose name appears on the signature line for the Trump Organization in its contract with the Loews Madison. Defendants have not been able to explain why his name appears on the contract on behalf of the Trump Organization when he was not an employee of the Trump Organization and not authorized to sign a contract on behalf of the Trump Organization.
- Third, the District will depose Kara Hanley, a former executive assistant at the Trump Organization who communicated directly with the collection agency regarding the Trump Organization's debt to the Loews Madison.

All of these individuals appear to be located outside of the Court's 25-mile radius within which a witness can be subpoenaed to testify per SCR-Civil 32(a)(4). As such, allowing the District to depose these witnesses will also preserve their testimony for trial in the event they refuse to appear willingly.

Conclusion

For the foregoing reasons, as well as those set out in the District's Motion, the Court should grant a limited extension of discovery to allow the District thirty days to issue additional document discovery and take up to three depositions.

Dated: March 15, 2021

Respectfully submitted,

KARL A. RACINE
Attorney General for the District of Columbia

KATHLEEN KONOPKA
Deputy Attorney General
Public Advocacy Division

/s/ Jimmy R. Rock
JIMMY R. ROCK (D.C. Bar No. 493521)
Assistant Deputy Attorney General
Public Advocacy Division

/s/ Jennifer Jones
JENNIFER JONES (D.C. Bar No. 1737225)
Senior Trial Counsel
Public Advocacy Division

/s/ Nicole Hill
NICOLE HILL (D.C. Bar No. 888324938)
MATTHEW JAMES (D.C. Bar No. 1632202)
LEONOR MIRANDA (D.C. Bar No. 1044293)
Assistant Attorneys General
Office of the Attorney General for the
District of Columbia
400 6th Street, N.W., 10th Floor
Washington, D.C. 20001
(202) 727-4171 Phone
(202) 741-8871 Fax
Leonor.Miranda@dc.gov
Nicole.Hill@dc.gov
Matthew.James2@dc.gov

CERTIFICATE OF SERVICE

I hereby certify that on March 15, 2021, I caused to be served true and correct copies of the foregoing Reply to Defendants' Joint Opposition to the District's Combined Motion to Extend Discovery Deadlines and Motion for Leave to Conduct Additional Depositions on all counsel of record via CaseFileXpress.

/s/ Nicole Hill
NICOLE HILL
Assistant Attorney General