

In the Circuit Court of Marion County, West Virginia

**American Bituminous Power
Partners, LP,**
Plaintiff,

v.

Case No. CC-24-2018-C-130
Judge Michael Lorensen

**Horizon Ventures of West Virginia,
Inc.,**
Defendant

ORDER DENYING DEFENDANT'S MOTION TO STAY PROCEEDINGS

This matter came before the Court this 8th day of February, 2023, upon Defendant Horizon Ventures of West Virginia, Inc.'s Motion to Stay Proceedings. The Plaintiff, American Bituminous Power Partners, L.P., by counsel, Roberta F. Green, Esq., and Defendant, Horizon Ventures of West Virginia, Inc., by counsel, Mark A. Kepple, Esq., have fully briefed the issues necessary. The Court dispenses with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

FINDINGS OF FACT

1. Upon remand from the West Virginia Supreme Court of Appeals, this Court held a hearing/scheduling conference on November 14, 2022, and set the above-captioned civil action for trial on February 27, 2023 by Order entered December 2, 2022. At this same hearing, and by this same Order, the Court denied Defendant's request and motion for additional discovery.
2. After a motion to reconsider the ruling on additional discovery was briefed, this Court denied such motion by Order entered December 29,

2022.

3. On or about January 27, 2023, Defendant filed a Writ of Prohibition with the Supreme Court of Appeals of West Virginia, in response to this Court's ruling denying Horizon's motion for additional discovery in this matter. See Def's Mot., p. 1.
4. Subsequently, on February 1, 2023, Defendant filed the instant Motion to Stay Proceedings, requesting that this Court, in its discretion under West Virginia Code §53-1-9, suspend the proceedings in this civil action, namely due to the "various trial-related deadlines coming up, including, but not limited to, pre-trial conference memoranda,...the Pre-Trial Conference set for February 17, 2023, and the trial itself, which is set for February 27, 2023." See Def's Mot., p. 1.
5. Also on February 1, 2023, this Court entered a Scheduling Order on the motion to stay, giving Plaintiff one week to file a response.
6. On February 7, 2023, Plaintiff filed AMBIT's Opposition to Motion to Stay, rehashing its arguments against Defendant's request for additional discovery, and alleging that Horizon "delayed" filing its writ of prohibition until January 27, 2023, which causes the request for stay so close to trial to cause prejudice to AMBIT. See Pl's Resp., p. 2.

The Court finds the issue ripe for adjudication.

CONCLUSIONS OF LAW

Rule 16(j) of the West Virginia Rules of Appellate Procedure states as follows:

(j) Rule to Show Cause. If the Supreme Court determines to issue a rule to show cause, the Clerk shall so notify the parties. Unless otherwise provided, the issuance of a rule to show cause in prohibition stays all further proceedings in the underlying action for which an award of a writ of prohibition is sought.

W. Va. R. App. P. 16.

Further, West Virginia Code § 53-1-9 governs suspension of proceedings where prohibition is applied for. West Virginia Code § 53-1-9 states, in pertinent part: “On petition for a writ of prohibition, the circuit court...may, at any time before or after the application for the writ is made, if deemed proper, make an order... suspending the proceedings sought to be prohibited until the final decision of the cause.”W. Va. Code Ann. § 53-1-9 (West).

First, here, as of the date of the entry of this Order, there has been no evidence submitted to this Court or contained in this action’s case file that the Supreme Court has issued a rule to show cause. Therefore, a stay under Rule 16 is unwarranted.

Second, further, in its discretion under §53-1-9, the Court does not find that a stay of proceedings would be proper. The Court considers that Rule 16 of the Rules of Appellate Procedure provides for a stay only in the case of an issuance of a rule to show cause. The Court considers that the very procedural rule governing a petition for writ of prohibition clearly contemplates that a stay should be issued only if the West Virginia Supreme Court issues a rule to show cause. The Court acknowledges that the Pre-Trial and Trial dates are approaching. However, the Court finds and concludes that in the interest of judicial economy, justice would best be served by not staying the proceedings at this stage. If the Supreme Court issues a rule to show cause, of course the matter will be stayed. If the Court does not issue a rule to show cause, the Court concludes the proper course is for this matter shall be on course to its final resolution. In sum, the Court does not “deem proper” a stay under its consideration of the facts, the procedural posture of this case, and the Court’s discretion under West Virginia Code § 53-1-9.

CONCLUSION

It is hereby ADJUDGED and ORDERED that Horizon Ventures of West Virginia Inc.'s Motion to Stay Proceedings is hereby DENIED. The Court notes the objections and exceptions of the parties to any adverse ruling herein. The Court directs the Circuit Clerk to distribute attested copies of this order to all counsel of record, and to the Business Court Central Office at West Virginia Business Court Division, 380 West South Street, Suite 2100, Martinsburg, West Virginia, 25401.

ENTER: February 8, 2023

/s/ Michael Lorensen
Circuit Court Judge
16th Judicial Circuit

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit www.courtswv.gov/e-file/ for more details.