

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA**

Ergun M. Caner,

Plaintiff

v.

Jonathan Autry,

Defendant

: No.: 6:14-cv-4

:

: Civil Action - Law

: Jury Trial Demanded

: (Electronically Filed)

:

**Brief in Support of
Motion to Stay**

**Joshua M. Autry, Esquire
Pa. Supreme Ct. I.D. 208459
Clymer Musser & Conrad, P.C.
408 W. Chestnut St.
Lancaster, PA 17603
Phone: (717) 299-7101
Fax: (717) 299-5115
josh.autry@clymerlaw.com
Counsel for Jonathan Autry**

Dated: April 4, 2014

I. Procedural History:

On June 18, 2013, Dr. Ergun Caner filed a Complaint in the Northern District of Texas. On October 14, 2013, Dr. Ergun Caner filed an Amended Complaint. In Counts 1 and 2, Dr. Caner alleges that Jonathan Autry infringed his copyright by posting two videos on YouTube. Jonathan Autry and Jason Smathers filed a motion to dismiss, or, in the alternative, for summary judgment. Dr. Caner filed a response. Before the reply deadline, the Northern District of Texas severed the case and transferred the case against Jonathan Autry to this Court. The Motion to Dismiss or, in the Alternative, for Summary Judgment is still pending. Jonathan Autry files this reply brief in support of the Motion.

Jason Smathers also filed a Motion to Dismiss for failure to join a party, which Jonathan Autry joined. The Northern District of Texas has not yet ruled on either motion as to Jason Smathers. That Court has stayed discovery pending resolution of the dispositive motions.

II. Argument:

There is a substantial chance that this Court's rulings on the dispositive motions could prevent the need for discovery altogether if this Court terminates the case. Jonathan Autry has not even filed an answer in this matter because his deadline to do so is tolled by the dispositive motions—either of which would terminate the case. For these reasons, Jonathan Autry believes that discovery at this point would be premature and asks this Court to stay discovery pending the rulings on the dispositive motions. Although not binding on this Court, the Northern District of Texas recognized that “the disposition of the pending motions to dismiss may dispense of the need for any discovery” and granted the motion. *See Caner v. Smathers*, N.D. Tex. NO. 4:13-CV-494-Y, Docket #50 (Feb. 18, 2014).

Discovery would also be burdensome on Jonathan Autry who lacks the financial resources to hire counsel for his defense. Undersigned counsel, Jonathan's younger brother, is representing him *pro bono* in the hope of recovering legal fees as a prevailing party.¹

III. Conclusion

Therefore, Jonathan Autry requests this Honorable Court stay discovery pending resolution of the dispositive motions.

Respectfully Submitted,

By: /s/ Joshua M. Autry
Joshua M. Autry, Esquire
PA Attorney I.D. #208459
408 West Chestnut Street
Lancaster, PA 17603
Telephone: 717.299.7101
Facsimile: 717.299.5511
Counsel for Jonathan Autry

Date: April 4, 2014

¹ Dr. Caner opposes this request. It is worth noting, however, that Dr. Caner—although he opposed Mr. Smathers's similar request to stay discovery—failed to file any response.

CERTIFICATE OF SERVICE

I hereby certify that on the date listed below I electronically filed the foregoing with the Court using the CM/ECF system, which sent notification of such filing to the following person(s) at the following email address(es):

David C. Gibbs
dgibbs@gibbsfirm.com

/s/ Joshua M. Autry
Joshua M. Autry, Esquire

Dated: April 4, 2014