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6-7-2016

Morris Hardwick Schneider LLC et al Order  
Denying US's Mtn to Intervene and Stay

Melvin K. Westmoreland  
*Fulton County Superior Court, Judge*

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**IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA**

MORRIS HARDWICK SCHNEIDER, LLC,	)	
and LANDCASTLE TITLE, LLC,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action File No.: 2014CV250583
	)	
NATHAN E. HARDWICK IV, and DIVOT	)	
HOLDINGS, LLC,	)	
	)	
Defendants.	)	

**ORDER DENYING THE UNITED STATES’S MOTION  
TO INTERVENE AND STAY DISCOVERY**

This matter is currently before the Court on the United States Motion to Intervene and Stay Discovery. Having considered the briefs submitted, the oral arguments presented at the May 24, 2016, hearing and the post-hearing briefing, the Court finds as follows:

The United States has indicted Defendant Nathan Hardwick for stealing money from Morris Hardwick Schneider, LLC’s (“MHS”) operating accounts and attorney escrow accounts in excess of MHS profits to which he was entitled. In this case, Plaintiffs MHS and Landcastle Title, LLC make similar allegations against Hardwick—namely that Hardwick depleted firm operating and client escrow accounts for his own personal benefit. The United States seeks a stay of discovery until the criminal case is resolved and while both Plaintiffs consent, Hardwick opposes the Motion.

O.C.G.A. § 9-11-24 (a) allows for intervention of right if there is a statutory basis to do so or when the applicant “claims an interest relating to the property or transaction which is the subject matter of the action and is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant’s interest in

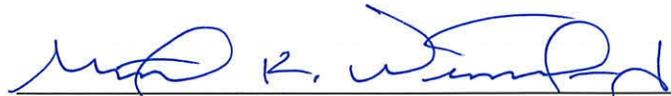
adequately represented by existing parties.” O.C.G.A. § 9-11-24(b) allows for a party to timely apply for permissive intervention if there is a statutory basis to do so or if the applicant’s claim or defense and the main action have a question of law or fact in common. “In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.” O.C.G.A. § 9-11-24(b). Additionally, the court shall consider other relevant circumstances such as the degree to which the intervenor would be affected by the outcome in the underlying case.” *Branch v. Maxwell*, 203 Ga. App. 553, 554(1) (1992); see also *Allgood v. Ga. Marble Co.*, 239 Ga. 858, 859 (1977).

The United States does not seek to intervene to pursue its rights against Hardwick in this action, but instead argues intervention is necessary to protect the integrity of its federal criminal prosecution. Presumably, the United States will continue to prosecute Hardwick in the criminal action whether or not intervention is allowed and this action stayed. Further, the United States will not be estopped from criminally prosecuting Hardwick regardless of the outcome of this civil action. The United States speculates Hardwick will gain some advantage in his criminal defense by conducting civil discovery. Specifically, the United States argues Hardwick will be able to circumvent the restrictions of the Jencks Act, 18 U.S.C. § 3500, by deposing witnesses in this civil action who may be called as witnesses in the criminal action. The Jencks Act prohibits a criminal defendant from compelling the United States to produce witness or potential witness statements until after the United States has called that witness to testify on direct examination. Hardwick’s attorneys have stated they do not plan to question witnesses in the civil action about statements made to law enforcement or prosecutors in the criminal action and will not request the witness statements through civil discovery. Further, the United States will not lose its right to withhold its witness statements even if Hardwick deposes individuals in the civil action. Thus,

the Court finds the United States will not be unduly affected by ongoing discovery or the ultimate outcome in the civil action and have presented no special circumstances justifying a stay.

In contrast, Hardwick claims he will be prejudiced in this civil action should the Court allow the intervention and stay the case. Georgia's Civil Practice Act must be construed "to secure the just, speedy, and inexpensive determination of every action." O.C.G.A. § 9-11-1. Hardwick asserts fading memories could prejudice him in the civil action and argues the criminal action may take well over a year to be tried to a verdict. Hardwick wishes to proceed with his defense and counterclaim in the civil matter despite the fact he has invoked his Fifth Amendment right against self-incrimination in response to discovery sought by Plaintiffs and cognizant the factfinder may draw adverse inferences against him at a trial on the merits. The Court finds the potential delay and prejudice to Hardwick in this civil case outweighs the United States' concerns regarding interference with its prosecution of Hardwick and there has not been a sufficient showing by the United States to allow an intervention and justify a stay. As such, the Motion To Intervene and Stay Discovery is **DENIED**.

**SO ORDERED, this 6th day of June, 2016.**

  
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HON. MELVIN K. WESTMORELAND, JUDGE  
Fulton County Superior Court – Business Case Division  
Atlanta Judicial Circuit

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