



By Order of the Court, Judge Joseph N. Camacho

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FOR PUBLICATION



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CNMI SUPERIOR COURT  
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IN THE SUPERIOR COURT  
FOR THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

JOHN D. ARRIOLA, individually and as  
guardian and next friend of N.C.A., a  
minor, and ELENITA K. ARRIOLA,

Plaintiffs,

v.

LIN, JIN SONG and LIN'S  
INVESTMENTS CORPORATION,  
Defendants.

CIVIL ACTION NO. 13-0021

ORDER GRANTING STAY AS TO LIN  
INDIVIDUALLY AND DENYING AS TO  
LIN'S INVESTMENTS CORPORATION

**I. INTRODUCTION**

**THIS MATTER** came before the Court on May 9, 2013 on Defendant's motion to stay. Plaintiffs John D. Arriola, individually and as guardian and next friend of N.C.A., a minor, and Elenity K. Arriola ("Plaintiffs") appeared with their attorneys Matthew Smith and Jennifer Dockter. Defendants Lin, Jin Song ("Lin") and Lin's Investments Corporation ("the Corporation") appeared by and through their attorney Nadeah Vali. Based on the filings, law and oral argument in this case, the Court **GRANTS** the stay as to Lin and **DENIES** the stay as to the Corporation.

**II. BACKGROUND**

On July 9, 2012, Lin was arrested for an incident involving a minor who walked into the LF Market where he works. On January 31, 2013, the Plaintiffs John D. Arriola, Elenita K. Arriola and the minor child initiated the present lawsuit against the defendants based on the same set of facts as the criminal charges.

1 On April 1, 2013, Plaintiffs served each defendant a set of interrogatories, request for production  
2 of documents and noticed their intent to take the Corporation's deposition on May 6, 2013.

3 Defendants seek a stay of all proceedings pending disposition of the criminal case. Plaintiffs do  
4 not oppose a limited stay as to Lin, but oppose a stay as to the Corporation.

### 5 **III. LEGAL STANDARD**

6 The party seeking a stay bears the burden of establishing that it is warranted. *Clinton v. Jones*,  
7 520 U.S. 681, 708 (1997).<sup>1</sup> “[T]he Fifth Amendment does not mandate a stay of civil proceedings  
8 pending the outcome of criminal proceedings.” *Ex parte Oliver*, 864 So. 2d 1064, 1066 (Ala. 2003).  
9 Rather, courts have discretion to stay civil proceedings in the interest of justice. *Pac. Am. Title Ins. &*  
10 *Escrow, Inc. v. Anderston*, Civil Action No. 98-0010A (NMI. Super. Ct. Aug. 28, 1998 at 2) (citing  
11 *United States v. Kordel*, 397 U.S. 1 (1970)).

12 In deciding whether to grant a stay the court considers the extent to which the defendant's Fifth  
13 Amendment rights are implicated;

14 (1) the interest of the plaintiffs in proceeding expeditiously with this litigation or any  
15 particular aspect of it and the potential prejudice to plaintiffs of a delay; (2) the burden  
16 which any particular aspect of the proceedings may impose on defendants; (3) the  
17 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.

18 *Pac. Am. No. 98-0010A at 2.*

19 The Fifth Amendment privilege to be free from compulsory self-incrimination allows an  
20 individual to refrain from answering official questions put to him in any proceeding, civil or criminal,  
21 formal or informal, where the answers might incriminate him in future criminal proceedings. *Chavez v.*  
22 *Martinez*, 538 U.S. 760, 770, (2003) (citing *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973)). Corporations

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24 <sup>1</sup> In the absence of written, local customary law, or restatements of law, common law as applied in the United States  
governs. 7 CMC § 3401.

1 do not enjoy the privilege. *Pac. Am.*, No. 98-0010A at 2. However, a corporate officer may assert the  
2 privilege in civil discovery proceedings. *See id.*; *see also, Kordel*, 397 U.S. at 7. Where corporate  
3 officers are unable to designate a representative who can testify without invoking the Fifth Amendment  
4 privilege against self-incrimination the appropriate remedy is to seek a protective order under NMI R.  
5 Civ. P. 30(b). *Pac. Am.*, No. 98-0010A at 2 (citing *Commodity Futures Trading v. Noble Metals Intern.*,  
6 67 F.3d 766 (9th Cir. 1995)).

7 With these basic principles in mind the Court turns to the issues in the case.

#### 8 **IV. DISCUSSION**

9 The Court proceeds by addressing the stay first as to Lin and second as to the Corporation.

##### 10 **A. STAY AS TO LIN**

11 Plaintiffs do not oppose a limited stay as to Lin. (Opp'n 2, 3, 6.) Here, the facts underlying this  
12 case appear to be the same as those alleged in the criminal charges. As a result, Lin's Fifth Amendment  
13 rights are implicated. *See Pac. Am.*, No. 98-0010A at 2-3. Accordingly, the Court **GRANTS** a stay of  
14 the proceedings as to Lin, until the criminal matter is adjudicated in the Superior Court. Consequently,  
15 the jury trial is hereby continued until Tuesday **November 5, 2013 at 9:00a.m.**

##### 16 **B. STAY AS TO THE CORPORATION**

17 The Corporation is not entitled to stay the proceedings in this case. The Corporation is not  
18 facing criminal charges, and enjoys no right against self-incrimination. *Pac. Am.*, No. 98-0010A at 2.  
19 Further, Plaintiffs demonstrated an interest in proceeding quickly so that the minor child and her parents  
20 can receive psychological counseling. (*See Graf Affidavit* 1-3.)

21 The Corporation failed to meet its burden to show the privilege against self-incrimination is  
22 implicated. Where no authorized person exists who can answer interrogatories without the possibility of  
23 compulsory self-incrimination, the party seeking a stay has the burden to demonstrate that situation.  
24 *See, Kordel*, 397 U.S. at 9. In *Pac. Am.* the corporation's deposition was taken, but several times during

