

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIVIL DIVISION

JOHN WILLIAM LICCIONE,

Plaintiff,

v.

Case No.: 24-003939-CI

JULIE MARCUS, et al.

Defendants.

DEFENDANT CATHY SALUSTRI LOPER'S
RESPONSE TO MOTION TO LIFT STAY

Defendant Cathy Salustri Loper ("Loper") objects in part to Plaintiff's Motion to Lift Stay (Dkt. No. 122). Loper consents and agrees to this Court proceeding with consideration of Loper's Anti-SLAPP defenses to the pending First Amended Complaint ("FAC") (Dkt. No. 14). Otherwise, Loper opposes the Motion to Lift Stay, for the following reasons:

Background

This is the third lawsuit Plaintiff has filed concerning a 2024 primary election, in which Plaintiff unsuccessfully sought the Democratic Party nomination for Florida's 13th Congressional District. The first case, *Liccione v. Pinellas Democratic Executive Committee*, Case. No. 24-002994-CI (Fla. 6th Cir. Ct.) (the "PDEC Case"),¹ was filed July 3, 2024. The second case, originally styled *Liccione v. Marcus*, Case No. 8:24-cv-02005-SDM-NHA (M.D. Fla.) (the "Federal Case"), was filed August 23, 2024. The third case – this one – was filed September 3, 2024. In these three lawsuits, Plaintiff blames his election loss on various people, agencies and

¹ Copies of documents from Plaintiff's other litigation and related materials are included in a Notice of Filing ("NOF") that Loper is submitting contemporaneously with this response. Loper asks that the Court take judicial notice of the records in the PDEC Case and the Federal Case. *See* Fla. R. Civ. P. 90.202(6).

business, including the Governor of Florida, the Florida Secretary of State, the Pinellas County Supervisor of Elections, the supervisor's general counsel, the Palm Beach County Supervisor of Elections, an election software company's CEO, ten John and Jane Doe defendants, the Pinellas Democratic Executive Committee, the committee chair and secretary, the Florida Democratic Party, and various media organizations, including two newspapers. *See* Federal Case Verified First Amended Complaint (the "Federal Complaint") (NOF Exhibit 1) ¶¶ 6-14, 64-66 & 70-72; PDEC Case Complaint (NOF Exhibit 4) ¶¶ 3-7, 39-42; PDEC Case First Amended Complaint (NOF Exhibit 5) ¶¶ 4-6, 20, 24. Loper is identified as the owner and editor of one of those newspapers, *The Gabber*, a local publication in Gulfport. FAC ¶ 8.

In response to the First Amended Complaint in this case, Loper invoked her rights under Section 768.295, Fla. Stat. (2024), the Florida Anti-SLAPP Statute. Dkt. No. 41. On November 4, 2024, this Court moved to stay this case, noting that the Federal Case and this one involved many of the same defendants, some of the same claims, and the same nucleus of facts. Dkt. No. 85. Loper did not oppose a stay, subject to her "right to an expeditious resolution" of her Anti-SLAPP motion "at the earliest possible time after" the stay is lifted. Dkt. No. 96. After hearing from all parties, the Court entered a stay and added that, once the stay is lifted, the Court would "hear any remaining anti-SLAPP defenses" at a Case Management Conference. Dkt. No. 107.

On April 1, 2025, Plaintiff filed a Motion to Lift Stay (Dkt. No. 122), and on April 12, 2025, Plaintiff filed a Motion for Leave to File Second Amended Complaint (Dkt. No. 125) ("Motion to Amend"). On May 5, 2025, this Court gave notice that the Motion to Lift Stay and Motion to Amend will be heard – and a Case Management Conference will be held – on June 10, 2025. Dkt. No. 130. Accordingly, Loper is separately filing a Memorandum of Law in support of her Anti-SLAPP defenses for the Court's consideration at the conference.

I. Loper’s Anti-SLAPP defenses to the First Amended Complaint must be resolved.

Plaintiff’s request to lift this Court’s stay of this proceeding rests upon differences he alleges between the Verified First Amended Complaint (NOF Exhibit 1) in the Federal Case and a proposed Second Amended Complaint (Dkt. No. 126) in this case. The proposed Second Amended Complaint, however, is not the operative pleading in this case. Plaintiff is currently proceeding under the First Amended Complaint (Dkt. No. 14). Loper filed a response to the First Amended Complaint in the form of a motion to dismiss asserting Anti-SLAPP defenses (Dkt. No. 41). Those Anti-SLAPP defenses have not been resolved.

In staying this case, this Court ruled that the Court would “hear any remaining anti-SLAPP defenses” expeditiously at a Case Management Conference once the stay is lifted. *See Order Granting Court’s Motion to Stay* (Dkt. No. 107). This ruling was consistent with Loper’s express reservation of her “right to an expeditious resolution” of her Anti-SLAPP motion “at the earliest possible time after” the stay is lifted. *See Defendant Cathy Salustri Loper’s Response to Court’s Motion to Stay and Order* (Dkt. No. 96). Loper’s Anti-SLAPP defenses to the First Amended Complaint remain pending.

The Florida Anti-SLAPP statute requires the expeditious resolution of claims within its scope. SLAPP “lawsuits are an abuse of the judicial process and are used to censor, intimidate, or punish citizens, businesses, and organizations for involving themselves in public affairs.” Ch. 2000-174, § 1, Laws of Fla. The Anti-SLAPP law “operates to deter violations of its prohibition on meritless, speech-targeted lawsuits.” *Vericker v. Powell*, No. SC2022-1042, 2025 WL 922413, at *5 (Fla. Mar. 27, 2025). “It is the intent of the Legislature that such lawsuits be expeditiously disposed of by the courts.” § 768.295(1), Fla. Stat. Accordingly, as the Florida Supreme Court recently recognized, “courts are to resolve Anti-SLAPP claims ‘at the earliest possible time’ once the necessary filings are submitted by the parties.” *Vericker*, 2025 WL 922413, at *5. Allowing

the ongoing prosecution of such lawsuits “is precisely the harm that the Anti-SLAPP statute seeks to prevent – unnecessary litigation.” *Gundel v. AV Homes, Inc.*, 264 So. 3d 304, 311 (Fla. 2d DCA 2019) (disapproved of on other grounds by *Vericker*). For that reason, a denial of an Anti-SLAPP motion is immediately appealable, even if proceedings in the trial court will continue. *See In re Amendments to Florida Rule of Appellate Procedure 9.130*, No. SC2024-1798, 2025 WL 922308, at *1 (Fla. Mar. 27, 2025).

Likewise, in this case, before deciding whether to permit the proposed Second Amended Complaint, this Court should resolve the Anti-SLAPP defenses raised by the operative First Amended Complaint. Section 768.295(3) provides that a person “may not file ... any ... claim” that violates the statute. The mere *filing* of the First Amended Complaint violated Section 768.295. Plaintiff’s request to amend his pleading does not cure that violation, because the harm the statute addresses was committed upon filing.

To be sure, by pursuing multiple claims in multiple courts, Plaintiff was able to delay adjudication of Loper’s Anti-SLAPP defenses. But Plaintiff now seeks relief from the stay *and* to amend his pleading, as if the First Amended Complaint never existed. He is not entitled to relief from the stay *and* to sidestep the consequences of his earlier actions.

The proposed Second Amended Complaint drops six of the First Amended Complaint’s claims against Loper. Resolution of Loper’s Anti-SLAPP defenses, however, cannot be evaded by Plaintiff’s belated attempt to abandon some of his claims. Plaintiff should not have filed these claims at all. He had the opportunity to abandon them on October 3, 2024, when he was served with Loper’s Anti-SLAPP motion. He chose not to do so and instead persisted in them, forcing Loper to incur additional unnecessary attorneys’ fees. His Anti-SLAPP liability is a result of his own choosing. That liability must be resolved before the proposed amendment is considered.

As Plaintiff notes, Loper is not a party to the Federal Case, and the overlap between the Federal Case and this litigation has diminished. Therefore, the comity concerns that this Court identified in staying this case have lessened. Moreover, the Florida Supreme Court has recognized that this state's courts may depart from the rule of comity where necessary to protect its citizens or to enforce a paramount rule of public policy. *State Farm Mut. Auto. Ins. Co. v. Roach*, 945 So. 2d 1160, 1164 (Fla. 2006) (quoting *Herron v. Passailaigue*, 110 So. 539, 542 (Fla. 1926)). The Florida Supreme Court's recent *Vericker* decision, rendered since this Court's stay order, articulates a paramount public policy of expeditious enforcement of the Anti-SLAPP law. Accordingly, resolution of Loper's Anti-SLAPP defenses is now appropriate.

II. If Loper's Anti-SLAPP defenses do not resolve this case, this litigation should remain stayed.

Although Loper's Anti-SLAPP defenses are ripe for resolution, if those defenses do not lead to a complete and prompt dismissal, this action should otherwise remain stayed.

Plaintiff has indicated that he wishes to proceed on his proposed Second Amended Complaint in this case and has cited differences between that anticipated pleading and the operative Federal Complaint. At the same time, Plaintiff has repeatedly indicated that he still plans to amend the Federal Complaint. On March 6, 2025, Plaintiff filed in the Federal Case a "Motion for Leave to File Second Amended Complaint," based upon "newly discovered evidence and further developments in Plaintiff's case, including material facts and evidence presented in a recent filing before the Supreme Court of Florida." *See* Federal Case DE 83 page 1 (NOF Exhibit 2). On April 19, 2025, Plaintiff withdrew that motion but also notified the federal court that he still "intends to file a new motion for leave to amend" his federal pleading based upon "newly developed factual circumstances." *See* Federal Case DE 113 page 1 (NOF Exhibit 3). Loper's federal pleadings, therefore, remain in flux, and consequently discovery in the Federal Case is

stayed, as shown in the following screenshot of an Endorsed Order as it appears in PACER:

03/24/2025	103	ENDORSED ORDER granting 82 , 87 , and 91 Motions to Stay Discovery. Generally, unilateral motions to stay discovery are disfavored. <i>See</i> Middle District Discovery (2021) at Section I.E.4. However, having reviewed the pending motions to dismiss, which raise potentially dispositive legal challenges to the lawsuit, I find that allowing discovery on the numerous claims presently in flux (<i>see</i> Docs. 59, 71, 80, 81), would create an undue burden and would be inconsistent with Rule 1 of the Federal Rules of Civil Procedure. Accordingly, discovery is STAYED as to each movant until its respective motion to dismiss is resolved (Docs. 59, 71, 80, 81). Signed by Magistrate Judge Natalie Hirt Adams on 3/24/2025. (CJF) (Entered: 03/24/2025)
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Similarly, in this case, proceedings should remain stayed until Loper's Anti-SLAPP defenses are resolved, any Anti-SLAPP award is paid, and any remaining claims are found to state a cause of action. In the alternative, if the Court elects not to reach Loper's Anti-SLAPP defenses at this time, this action should remain stayed pending a final judgment in the Federal Case, as this Court previously ordered.

Conclusion

This Court should proceed with consideration of Loper's Anti-SLAPP defenses to the pending First Amended Complaint. Otherwise, and if those Anti-SLAPP defenses do not result in a complete dismissal, this action should remain stayed.

Respectfully submitted,

THOMAS & LOCICERO PL

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Counsel for Defendant Cathy Salustri Loper

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the **3rd** day of **June, 2025**, the foregoing document was electronically filed with the Clerk of the Court via the E-Portal, and was served this same day on all parties and attorneys of record, either via transmission of Notices of Electronic Filing generated by the E-Portal or in some other authorized manner for those counsel or parties who are not authorized to receive electronic Notices of Electronic Filing.

s/ James B. Lake

Attorney