

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,

Plaintiff,

v.

Case No. 17-CV-1261

RONALD HENRY VAN DEN HEUVEL
and
GREEN BOX NA DETROIT, LLC,

Defendants.

**UNITED STATES' MEMORANDUM IN
SUPPORT OF MOTION TO INTERVENE
AND STAY CIVIL PROCEEDINGS**

The United States of America, by its attorney, Gregory J. Haanstad, United States Attorney for the Eastern District of Wisconsin, and Matthew D. Krueger and Rebecca L. Taibleson, Assistant United States Attorneys, respectfully moves this Court for an order (a) permitting the United States to intervene in this civil case and (b) staying discovery in this case until the resolution of the related and recently indicted criminal case.

I. BACKGROUND

On September 19, 2017, the plaintiff in this case, the Securities and Exchange Commission (“SEC”), filed a complaint alleging that Ronald Van Den Heuvel and Green

Box NA Detroit LLC (“Green Box Detroit”) violated the antifraud provisions of the federal securities laws by engaging in fraudulent conduct relating to the offer or sale of securities. Dkt. 1. Also on September 19, 2017, a federal grand jury in the Eastern District of Wisconsin returned an indictment charging Van Den Heuvel with multiple counts of wire fraud and money laundering based upon his fraudulent conduct in obtaining money from investors and lenders on behalf of Green Box Detroit and other related companies. *See United States v. Van Den Heuvel*, 17-CR-160 (E.D. Wis. Sept. 19, 2017).

The SEC’s complaint and the criminal indictment involve the same defendant, as well as overlapping facts and law. Specifically, according to both the SEC’s complaint and the criminal indictment, Van Den Heuvel obtained funds from investors and lenders with promises that he would use their money for an eco-friendly recycling process called the Green Box Process. Van Den Heuvel formed and controlled numerous business entities that, he claimed, were furthering the Green Box Process, including Green Box Detroit, Green Box NA LLC, and Green Box NA Green Bay LLC. Van Den Heuvel represented to investors and lenders that their funds would promote the Green Box Process through these corporate entities. In reality, according to both the SEC’s complaint and the criminal indictment, Van Den Heuvel misappropriated a substantial percentage of the funds contributed by investors and lenders. Instead of using his victims’ funds to implement the Green Box Process, Van Den Heuvel used a significant portion of their money for improper purposes, such as a Cadillac Escalade and Green Bay Packers tickets.

The SEC’s complaint and the criminal indictment identify numerous specific

victims of Van Den Heuvel's fraud. Some of the same victims are identified in both cases – specifically, Clifton Equities, a private investment firm located in Canada, and multiple foreign persons who invested through the EB-5 visa program. The SEC's complaint and the criminal indictment also identify numerous specific misrepresentations made by Van Den Heuvel in the process of obtaining these victims' funds. Again, some of those misrepresentations overlap; in both cases, for example, it is alleged that Van Den Heuvel lied to investors about his business relationship with Cargill, about his ability to obtain tax-exempt bonds to fund Green Box Detroit, and about how he would use the money he obtained from investors and lenders.

Van Den Heuvel has not filed an answer to the SEC's complaint and has instead moved to stay proceedings in this case. Dkt. 7. The parties have not yet engaged in discovery. The United States now seeks to intervene in this civil proceeding in order to seek a stay of discovery pending resolution of the criminal case. The SEC does not oppose this motion.

II. INTERVENTION IS APPROPRIATE

The United States' intervention in this case is appropriate, and the Court has the power to grant the Government's motion under Rule 24 of the Federal Rules of Civil Procedure. Rule 24 authorizes two forms of intervention: intervention as of right, and intervention as a matter of discretion. As relevant here, intervention as of right is governed by Rule 24(a)(2), which provides that "the court must permit anyone to intervene who ... claims an interest relating to the property or transaction that is the subject of the action,

and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." To intervene as of right under this rule, an applicant must demonstrate that "(1) the application is timely; (2) the applicant has an 'interest' in the property or transaction which is the subject of the action; (3) disposition of the action as a practical matter may impede or impair the applicant's ability to protect that interest; and (4) no existing party adequately represents the applicant's interest." *Security Ins. of Hartford v. Schipporeit*, 69 F.3d 1377, 1380 (7th Cir. 1995).

Under Rule 24(b)(1)(B), discretionary intervention is appropriate when the third party "has a claim or defense that shares with the main action a common question of law or fact." To intervene under this portion of the Rule, an applicant must show the existence of a common question of law or fact and independent jurisdiction. *Schipporeit*, 69 F.3d at 1381. Further, under Rule 24(b)(3), "[i]n exercising its discretion [under this rule], the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights."

In this context—that is, where there is both a pending SEC civil case and a related criminal case—courts have routinely allowed the United States to intervene in the civil case for the purpose of requesting a stay. *See, e.g., SEC v. Saltsman*, 2008 WL 360995 (E.D.N.Y. Feb. 11, 2008); *SEC v. Downe*, 1993 WL 22126, at *11 (S.D.N.Y. Jan. 26, 1993) ("It is well-established that the United States Attorney may intervene in a federal civil action to seek a stay of discovery when there is a parallel criminal proceeding, which

is anticipated or already underway, that involves common questions of law or fact.”). Such interventions have been granted both as a matter of right under Rule 24(a), *see, e.g., SEC v. Mutuals.com. Inc.*, 2004 WL 1629929 (N.D. Tex. July 20, 2004), and as a matter of discretion under Rule 24(b), *see, e.g., SEC v. Chestman*, 861 F.2d 49, 50 (2nd Cir. 1988); *Downe*, 1993 WL 22126; *see also, e.g., SEC v. Nacchio*, 2005 WL 1799372, at *3 (D. Colo. July 28, 2005) (finding intervention appropriate under either rule).

In this case, intervention by the United States is appropriate both as a matter of right and as a matter of discretion. First, the United States’ motion is timely, having been brought during the preliminary phases of both the civil and criminal proceedings and before the commencement of discovery in the SEC’s case.

Second, there is substantial factual overlap between the civil enforcement action brought by the SEC and the pending criminal case. As noted above, the schemes in the two cases are essentially the same, the defendant is the same, and many of the victims are the same.

Third, the United States’ interest in this case will be affected if this Court does not stay the SEC’s civil case. Under similar circumstances, courts have determined that a stay is appropriate in order to avoid unfair prejudice to the United States by permitting the defendants to obtain civil discovery to which they would not otherwise be entitled in a criminal case, including taking depositions of the Government’s witnesses. *See, e.g., Downe*, 1993 WL 22126, at *12-13 (granting stay in part because defendants would otherwise be able to obtain testimony via civil discovery from the Government’s

witnesses). Moreover, “even though the SEC is involved in this action, the United States Attorney may have an interest in this litigation which is qualitatively different from the SEC’s interest.” *Downe*, 1993 WL 221126 at *12; *see also Mutuals.com*, 2004 WL 1629929 at *2.

Accordingly, the United States requests that it be permitted to intervene in this civil case for the purpose of seeking a temporary stay of discovery.

III. DISCOVERY IN THIS CASE SHOULD BE TEMPORARILY STAYED PENDING RESOLUTION OF THE CRIMINAL CASE

Based on a district court’s inherent power to control and manage its docket, this Court has authority to stay all or any portion of this case. *See Landis v. North American Co.*, 299 U.S. 248, 255 (1936) (“[T]he 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.”). In determining whether to stay proceedings and the scope of any stay order, courts examine “a variety of factors.” *Benevolence International Foundation, Inc. v. Ashcroft*, 200 F. Supp. 2d 935, 938 (N.D. Ill. 2002); *Downe*, 1993 WL 22126 at *12. Those factors include whether a related criminal matter has ripened into an indictment or remains an investigation. *See, e.g., Trustees of Plumbers and Outfitters National Fund v. Transworld Mechanics, Inc.*, 886 F. Supp. 1134, 1139 (S.D.N.Y. 1995) (“A stay of a civil case is most appropriate where a party to the civil case has already been indicted for the same conduct.”); *Mutuals.com*, 2004 WL 1629929 at *3. Courts also evaluate whether the civil plaintiff opposes the stay, *Mutuals.com*, 2004

WL 1629929 at *3; *SEC v. Mersky*, 1994 WL 22305, at *3 (E.D. Pa. Jan. 25, 1994), and whether the civil defendants would somehow be prevented from resuming a defense to the civil case once a stay is lifted, *Mutuals.com*, 2004 WL 1629929 at *4; *Mersky*, 1994 WL 22305 at *3.

Whether the criminal prosecution will be compromised by allowing the civil case—and the use of civil discovery procedures—to continue is also relevant to the stay analysis. *See Benevolence International Foundation, Inc.*, 200 F. Supp. 2d at 939-40; *Mersky*, 1994 WL 22305 at *4; *Downe*, 1993 WL 22126 at *12-13. Courts have acknowledged “the great weight” that should be accorded to protecting the Government’s interest in preserving its ability to prosecute the criminal case without interference from the civil case. *Mersky*, 1994 WL 22305 at *4 (citing *United States v. Stewart*, 872 F.2d 957, 962-63 (10th Cir. 1989)); *see Benevolence International Foundation, Inc.*, 200 F. Supp. 2d at 939 (“[A] trial court should not permit a defendant in a criminal case to use liberal civil discovery procedures to gather evidence to which he might not be entitled under the more restrictive criminal rules.”).

Finally, in determining whether to stay a civil proceeding, courts often examine whether a stay may result in saving judicial resources, because “any successful criminal prosecutions may streamline discovery and trial” of the civil case once the stay is lifted. *Mersky*, 1994 WL 22305 at *4; *Benevolence International Foundation, Inc.*, 200 F. Supp. 2d at 940-41.

After examining these factors, courts have routinely issued stays of SEC civil

enforcement actions pending the resolution of related criminal cases. *See, e.g., Chestman*, 861 F.2d 49; *SEC v. Nicholas*, 569 F. Supp. 2d 1065 (C.D. Cal. 2008); *SEC v. TelexFree, Inc.*, 52 F. Supp. 3d 349, 353 (D. Mass. 2014); *Mutuals.com*, 2004 WL 1629929; *Mersky*, 1994 WL 22305; *Downe*, 1993 WL 22126. Further, several courts in this Circuit have stayed non-SEC civil cases pending the resolution of related criminal cases. *See, e.g., Mr. Dee's, Inc. v. Int'l Outsourcing Servs., LLC*, 2008 WL 4853601 (E.D. Wis. Nov. 3, 2008); *United States v. All Meat And Poultry Products*, 2003 WL 22284318 (N.D. Ill. Oct. 3, 2003); *Benevolence International Foundation, Inc.*, 200 F. Supp. 2d 935.

In this case, virtually all factors weigh in favor of staying discovery until the criminal case is completed. As described above, the pending criminal case is very similar to this civil action. None of the parties to this action object to a stay; indeed, Van Den Heuvel himself has also moved for a stay (albeit for different reasons, which the United States does not endorse). In addition, neither the SEC nor Van Den Heuvel will be prejudiced in litigating the civil case following the conclusion of the criminal case. In the criminal case, the United States has already produced discovery pursuant to this district's discovery rules, which includes a substantial number of statements of witnesses. The United States is also producing to Van Den Heuvel, in the criminal case, the documents and investigative testimony that the SEC has gathered to date during its own investigation. In addition, if civil discovery did proceed, it is likely that Van Den Heuvel, and possibly other witnesses, would invoke their Fifth Amendment rights in response to notices of deposition from the SEC. *See Nicholas*, 569 F.Supp.2d at 1070 ("The specter of parties and

witnesses invoking their Fifth Amendment rights would render civil discovery largely one-sided; the SEC would produce scores of documents and witness testimony only to be precluded from gathering reciprocal discovery from the Defendants.”).

Finally, considerations of judicial economy and the public interest in efficient use of judicial resources also favor a stay. Issues common to both cases may be resolved in the criminal proceedings, narrowing or eliminating factual questions in the civil litigation. Further, a stay “may streamline later civil discovery since transcripts from the criminal case will be available to the civil parties.” *Twenty First Century Corp. v. LaBianca*, 801 F. Supp. 1007, 1011 (E.D.N.Y. 1992) (granting stay over objection of civil defendants); *see also, e.g., In re Grand Jury Proceedings*, 995 F.2d 1013, 1018 n.11 (11th Cir. 1993) (“although stays delay civil proceedings, they may prove useful as the criminal process may determine and narrow the remaining civil issues”). Finally, “collateral estoppel in the criminal case may expedite the resolution of the civil case.” *Nicholas*, 569 F. Supp. 2d at 1070.

Accordingly, the United States requests that the Court issue a stay of discovery in this case until the resolution of the criminal case.

IV. CONCLUSION

For the foregoing reasons, the United States requests that the Court grant its motion to intervene and stay all discovery in this case pending further order of the Court and pending the resolution of the related criminal matter captioned *United States v. Van Den Heuvel*, 17-CR-160 (E.D. Wis.).

Dated at Milwaukee, Wisconsin, this 28th day of November, 2017.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 28, 2017, I electronically filed a Motion to Intervene and Stay Civil Proceedings, and a supporting Memorandum, with the Clerk of the Court using the ECF system. I hereby certify that I have also mailed a copy of these materials by United States Postal Service to the following address, which was provided by defendant Ronald Van Den Heuvel in his waiver of service in this case, Dkt. 3:

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Respectfully submitted,

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