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Order (SUE AN)

Elizabeth E. Long
Superior Court of Fulton County

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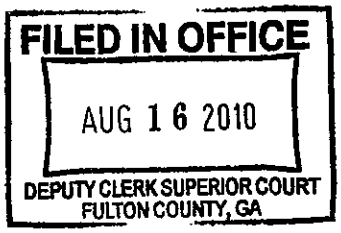
IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA



SUE AN, Derivatively on Behalf of Nominal Defendant COMPUCREDIT CORPORATION Plaintiff,	)	
v.	)	**Civil Action File No. 2009-CV-178060**
DAVID G. HANNA, NICHOLAS PAUMGARTEN, MACK F. MATTINGLY, RICHARD R. HOUSE, JR., FRANK J. HANNA III, DEAL W. HUDSON, RICHARD W. GILBERT, GREGORY J. CORONA, THOMAS G. ROSENCRANTS, J. PAUL WHITEHEAD III, and KRISHNAKUMAR "K.K." SRINIVASAN, Defendants,	)	
and	)	
COMPUCREDIT CORPORATION, Nominal Defendant.	)	

ORDER

This case is before the Court on a motion for a protective order to stay discovery filed by Nominal Defendant CompuCredit Corporation ("CompuCredit") and Defendants Mack F. Mattingly ("Mattingly") and Nicholas Paumgarten ("Paumgarten"). After considering the briefs submitted on the motions, the Court finds as follows:

On November 20, 2009, Plaintiff filed this shareholder derivative suit alleging breaches of fiduciary duty, abuse of control, and gross mismanagement by CompuCredit's Board of Directors. Defendants filed a motion to dismiss pursuant to O.C.G.A. 14-2-744(a) on May 12,

2010. On July 1, 2010, pursuant to O.C.G.A. 9-11-26(c) and O.C.G.A. 9-11-12(j), Defendants filed a motion for protective order to stay discovery until after a ruling on their pending motions to dismiss.

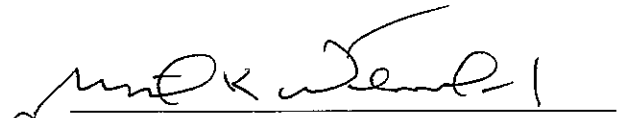
Trials courts have broad discretion in controlling discovery. O.C.G.A. 9-11-26(c); Bloomfield v. Liggett & Myers, Inc., 230 Ga. 484, 485 (1973) ("The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants."); Long v. Marino, 212 Ga. App. 113, 114 (1994) ("The matter of allowing or postponing a deposition is in the trial court's discretion").

In support of their motion for a protective order, Defendants argue, among other things, that Plaintiff is not entitled to discovery as a matter of right. In response, Plaintiff argues that because this is a derivative suite, she is entitled to take discovery on "the independence and good faith of the [special litigation committee], and the reasonableness of the [special litigation committee's] investigation." The Court agrees with Plaintiff and finds that she may pursue discovery regarding the independence and good faith of the special litigation committee established by CompuCredit to look into Plaintiff's demand and the reasonableness of that committee's investigation. Thompson v. Scientific Atlanta, Inc., 275 Ga. App. 680 (2005). In Thompson, the Court of Appeals explained that, in shareholder derivative suits such as this one, "discovery may be ordered to facilitate inquiries into independence, good faith, and the reasonableness of the investigation. This discovery is not by right, but by order of the Court, with the type and extent of discovery left totally to the discretion of the Court." Id. at 683. Accordingly, the Court **ORDERS** that Nominal Defendant CompuCredit and the Special

Litigation Committee respond to Plaintiff's First Request for Production of Documents as follows: Request No. 4, but only for documents actually relied upon in creating, formulating, drafting and/or filing the special litigation committee report; Request No. 5 (a)-(e) only; Request No. 9, but only for communications relating to the special litigation committee's investigation; Request No. 17; Request No. 19 (a)-(c) only. In addition, Plaintiff may take the depositions of Defendants Mattingly and Paumgarten, but limited to questions concerning their independence and good faith and the reasonableness of their investigation. All other discovery shall be stayed until the Court has entered an order on Defendants' pending motions to dismiss.

Plaintiff shall have until 20 days after the receipt of the responses to Plaintiff's First Request for Production of Documents and the taking of Defendants Mattingly and Paumgarten's depositions to respond to Defendants' pending motions to dismiss.

SO ORDERED this 16th day of August, 2010.



for Elizabeth E. Long, Senior Judge
Superior Court of Fulton County
Atlanta Judicial Circuit

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