

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19 CVS 23974

HYOSUNG USA, INC.,

Plaintiff,

v.

TRAVELERS PROPERTY
CASUALTY COMPANY OF
AMERICA; HARTFORD FIRE
INSURANCE COMPANY; and USI
INSURANCE SERVICES, LLC,

Defendants,

and

LOGIPIA USA, INC.,

Defendant and
Third-Party
Plaintiff,

v.

DUKE REALTY LIMITED
PARTNERSHIP,

Third-Party
Defendant.

**AMENDED ORDER ON THIRD-
PARTY DEFENDANT DUKE REALTY
LIMITED PARTNERSHIP'S MOTION
TO AMEND CASE MANAGEMENT
ORDER, PARTIALLY CONSENTED
TO BY OTHER PARTIES**

1. **THIS MATTER** is before the Court on Third-Party Defendant Duke Realty Limited Partnership's ("Duke Realty") Motion to Amend Case Management Order, Partially Consented To By Other Parties (the "Motion") filed on 12 April 2021. (ECF No. 100.)

2. Plaintiff Hyosung USA, Inc. ("Hyosung") filed this action on 30 December 2019 against (i) its insurers, Defendants Travelers Property Casualty Company of America ("Travelers") and Hartford Fire Insurance Company ("Hartford"), (ii) its

insurance broker, Defendant USI Insurance Services, LLC (“USI”), and (iii) its warehouse services provider, Defendant Logipia USA, Inc. (“Logipia”), seeking insurance coverage, reimbursement, and damages for Hyosung’s losses relating to storm and repair damage to certain Hyosung products Logipia stored for Hyosung at Duke Realty’s warehouse in Savannah, Georgia. (Compl., ECF No. 2.) The case was designated a mandatory complex business case on 28 February 2020. (ECF No. 1.)

3. The Court entered a Case Management Order (“CMO”) in this action on 25 June 2020. (ECF No. 37.) The CMO established that the discovery period would end on 22 March 2021 and that the parties must file all post-discovery dispositive motions on or before 21 April 2021.

4. Logipia brought third-party claims against Duke Realty on 31 July 2020. (ECF No. 52.) Duke Realty accepted service on 25 September 2020. (ECF No. 64.) On 26 October 2020, Duke Realty moved to dismiss Logipia’s third-party claims against it, or, in the alternative, to stay Hyosung’s claims against Logipia, compel those claims to arbitration, sever Logipia’s third-party claims against Duke Realty, and transfer those third-party claims to Georgia (the “Motion to Dismiss”). (ECF No. 65.)

5. The Court sent an e-mail to all counsel on 11 January 2021, advising that the Court would not order any claims in this matter to arbitration and would thus not enter a stay under N.C.G.S. § 1-569.7(f) as requested by Duke Realty. The Court

noted that it would address this conclusion and the other arguments raised on the Motion to Dismiss by separate order and opinion.¹

6. On 16 March 2021, the Court entered its Order and Opinion, denying Duke Realty's Motion to Dismiss and request for alternative relief to stay Hyosung's claims against Logipia and to sever Logipia's third-party claims against Duke Realty and transfer those claims to Georgia. (ECF No. 91.)

7. On 22 March 2021, the discovery period expired under the express terms of the CMO.

8. On 12 April 2021, Duke Realty filed the current Motion, seeking to extend by seven months the deadlines for fact discovery, expert discovery, and post-discovery dispositive motions. While all Defendants consented to Duke Realty's requested relief, Hyosung did not and timely filed its opposition brief on 22 April 2021. (ECF No. 104.)

9. The Court held a hearing on the Motion on 4 May 2021 via WebEx videoconference (the "Hearing"), at which all parties were represented by counsel. This Order memorializes the Court's oral ruling at the Hearing.

10. After careful consideration, the Court concludes, in the exercise of its discretion, that Duke Realty's Motion must be denied. Duke Realty was served with the third-party complaint initiating this action against Duke Realty on 25 September

¹ The Court's 11 January 2021 e-mail specifically stated, in relevant part, that the Court "has concluded that [it] will not order any claims in this matter to arbitration. Thus, the Court will not enter a stay under N.C.G.S. § 1-569.7(f) as requested by Duke Realty. The Court will address this conclusion and the other arguments raised on Duke Realty's Motion to Dismiss by separate order and opinion."

2020. Duke Realty learned on 11 January 2021 that the Court would not compel any claims to arbitration, rejecting Duke Realty’s request, and thus would not enter an arbitration-related stay of the litigation, which Duke Realty had sought. The Court’s ruling was memorialized in the Court’s Order and Opinion resolving Duke Realty’s Motion to Dismiss and alternative motion to stay and compel arbitration and for other relief on 16 March 2021. Six days after the Court’s formal written ruling, the discovery period expired. Duke Realty did not seek an extension of the discovery period, however, until 12 April 2021, three weeks after the discovery period’s expiration.

11. Business Court Rule (“BCR”) 10.4(a) specifically provides as follows:

Absent extraordinary cause, a motion that seeks to extend the discovery period or to take discovery beyond the limits in the Case Management Order must be made before the discovery deadline. The motion must explain the good cause that justifies the relief sought. The motion must also demonstrate that the parties have pursued discovery diligently.

BCR 10.4(a). The Rule also provides that “[e]ach party is responsible for ensuring that it can complete discovery within the time period in the Case Management Order.” BCR 10.4(a).

12. Duke Realty argues that its delay in seeking an extension of the discovery period until after the period had expired was justified because Duke Realty (i) sought a stay of this litigation under N.C.G.S. §1-569.7(f) in its motion to compel arbitration and (ii) worked diligently in an ultimately unsuccessful effort to negotiate the terms of an amended CMO with the other parties to this litigation. (Duke Realty’s Reply Mem. 2–3, 5–6, ECF No. 109.) Neither proffered justification, however—whether

considered alone or together—constitutes the “extraordinary cause” required under BCR 10.4(a).

13. As to Duke Realty’s request for an arbitration-related stay, the Court advised the parties, including Duke Realty, on 11 January 2021 that it would not compel arbitration and thus that a stay would not be entered. Yet Duke Realty waited three months before seeking an extension of the discovery period—a delay of four weeks after the Court entered its formal written ruling and of three weeks after the discovery period had expired. Thus, even if Duke Realty was justified in expecting the Court to enter a stay under section 1-569.7(f), Duke Realty was made aware that no such stay would be forthcoming long before the period expired. Yet Duke Realty took no action. Duke Realty still did not take action in the six days prior to the expiration of the discovery period after the Court’s formal written ruling was issued. The Court concludes that Duke Realty’s delay in these circumstances does not constitute the “extraordinary cause” required under BCR 10.4(a).

14. The same is true for Duke Realty’s other proffered justification. While Duke Realty is to be commended for its efforts to negotiate an amended CMO, those efforts cannot excuse its failure to timely move to extend the discovery period before its expiration. While the Court certainly encourages parties to reach agreements concerning discovery where they can be reached, the Court’s discovery period deadline is a deadline set by the Court, and BCR 10.4(a) makes quite clear that efforts to amend that deadline must be taken, with rare exception not present here, before the deadline passes. *See also* N.C. R. Civ. P. 6(b) (requiring a party to show “excusable

neglect” where a motion for extension is made “after the expiration of the specified period”).

15. The Court also notes that BCR 10.4(a) requires that a successful motion to extend the discovery period after the period expires requires the moving party to “demonstrate that the parties have pursued discovery diligently.” Duke Realty admits, however, that even though it was served with the third-party complaint with six months remaining in the discovery period, it did not conduct any discovery whatsoever. Indeed, Duke Realty declined to engage in discovery even though it received and answered discovery requests from Logipia, and it continued to decline to engage in discovery even after Duke Realty learned that its arbitration-related stay request would not be granted three months before the discovery period expired.

16. Based on this record, the Court concludes, in the exercise of its discretion, that Duke Realty has failed to show the “extraordinary cause” required under BCR 10.4(a) to justify its failure to file its Motion within the discovery period.² The Court therefore concludes that the Motion must be denied.

17. The Court recognizes that its ruling, as with many rulings enforcing court-imposed deadlines, may impose a harsh result. BCR 10.4(a) and its “extraordinary cause” standard, however, are part of Rules that were the result of lengthy deliberations originating within a sixty-member Business Court Rules Advisory

² This is particularly true given that Duke Realty seeks an extension of the discovery period of seven months. Hyosung and the other parties conducted all the discovery they determined was necessary within the nine-month discovery period set forth in the CMO, and it would cause unfair prejudice to Hyosung, in particular, to require it to engage in a nearly equal length period of further discovery after the discovery period has expired and dispositive motions have been filed.

Committee, with input and approval from the five Business Court judges, and with final approval and promulgation by the Supreme Court of North Carolina. As such, the Court may not cavalierly disregard Rule 10.4(a)'s "extraordinary cause" requirement or find "extraordinary cause" where it does not exist. As Judge Adam M. Conrad of this Court has noted, parties have a "right to expect that having been set, . . . case management deadlines [will] be honored." *Bohn v. Black*, 2018 NCBC LEXIS 50, at *10 (N.C. Super. Ct. May 16, 2018) (citation and internal quotation marks omitted). The Court exercises its discretion to do so here in light of BCR 10.4(a)'s express requirements. *See, e.g., In re Pedestrian Walkway Failure*, 173 N.C. App. 254, 265 (2005) (finding trial court did not abuse its discretion in enforcing CMO deadlines); *see also Flint v. City of Belvidere*, 791 F.3d 764, 768 (7th Cir. 2015) (affirming trial court's enforcement of CMO deadlines and noting that "case management depends on enforceable deadlines, and discovery must have an end point" (citation and internal quotation marks omitted)); *United States ex rel. Tyson v. Amerigroup Ill., Inc.*, 230 F.R.D. 538, 545 (N.D. Ill. 2005) ("Complex . . . cases must have enforceable discovery deadlines.").

18. As a last note, the Court recognizes that Hyosung's counsel suggested in briefing and argument that a compromise solution in these circumstances might involve the severance of Logipia's third-party claims against Duke Realty from the rest of this action. (Hyosung's Mem. Opp'n 3-4, ECF No. 104.) Although various parties have offered competing views of Hyosung's proposal, both in briefing and at the Hearing, no party has filed a motion to sever any claims at this time. As the

Court advised at the Hearing, the Court declines to consider the severance of claims in the absence of a timely and well-founded motion and supporting brief and after an opportunity has been afforded for all parties to be heard.

19. **WHEREFORE**, for the reasons set forth above and in the exercise of its discretion, the Court hereby **DENIES** Duke Realty's Motion.

SO ORDERED, this the 10th day of May, 2021.

/s/ Louis A. Bledsoe, III
Louis A. Bledsoe, III
Chief Business Court Judge