

IN THE CIRCUIT COURT OF HANCOCK COUNTY, WEST VIRGINIA

**WINE AND BEVERAGE MERCHANTS
OF WEST VIRGINIA, INC.; ATOMIC
DISTRIBUTING COMPANY;
BEVERAGE DISTRIBUTORS, INC.;
PHILLIP JAY SHIFFLETT; JO'S GLOBE
DISTRIBUTING COMPANY; and
MARTIN DISTRIBUTING COMPANY,**

Plaintiffs,

v.

CASE NO.: 17 – C - 91

Presiding Judge: Hon. James Young

Resolution Judge: Hon. Paul Ferrell

**MOUNTAIN STATE BEVERAGE, INC.;
MOUNTAIN EAGLE, INC.; NORTHERN
EAGLE, INC.; WILLIAM J. RUCKER, JR.;
SCOTT PARKES; and JOHNSON
BROTHERS LIQUOR COMPANY,**

Defendants.

ORDER GRANTING DEFENDANTS' MOTION TO STAY DISCOVERY
PENDING RESOLUTION OF MOTION TO DISMISS AND STAYING
SUBPOENAS

This matter came before the Court upon Defendants' motion to stay discovery pending resolution of motion to dismiss filed on August 14, 2017. Plaintiffs filed a response in opposition to defendants' motion on September 13, 2017. Defendants filed a reply on November 13, 2017. Also before the Court are the Wine Group, Inc.'s objections and motion to quash and/or modify plaintiff's July 19, 2017 subpoena and Sutter Home Winery, Inc. dba Trinchero Family Estates erroneously served as Trinchero Family

Estates, Inc.'s objections and motion to quash and/or modify plaintiff's July 19, 2017 subpoena both filed on August 29, 2017.

After reviewing these aforementioned motions the Court finds as follows:

While some limited discovery between the parties has been undertaken, at this point, discovery has not been extensive. Further, the Court recognizes that discovery in a matter such as this could be costly and time consuming. Finally, the Court notes that Defendants' motion to dismiss is scheduled for hearing on November 28, 2017.

In considering the procedural posture of the case, weighing the above-mentioned factors, and considering the fairness to all the parties involved, the Court finds good cause to **GRANT** Defendants' motion to stay discovery until Defendants' motion to dismiss is heard on November 28, 2017.

As for the two above-mentioned objections and motions to quash subpoenas, the Court **ORDERS** that these subpoenas be stayed until Defendants' motion to dismiss is heard on November 28, 2017. As discussed during the November 7, 2017 telephonic status conference, the Court will hear the two objections and motions to quash subpoena in the event Defendants' motion to dismiss is denied at the November 28, 2017 hearing.

Finally, regards to electronically stored information (ESI), all parties and counsel shall cooperate and work diligently to agree upon the methods and conduct for discovery of electronically stored information.

All counsel are required to be informed of and understand to a reasonable degree of their client's information management systems and electronically stored information processes including how information is stored and retrieved. An attorney's lack of

knowledge will not be considered as an excuse by this Court in ruling upon a motion to compel or a motion for discovery sanctions.

A party has an obligation to take reasonable and proportional steps to preserve discoverable information in the party's possession, custody, or control. The Court may issue sanctions for spoliation, the intentional or negligent destruction, or failure to preserve relevant electronically stored information. A party may move for an order to preserve electronically stored information upon a showing that the continuing existence and integrity of the information is threatened.

All requests made pursuant to Rule 34 of West Virginia Rules of Civil Procedure shall be construed to include information contained or stored in an electronic medium, regardless of format, unless otherwise stated.

Unless otherwise agreed upon, all production of electronically stored information shall be either in hard copy form or in the form of a compact disk (CD) utilizing a format best suited for viewing the information by the requesting party and reasonably accessible to the producing party. If the parties are unable to agree upon a format, the Court will rule upon the type of format to be used for a particular category or all discovery of electronically stored information.

If any party intends to utilize an electronic search of another party's electronically stored information or if any other issue regarding electronically stored information arises between the parties, then all counsel and pro se parties shall hold a conference. The requesting party shall give reasonable notice to all parties, and all counsel and pro se parties shall be present. The conference must be held at least 40 days prior to the completion of discovery, as set by the scheduling order in this matter.

At the conference, all counsel and pro se parties shall use their best efforts to reach an agreement as to the method of search, the scope of the search, the amount of searching, and the words, terms, or phrases to be used. All counsel and pro se parties shall utilize this conference to resolve all remaining electronic discovery issues such as the allocation of discovery costs for material not readily accessible, form of production, etc.

If, during a search or otherwise, electronically stored information that contains privileged information or attorney work product is inadvertently released in whole or part, then

- a. If the information, document, or material, on its face, appears to be privileged or attorney work product, it shall be immediately returned,
- b. If notice of the inadvertent disclosure is given, it shall be returned as soon as practicable, and in no case later than 10 days.

Upon returning the privileged or attorney work product material, any person to whom it has been disclosed, must destroy any copies, notes, or information derived from the material. The filing of a motion for protective order or to compel or other similarly related motion shall not affect this order.

It is, therefore, **ADJUDGED** and **ORDERED** that:

1. Defendants' motion to stay discovery is **GRANTED**,
2. The two aforementioned disputed subpoenas are **STAYED**,
3. These matters will be taken up at the hearing scheduled for **November 28, 2017**.

Enter this 15th day of November, 2017.

ORDER
ENTER:

James H. Young, Jr.

HONORABLE JAMES H. YOUNG, JR.

A TRUE COPY

Attests

Charles R. Wright

Clerk, Circuit Court, Hancock County

Deputy