

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

CARA WELLS,

Plaintiff,

v.

TEXAS TECH UNIVERSITY, et al.,

Defendants.

No. 5:23-CV-060-H

ORDER

Before the Court is the defendants' Motion to Stay Discovery. Dkt. No. 22. Exercising its discretion to promote judicial economy and efficiency—and to remain consistent with Fifth Circuit precedent—the Court grants the motion to the extent it seeks to stay discovery pending resolution of Dr. Prien and Dr. Penrose's Motion to Dismiss Plaintiff's First Amended Complaint (Dkt. No. 25). Additionally, the Court vacates the July 21, 2023 deadline for the parties to submit their joint report concerning scheduling matters (*see* Dkt. No. 21 at 2) until further notice.

1. Factual and Procedural Background

Wells filed suit against the defendants in March 2023. Dkt. No. 1. The defendants moved to dismiss her claims (Dkt. Nos. 15; 16), and Wells timely filed an amended complaint (Dkt. No. 19). In short, the amended complaint alleges that Wells suffered sexual discrimination and harassment at the hands of her professor, Dr. Prien, and his associate, Dr. Penrose, while a student under their direction and that Texas Tech University (TTU) failed to protect her from this misconduct. The amended complaint further alleges that Dr. Prien and Dr. Penrose have since tried to derail Wells's career by taking credit for

her work, interfering with her job prospects, and pursuing financial opportunities to which they were not entitled.

Wells raises a variety of claims against the defendants. Against TTU, Wells brings sexual-harassment, hostile-work-environment, and retaliation claims under Title VII and a deliberate-indifference claim under Title IX. Dkt. No. 19 ¶¶ 118–49. As for Dr. Prien and Dr. Penrose, Wells similarly alleges harassment and unequal treatment on the basis of sex under Title IX and the Equal Protection Clause, in addition to claims that they deceptively removed her as a listed author on a patent to which she contributed, breached a fiduciary duty owed to her, knowingly received unjust enrichment from the patent subject to this action, fraudulently concealed material facts related to the intellectual property rights at issue, and intentionally caused her emotional distress. *Id.* ¶¶ 118–59, 180–210. Wells additionally alleges that Dr. Prien tortiously interfered with a contract that existed between her and third parties, misappropriated trade secrets from her research, and made defamatory statements about her to third parties. *Id.* ¶¶ 169–79, 211–17.

The defendants have since moved to dismiss Wells’s amended complaint. Dkt. Nos. 24; 25. In its motion, TTU argues that the claims against it are time-barred and fail to state a plausible claim for relief. Dkt. No. 24. Separately, Dr. Prien and Dr. Penrose contend that (1) the state-law claims against them are barred by official immunity; (2) the Equal Protection, correction-of-ownership, and patent-invalidity claims are barred by sovereign immunity; (3) the Title IX claim cannot be brought against individuals; (4) the tort claims must be automatically dismissed pursuant to a state-law provision; and (5) the trade-secret-misappropriation claim fails to state a plausible claim for relief. Dkt. No. 25.

Meanwhile, after the defendants responded to the original complaint, the Court ordered the parties to confer and submit a joint report regarding scheduling matters by no later than July 21, 2023. Dkt. No. 21. The defendants then jointly moved to stay discovery, arguing that because they have asserted immunity and other defenses that may require dismissal of Wells's claims as a matter of law, they should not be subject to discovery until the Court rules on their motions to dismiss. Dkt. No. 22. Due to the forthcoming status-report deadline, the Court ordered expedited briefing. Dkt. No. 23. In her response, Wells concedes to a stay on discovery for the claims to which the defendants assert sovereign immunity but insists that discovery should proceed for all other claims. Dkt. No. 28. The defendants replied in opposition. Dkt. No. 30. Their motion is ripe for review.

2. To streamline the discovery process and preserve Dr. Prien and Dr. Penrose's assertion of sovereign immunity, the Court in its discretion stays discovery until resolution of Dr. Prien and Dr. Penrose's motion to dismiss.

"The stay of a pending matter is ordinarily within the trial court's wide discretion to control the course of litigation, which includes authority to control the scope and pace of discovery." *In re Ramu Corp.*, 903 F.2d 312, 318 (5th Cir. 1990). In particular, "a trial court may properly exercise its discretion to stay discovery pending a decision on a dispositive motion." *Corwin v. Marney, Orton Invs.*, 843 F.2d 194, 200 (5th Cir. 1988) (citing *Scroggins v. Air Cargo, Inc.*, 534 F.2d 1124, 1133 (5th Cir. 1976)). When, however, a motion to dismiss is pending, courts have generally treated a stay of discovery as "the exception rather than the rule." *Griffin v. Am. Zurich Ins. Co.*, No. 3:14-CV-2470-P, 2015 WL 11019132, at *2 (N.D. Tex. Mar. 18, 2015) (quoting *Glazer's Wholesale Drug Co., Inc. v. Klein Foods, Inc.*, No. 3:08-CV-0774-L, 2008 WL 2930482 at *1 (N.D. Tex. July 23, 2008)).

Nonetheless, the Fifth Circuit has recognized that “trial court[s] ha[ve] broad discretion and inherent power to stay discovery until preliminary questions that may dispose of the case are determined.” *Petrus v. Bowen*, 833 F.2d 581, 583 (5th Cir. 1987) (citing *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936) and *Scroggins*, 534 F.2d at 1133). And the Supreme Court “has described immunity as a threshold question, to be resolved as early in the proceedings as possible.” *Boyd v. Biggers*, 31 F.3d 279, 284 (5th Cir. 1994) (citing *Siebert v. Gilley*, 500 U.S. 226, 231–33 (1991)); *see also Longoria v. Paxton*, No. 22-50110, 2022 WL 832239, at *2 (5th Cir. 2022) (stating that “whether sovereign immunity bars [a plaintiff’s] claim” is a “threshold jurisdictional question[]”). That is because the various immunity defenses are meant to provide “immunity from *suit* (including discovery), not just liability.” *See Russell v. Jones*, 49 F.4th 507, 514 (5th Cir. 2022) (citing *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985)) (emphasis in original). The Fifth Circuit has therefore indicated that a “district court act[s] properly in staying discovery . . . pending resolution of [] immunity issues.” *Williamson v. U.S. Dep’t of Agric.*, 815 F.2d 368, 383 (5th Cir. 1987); *see also Wells v. State Att’y Gen. of La.*, 469 F. App’x 308, 310 (5th Cir. 2012) (“[D]iscovery generally is not allowed until the resolution of immunity issues in the case.”).

Consistent with this reasoning, courts throughout the Fifth Circuit have routinely “f[ound] it appropriate to stay discovery until resolution of [a] pending motion[] to dismiss” that raises a threshold immunity challenge. *Massey v. Willard*, No. CV 22-3924, 2023 WL 1102595, at *2 (E.D. La. Jan. 30, 2023) (staying discovery against all defendants pending resolution of one defendant’s sovereign-immunity defense); *Stollings v. Texas Tech Univ.*, No. 5:20-CV-250-H, 2021 WL 4171815, at *2 (N.D. Tex. Apr. 13, 2021) (staying discovery for all claims until resolution of qualified- and sovereign-immunity defenses); *J.A. b/n/f Alvarez*

v. Tex. Educ. Agency, No. 1:19-CV-921-RP, 2020 WL 3270834, at *2 (W.D. Tex. June 17, 2020) (staying discovery “until the [c]ourt’s ruling on the threshold sovereign immunity and jurisdictional challenges raised in the [m]otion to [d]ismiss”).

Wells does not challenge the Court’s authority to stay discovery for claims to which the defendants have asserted sovereign immunity. Dkt. No. 28 at 3. But she contends that the Court should allow discovery to proceed for the remaining claims. *Id.* She also suggests that it would be impractical for the Court to permit discovery only as to the claims against TTU because such would “necessarily entail facts and circumstances concerning Dr. Prien and Dr. Penrose,” specifically regarding their alleged “discriminatory and harassing conduct” towards Wells. *Id.* at 4. Exercising its broad discretion to regulate discovery, however, the Court reaches the opposite conclusion.

Although Dr. Prien and Dr. Penrose have asserted sovereign immunity to only some of the claims against them,¹ the Court finds that the interests of judicial economy and efficiency also support staying discovery for the remaining claims against them. *See Stollings*, 2021 WL 4171815, at *2. Because this suit, despite the various claims alleged, centers on the related efforts of Dr. Prien and Dr. Penrose to subvert Wells’s educational and career advancement, bifurcating discovery would likely require duplicative depositions

¹ The Court notes that Dr. Prien and Dr. Penrose have also asserted official immunity to the state-law claims against them. Texas courts have likewise recognized that “[t]he procedure for invoking the defense of official immunity for government employees renders the official immune from suit, not just immune from liability.” *Teran v. Valdez*, 929 S.W.2d 37, 38 (Tex. App.—Corpus Christi 1996, no writ). Texas courts have also suggested that “[b]ecause of the strong policy arguments in favor of limiting discovery of officials claiming immunity, . . . a prudent trial court might choose to look to the federal practice for guidance in ruling on [] discovery issues.” *State v. Sims*, 871 S.W.2d 259, 263 (Tex. App.—Amarillo 1997, orig. proceeding). Nonetheless, Texas courts have not adopted a clear approach to handling discovery where a defendant asserts official immunity; therefore, the Court declines to rely on Dr. Prien and Dr. Penrose’s assertion of official immunity as a basis for staying discovery.

and informational requests. Further, Dr. Prien and Dr. Penrose have raised several other grounds that, if successful, could dispose of all of the claims against them. And a court acts within its discretion by staying discovery “where the disposition of a motion to dismiss ‘might preclude the need for the discovery altogether thus saving time and expense.’” *Von Drake v. Nat’l Broad. Co.*, No. 3-04-CV-0652R, 2004 WL 1144142, at *1 (N.D. Tex. May 20, 2004) (quoting *Landry*, 901 F.2d at 436). Therefore, to streamline the discovery process, the Court finds it appropriate to resolve Dr. Prien and Dr. Penrose’s motion to dismiss before allowing discovery to proceed as to any of the claims against them.

As for the claims against TTU—who does not assert immunity at all—the Court finds the Fifth Circuit’s recent, related opinion in *Carswell v. Camp*, 54 F.4th 307, 309 (5th Cir. 2022), to be instructive. There, the Fifth Circuit addressed the permissibility of discovery after some defendants had asserted qualified immunity. *Id.* at 311. Citing the well-settled principle that qualified immunity is “an immunity from suit,” not “a mere defense to liability,” *id.* at 310 (quoting *Pearson v. Callahan*, 555 U.S. 223, 237 (2009)), the Fifth Circuit confirmed that a plaintiff suing a defendant who asserts qualified immunity “must survive [a] motion to dismiss without *any* discovery,” *id.* at 311 (citing *Ashcroft v. Iqbal*, 556 U.S. 662 (2009)) (emphasis in original). Further, the court extended this rule to the claims of non-qualified-immunity-asserting defendants, reasoning that “[i]t [wa]s quite likely that, when discovery as to [those defendants] proceed[ed], it would prove necessary for [the qualified-immunity-asserting defendants] and their counsel to participate in the process to ensure the case d[id] not develop in a misleading or slanted way that causes prejudice to their position.” *Id.* at 313 (quoting *Iqbal*, 556 U.S. at 685). In other words, “[e]ven if [the qualified-immunity-asserting defendants] [we]re not yet themselves subject to

discovery orders, . . . they would not be free from the burdens of discovery” if discovery proceeded for the other defendants. *Id.* (quoting *Iqbal*, 556 U.S. at 685–86).

Although Dr. Prien and Dr. Penrose have raised the defense of sovereign—not qualified—immunity, *Carswell’s* reasoning applies here. Sovereign immunity, like qualified immunity, serves as an immunity from suit—not just liability. *Russell*, 49 F.4th at 514 (citing *Mitchell*, 472 U.S. at 526). And to allow discovery as to claims against TTU—who has not asserted immunity—would nonetheless require Dr. Prien and Dr. Penrose to police the process to ensure that it does not intrude into forbidden subject matter or otherwise prejudice their position. In fact, Wells has admitted that her claims against TTU “overlap factually with” and “necessarily” implicate her claims of harassment and discrimination against Dr. Prien and Dr. Penrose. Therefore, it would be impossible to allow discovery as to one without also demanding discovery as to the other. *See* Dkt. No. 28 at 4. That is especially concerning because Dr. Prien and Dr. Penrose have asserted sovereign immunity to Wells’s Equal Protection claim, which specifically involves those allegations. Therefore, despite *Carswell’s* lack of binding authority in this context, the Court in its discretion additionally finds it prudent to stay discovery as to the claims against TTU until resolution of Dr. Prien and Dr. Penrose’s assertion of sovereign immunity.

3. Conclusion

For these reasons, the Court grants the defendants’ motion to stay discovery—with respect to all claims and defendants—until the Court resolves Dr. Prien and Dr. Penrose’s Motion to Dismiss Plaintiff’s First Amended Complaint (Dkt. No. 25). Additionally, the deadline for the parties to submit their joint report concerning scheduling matters (*see* Dkt. No. 21 at 2) is vacated until further notice.

So ordered on July 19, 2023.

A handwritten signature in black ink, appearing to read "James W. Hendrix", is written over a horizontal line.

JAMES WESLEY HENDRIX
UNITED STATES DISTRICT JUDGE