

STATE OF SOUTH CAROLINA
COUNTY OF HAMPTON

IN THE COURT OF COMMON PLEAS

RENEE S. BEACH, as Personal Representative
of the Estate of MALLORY BEACH,

Case No. 2019-CP-25-00111

Plaintiff,

**DEFENDANT RICHARD ALEXANDER
MURDAUGH'S MOTION TO STAY
DISCOVERY AND CONTINUE TRIAL**

vs.

GREGORY M. PARKER, INC., a/k/a
PARKER'S CORPORATION, d/b/a PARKERS
55; RICHARD ALEXANDER MURDAUGH;
RICHARD ALEXANDER MURDAUGH, JR.,
JOHN MARVIN MURDAUGH, AS P.R. OF
THE ESTATE OF MARGARET KENNEDY
BRANSTETTER MURDAUGH, AND
RANDOLPH MURDAUGH, IV, AS P.R. OF
THE ESTATE OF PAUL TERRY
MURDAUGH

Defendants.

COMES NOW the Defendant Richard Alexander Murdaugh ("Alex Murdaugh"), by and through his undersigned counsel and moves the court to stay discovery as to Alex Murdaugh and to continue the trial of this case until after the final disposition of pending criminal charges of two counts of murder and two counts of possessing a weapon during a violent crime. A stay of discovery as to Alex Murdaugh and a continuance is necessary because allowing the above-captioned civil suit to proceed while the criminal case is pending will substantially affect Alex Murdaugh's rights to a fair trial and due process of law as guaranteed by the United States and South Carolina Constitutions. If discovery is not stayed, Alex Murdaugh will be forced to either waive his Fifth Amendment privilege and defend the factual allegations in the Third Amended Complaint, and otherwise participate in discovery regarding these claims, or assert his privilege,

which will be used against him in this civil litigation through an adverse evidentiary inference. Further, Alex Murdaugh will not have time to adequately prepare and focus on his upcoming trial on the pending murder charges, which is anticipated to be held in January 2023, if he is involved with ongoing discovery and an upcoming trial in the subject civil suit.

INTRODUCTION AND BACKGROUND

On July 14, 2022, Murdaugh was indicted on two counts of murder and two counts of possession of a weapon during the commission of a violent crime in the deaths of his wife, Margaret (“Maggie”) Murdaugh, and his son, Paul Murdaugh. Indictments attached as Exhibit 1.

In light of these recent serious criminal charges, testimony in the above-captioned civil action (“Boat Accident Civil Suit”) could provide information that might be used against Alex Murdaugh in the criminal proceeding or might lead to the discovery of such information. A review of the allegations in the Boat Accident Civil Suit’s Third Amended Complaint demonstrates that Alex Murdaugh’s relationship with his son Paul Murdaugh is central to the Plaintiff’s claims.

Boat Accident Civil Suit

Plaintiff Renee S. Beach, as the personal representative of the Estate of Mallory Beach, filed the Boat Accident Civil Suit against Gregory M. Parker, Inc. d/b/a Parker’s Corporation, Alexander Richard Murdaugh, Alexander Richard Murdaugh, Jr., John Marvin Murdaugh, as P.R. of The Estate of Margaret Kennedy Branstetter Murdaugh, and Randolph Murdaugh, IV, as P.R. of the Estate of Paul Terry Murdaugh. Plaintiff’s Third Amended Complaint, filed on February 23, 2022, alleges that on February 23, 2019, and into the early morning hours of February 24, 2019, Paul Murdaugh was driving a boat owned by his parents while under the influence of alcohol when he subsequently crashed into a bridge in Archer’s Creek fatally injuring Mallory Beach. (Compl. ¶ 17). Plaintiff alleges Alex Murdaugh is liable for negligent entrustment and negligent supervision

related to Paul Murdaugh's operation of the boat while under the influence of alcohol. (Compl. ¶ 19). More specifically, Plaintiff's Complaint alleges:

12. That, at all pertinent times herein, Defendant Richard Alexander Murdaugh and Margaret Kennedy Branstetter Murdaugh had knowledge or should have known that their minor son Paul Murdaugh was illegally purchasing and consuming alcohol on a regular basis by using or displaying the driver's license of their adult son, Defendant Richard Alexander Murdaugh, Jr. Defendant Richard Alexander Murdaugh and Margaret Kennedy Branstetter Murdaugh also had actual and constructive knowledge that Paul Murdaugh would consume alcohol and operate vehicles provided to Paul Murdaugh for his use for the convenience of Richard Alexander Murdaugh and Margaret Kennedy Branstetter Murdaugh. Further, Richard Alexander Murdaugh and Margaret Kennedy Branstetter Murdaugh knew Paul Murdaugh would drink to excess and drive vehicles, including Richard Alexander Murdaugh and Margaret Kennedy Branstetter Murdaugh's boats, all of which are dangerous instrumentalities, and therefore knew or should have known of Paul Murdaugh's condition and proclivities including that Paul Murdaugh was incompetent, unfit, and/or reckless based on his almost constant consumption of alcohol. Many times prior to February 23, 2019, Margaret Kennedy Branstetter Murdaugh had actual knowledge that Paul Murdaugh was consuming alcohol while operating the family vehicles and otherwise as evidenced by the fact she "liked" social media posts depicting Paul Murdaugh consuming alcohol as a minor. Paul Murdaugh's consumption of alcohol was condoned, encouraged and facilitated by Richard Alexander Murdaugh and Margaret Kennedy Branstetter Murdaugh. Further, Paul Murdaugh was provided with and used his mother's credit card to purchase alcohol, including the alcohol he purchased from Parker's on February 23, 2019.

13. By condoning and facilitating Paul Murdaugh's alcohol purchases and consumption, while entrusting the boat to Paul Murdaugh when they knew or reasonably should have known Paul Murdaugh would be consuming alcohol and operating the boat, Defendants Richard Alexander Murdaugh and Margaret Kennedy Branstetter Murdaugh created an appreciable risk of harm to others including Mallory Beach and owed a duty of care to Mallory Beach and others endangered by their entrustment of the boat and facilitation of Paul Murdaugh's purchase of alcohol.

14. That, at all pertinent times herein, Defendants Richard Alexander Murdaugh and Margaret Kennedy Branstetter Murdaugh knowingly and willfully allowed their minor son to illegally purchase and consume alcohol, including but not limited to allowing Paul Murdaugh to use Defendant Richard Alexander Murdaugh, Jr.'s driver license to purchase and consume alcohol. Defendants Richard Alexander Murdaugh and Margaret Kennedy Branstetter Murdaugh provided Paul Murdaugh with a family credit card in his mother's name, Margaret Kennedy Branstetter Murdaugh, in order to facilitate Paul Murdaugh's purchases of alcohol and allowed Paul Murdaugh to

use their vehicles while operating them under the influence of alcohol. It also was known to them Paul Murdaugh in fact was purchasing or was foreseeable that Paul Murdaugh would purchase alcohol for consumption and drive their boat while under the influence. Further, in the early morning of February 24, 2019, prior to the boat crash, Margaret Kennedy Branstetter Murdaugh actually spoke to an intoxicated Paul Murdaugh by telephone. However, she failed to stop Paul despite knowing he was intoxicated after having paid for the alcohol he consumed earlier.

(Compl. ¶¶ 12–14).

Plaintiff further alleges Alex Murdaugh was negligent in the following manner:

As to Defendant Richard Alexander Murdaugh

- r. In knowingly and willfully allowing his minor son, under the age of twenty-one (21), to use Richard Alexander Murdaugh, Jr.’s driver’s license to purchase and consume alcohol;
- s. In failing to supervise his son when he knew or should have known that Paul Murdaugh was using another’s license to purchase and consume alcohol;
- t. In providing a credit card to Paul Murdaugh for him to illegally purchase alcohol;
- u. In entrusting a vehicle, a dangerous instrumentality, including the boat used in the crash, for Paul Murdaugh to use and operate when he knew or should have known that Paul Murdaugh was drinking and driving and drinking to excess and that Paul Murdaugh was incompetent, unfit, inexperienced, or reckless, thereby creating an appreciable risk of harm to others, including Mallory Beach[.].

(Compl. ¶¶ 19 (r)–(u)).

If discovery and the upcoming trial in the Boat Accident Civil Suit proceed, Alex Murdaugh will be forced to either waive his Fifth Amendment privilege and defend the suit, or otherwise participate in further discovery and trial regarding these claims, or assert his privilege, which will be used against him in this civil litigation through an adverse evidentiary inference, thereby causing him to suffer from undue prejudice.

Moreover, the recent murder indictments against Murdaugh have garnered unprecedented publicity in local, state, national and international media. If this case proceeds to trial before the

murder case, the effect on a jury in this case from the glaring media spotlight will be difficult to assess. There will certainly be a significant risk that Murdaugh's notoriety, and the media's presence in the courtroom, will hinder the jury's ability to give equal attention to all parties to this lawsuit, and fairly weigh the evidence presented in the trial. Lastly, one cannot overstate the impact that a televised trial in this case, conducted on the eve of Murdaugh's murder trial, will have on potential jurors in the murder trial, making it even more difficult to select a jury from within the Fourteenth Judicial Circuit.

LEGAL STANDARD

Courts have the "discretion to stay civil proceedings, postpone civil discovery, or impose protective orders and conditions when the interests of justice seem to require such action, sometimes at the request of the prosecution, sometimes at the request of the defense." *AFRO-LECON, Inc. v. United States*, 820 F.2d 1198, 34 Cont. Cas. Fed (CCH) P 75, 291 quoting *United States v. Kordel*, 397 U.S.C, 90 S. Ct. 763, 25 L.Ed.2d 1(1970). See also *Harbour Town Yacht Club Boat Slip Owners Ass'n v. Safe Berth Mgmt., Inc.*, 411 F. Supp. 2d 641, 643 (D.S.C. 2005) (citing *St. Paul Fire and Marine Ins. v. United States*, 24 Cl. Ct. 513 (1991); *Campbell v. Eastland*, 307 F.2d 478 (5th Cir. 1962)) ("The court has authority to stay civil proceedings pending the resolution of criminal investigations."); *Bridgeport Harbour Place I, LLC*, 269 F. Supp. 2d at 9; *Arden Way Assocs. v. Boesky*, 660 F. Supp. 1494, 1498 (S.D.N.Y.1987) ("Where invocation of the fifth amendment imposes undue sanctions or penalties on a defendant, a court may in its discretion stay civil proceedings, postpone civil discovery, or impose protective orders and conditions in the furtherance of the interests of justice.").

Thus, the question of whether to stay litigation proceedings rests largely within the sound discretion of the trial court. See, e.g., *American Recovery Corp. v. Computerized Thermal Imaging*,

Inc., 96 F.3d 88, 97 (4th Cir. 1996). Accordingly, the determination by a trial court in granting or denying a motion to stay calls for an exercise of judgment to balance the various factors relevant to the expeditious and comprehensive disposition of the causes of action on the court's docket. *See, e.g., Landis v. North American Co.*, 299 U.S. at 254-55. As the Supreme Court of South Carolina has stated:

An equitable stay may be invoked if justified by circumstances which outweigh any potential harm to the party against whom it is operative. In making this determination, the court 'must weigh competing interests and maintain an even balance.'

Merritt Brothers, Inc. v. Marine Midland Realty Credit Corp., 307 S.C. 213, 216, 414 S.E.2d 167, 169 (1992) (quoting *United States Central Supply, Inc. v. Wilke*, 685 F. Supp. 936, 938 (D.C. Md.1988)).

Moreover, where a party has moved for a stay of civil proceedings based upon the prosecution of a parallel criminal action involving the same subject matter, courts have held that "denying the stay may undermine the defendants' Fifth Amendment privilege against self-incrimination; expose the basis of the defendants' criminal defense in advance of trial; or otherwise prejudice the criminal or civil case." *Crawford & Sons, Ltd. v. Besser*, 298 F.Supp.2d 317, 319 (E.D.N.Y. 2004); *see also U.S. v. Real Property and Premises Known as 4408 Hillside Court, Alexandria, Va.*, 966 F.2d 1445, 1992 WL 120217, **4 (4th Cir. 1992) (unpublished) (recognizing that "the responsibility of a district court to seek an accommodation for an individual's [Fifth Amendment] rights in a forfeiture proceeding may be significant").

When determining whether to stay civil proceedings in the face of parallel criminal proceedings, courts consider numerous factors and competing interests. In *Keating v. OTS*, 45 F.3d 322, 324-325 (9th Cir. 1995), the court considered the following five factors:

(1) the interest of the plaintiffs in proceeding expeditiously with [the] litigation or any particular aspect of it, and the potential prejudice to plaintiffs of a delay, (2) the burden which any particular aspect of the proceedings may impose on

defendants; (3) the convenience of the court in the management of its cases, and the efficient use of judicial resources; (4) the interests of persons not parties to the civil litigation; and (5) the interest of the public in the pending civil and criminal litigation.

See Breedlove v. Cramer, No. 04-CP-07-2251, 2005 WL 6582780 (S.C. Com. Pl. Mar. 08, 2005) (applying the *Keating* factors). Each factor does not have to be met, but instead, the court applies a balancing test to consider staying proceedings.

ARGUMENT

Here, a stay of discovery and continuation of the trial date are necessary to protect Alex Murdaugh's Fifth Amendment privilege and his right to a fair trial and due process of law as guaranteed by the United States and South Carolina Constitutions. Murdaugh cannot adequately defend himself in the Boat Accident Civil Suit without introducing evidence or testimony regarding his relationship with his late wife Maggie and son Paul, which bears on the criminal proceedings.

Applying the *Keating* factors, the court should exercise its discretion to stay discovery as to Alex Murdaugh and continue the upcoming trial date. Under the first factor, while the Plaintiff has an interest in proceeding expeditiously with the litigation, no additional prejudice exists because Defendants Richard Alexander Murdaugh, Jr., the Estate of Maggie Murdaugh, and the Estate of Paul Murdaugh have already moved to continue the upcoming trial to allow new counsel adequate time to appear for these three Defendants and prepare for a trial. Further, Alex Murdaugh has filed a motion for a speedy trial in the criminal proceedings, which is expected to occur in January 2023.

Under the second *Keating* factor, Alex Murdaugh will certainly be prejudiced if discovery is not stayed and the upcoming trial is not continued. Murdaugh is criminal charged with murdering his wife Maggie and son Paul. Under the South Carolina Rules of Criminal Procedure, discovery

is very limited. Neither the State or the defendant has a right to conduct depositions, serve interrogatories and serve pre-trial third-party subpoenas. Furthermore, the scope of discovery under the State criminal rules is very narrow, as opposed to the civil discovery rules. If discovery is not stayed, the State will undoubtedly be provided with information disclosed in this lawsuit that the State would not otherwise be able to obtain.

For example, the State has yet to articulate any logical motive for Alex Murdaugh to have murdered his wife and son. The State does not have the ability to depose Murdaugh or even call him before a grand jury to question him about these relationships, to explore possible theories of motive. Yet, allowing discovery to proceed in this case will provide the State just that opportunity through able private counsel. Undoubtedly, Alex Murdaugh will be questioned about his relationship with both Maggie and Paul as demonstrated by the allegations in the Third Amended Complaint. If he chooses to answer, this will give the State an unfair advantage, one to which the State criminal rules do not permit. On the other hand, if he chooses to assert his Fifth Amendment privilege to prevent the State from obtaining detailed information about these relationship in advance of his murder trial, then this assertion will be used to his prejudice in the Boat Accident Civil Suit.¹

The Fifth Amendment to the United States Constitution and Article I, Section 12 of the South Carolina Constitution declare “no person shall be compelled to be a witness against himself in any criminal case.” *Grosshuesch v. Cramer*, 377 S.C. 12, 659 S.E.2d 112 (2008). “[The] prohibition against compelled self-incrimination is a basic constitutional mandate which is not a

¹ In addition, there are significant concerns as to whether a civil litigant waives his Fifth Amendment privilege by selectively asserting the privilege during deposition and/or trial testimony. Because of these concerns, criminal defense lawyers routinely advise clients to assert the Fifth on all substantive topics during a deposition to avoid the risk of waiver.

mere technical rule, but rather, a fundamental right of every citizen in our free society.” *First Union National Bank v. First Citizens Bank and Trust Company of South Carolina*, 346 S.C. 462, 551 S.E.2d 301 (2001). In interpreting the Fifth Amendment, the privilege against self-incrimination has been interpreted as an assurance that an individual will not be compelled to produce evidence or information, which may be used against him in a later criminal proceeding. *Maness v. Meyers*, 419 U.S. 449, 461, 95 S. Ct. 584, 42 L. Ed. 2d 574 (1975). The South Carolina Supreme Court has stated that “the privilege extends not only to answers that would themselves support a criminal conviction, but also to answers furnishing a link in the chain of evidence needed to prosecute an individual.” *Grosshuesch*, 377 S.C. at 22, 659 S.E.2d at 117 (citing *Hoffman v. United States*, 341 U.S. 479, 486, 71 S. Ct. 814, 95 L.Ed. 1118 (1951)).

Further, “the question when judging the application of the privilege against self-incrimination does not revolve around what defenses a party has asserted in a civil action, but whether there is a reasonable possibility that requiring a party to answer a certain question would provide information that could be used against the party in a criminal proceeding or would lead to the discovery of such information.” *Grosshuesch*, 377 S.C. at 24, 659 S.E.2d at 118. Here, there is certainly a reasonable possibility that responding to discovery or deposition questions in the Boat Accident Civil Suit could provide information that might be used against Alex Murdaugh in the related criminal proceedings regarding his relationship with Maggie and Paul Murdaugh.

If Alex Murdaugh zealously litigates the Boat Accident Civil Case and provides discovery, the State may use the information disclosed by Alex Murdaugh to his detriment. Alternatively, if Murdaugh exercises his Fifth Amendment privilege against self-incrimination in written discovery responses, deposition questions, and trial, this assertion will certainly be used against him in this

civil action. *See ePlus Tech., Inc.*, 313 F.3d at 179 (“In a civil proceeding, a fact-finder is entitled to draw adverse inferences from a defendant’s invocation of the privilege against self incrimination [sic].” (citing *Baxter v. Palmigiano*, 425 U.S. 308, 319, 96 S.Ct. 1551 (1976))).

Under the third *Keating* factor, the court’s interest in the efficient use of judicial resources would not be prejudiced, as three other Defendants have also requested a continuance of the upcoming trial. Further, a stay of discovery pending the outcome of the criminal case would likely do away with the need for Alex Murdaugh to assert his Fifth Amendment rights and thus ease the burden on this court of addressing Fifth Amendment issues. *United States v. All Meat & Poultry Prod.*, No. 02 C 5145, 2003 WL 22284318, at *5 (N.D. Ill. Oct. 3, 2003) (“Convenience to the court will militate in favor of a stay where the outcome of a criminal case can be expected to remove the predicate for the assertions of the Fifth Amendment rights against self-incrimination. . . .”). *See also Golden Quality Ice Cream Co. v. Deerfield Specialty Papers, Inc.*, 87 F.R.D. 53, 58 (E.D. Pa. 1980).

The fourth and fifth *Keating* factors are the interests of persons not parties to the civil litigation and the interest of the public in the pending civil and criminal litigation. The public interest overwhelmingly favors a stay so that the state criminal prosecution may proceed expeditiously and without interference. *See Ashworth v. Albers Med., Inc.*, 229 F.R.D. 527, 530 (S.D.W. Va. 2005) (holding that the weight of the governing factors heavily favors the issuance of a stay). Moreover, significant delay in the civil proceeding is not anticipated because a speedy trial has been requested in the criminal proceedings.

In sum, the *Keating* factors weigh in favor of staying discovery as to Alex Murdaugh and continuing the trial date to avoid severe prejudice by forcing Alex Murdaugh to waive his right against self-incrimination or subject himself to potential criminal liability. In *Maloney v. Gordon*,

328 F. Supp. 2d 508 (D. Del. 2004), the court stayed the civil proceedings because the prejudice against the defendant outweighed all other interests. *Maloney v. Gordon*, 328 F. Supp. 2d 508, 514 (D. Del. 2004). Specifically, it put the defendant in a “lose-lose position” by forcing the defendant to either assert his right against self-incrimination and risk prejudice in the civil case or waive that right and subject himself to potential criminal liability. *Id.*

CONCLUSION

For the foregoing reasons, Defendant respectfully requests a stay of discovery as to Alex Murdaugh and continuance of the trial date to avoid being placed in the impossible position of having to choose between waiving his Fifth Amendment right and defending this case, or asserting his constitutional right and subjecting himself to liability. Further, Alex Murdaugh will not have time to adequately prepare and focus on his upcoming trial on the pending murder charges, if he is involved with ongoing discovery and an upcoming trial in the subject civil suit. Lastly, the expected publicity surrounding a trial in the Boat Accident Civil case will make it even more difficult for the State and Murdaugh to select a jury from within the 14th Judicial Circuit for the murder trial.

Respectfully Submitted.

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