

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

PACIFIC AMERICAN TITLE INSURANCE AND ESCROW, (CNMI), INC.	)	Civil Action No. 98-0010A
	)	
Plaintiff,	)	
	)	
v.	)	DECISION AND ORDER
	)	GRANTING MOTION
KIM FELL ANDERSON,	)	TO STAY CIVIL
SECURITY TITLE, INC., and	)	PROCEEDING
JOHN DOES ONE THROUGH SEVEN	)	
Defendant.	)	
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I. INTRODUCTION

Defendant Kim Fell Anderson (“Anderson”) brings a motion to stay this civil action until her pending criminal proceeding concludes. Plaintiff Pacific American Title Insurance and Escrow, Inc. (“Pacific”) responds with a motion to compel or preclude Anderson’s testimony and for an award of attorneys fees.

II. FACTS

Pacific noticed a deposition to take place where it required Security Title (“Security”) to appear and produce a representative to testify on matters central to the determination of the disputed database, acquisition of an underwriter, and employment of Erin Hofackett. At the deposition, Ron Young, a director and the secretary-treasurer, testified on behalf of Security. In several instances, he testified that he was less knowledgeable than Anderson. Mr. Young refused to answer questions pertaining to what went on before Security was incorporated. In several instances, Mr. Young testified that others would know more information than himself. For example, he testified that Erin [p. 2] Hofackett would know more about her employment than he would. However, the court was not provided with a full transcript of the deposition.

**FOR PUBLICATION**

### III. ISSUES

1. Whether Anderson is entitled to a stay of the civil action by invoking her fifth amendment right against self-incrimination at her upcoming criminal trial.
2. Whether Ron Young's testimony was adequate as a corporate representative.
3. Whether attorneys fees or preclusion are appropriate at this time.
4. Whether Pacific can compel the testimony of Anderson.

### IV. ANALYSIS

When corporate officers are unable to designate a representative who can testify without invoking the fifth amendment privilege against self-incrimination, the appropriate remedy is to seek a protective order under Rule 30(b) of the CNMI Rules of Civil Procedure. Commodity Futures Trading v. Noble Metals Intern., 67 F.3d 766 (9th Cir. 1995). In this situation, Security made efforts to designate an available representative, who Pacific argues was insufficient. As a result, the only member of Security who could testify is Anderson, who will be using her fifth amendment privilege at her criminal trial.

In its discretion, a court may stay civil proceedings in the interest of justice. United States v. Kordel, 397 U.S. 1, 90 S.Ct. 763 (1970). Although a corporation does not have any privilege against self-incrimination, an individual does. *Id.* The ninth circuit has put forth a test which takes into account the particular circumstances and competing interests involved where a civil action should be stayed while parallel criminal proceedings are pending. The court must consider to what degree the defendant's fifth amendment rights are applicable. In addition, the court should consider:

(1) the interest of the plaintiffs in proceeding expeditiously with this 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." Keating v. Office of Thrift Supervision, 45 F.3d 322 (9<sup>th</sup> Cir. 1995).

[p. 3]

In this case, the central issue in both the civil and criminal cases revolves around whether Anderson stole a computer disc which contains title information compiled by Pacific ("database"). However, the issues of how Anderson hired Erin Hofackett and whether she solicited Pacific's customers are not

necessarily part of the criminal case, to the extent the solicitation of Pacific's customers does not involve the database.

The interest in plaintiffs proceeding expeditiously has already been touched upon in the court's prior order denying a preliminary injunction. As calculable money damages will be recoverable whatever the outcome, the delay will not prejudice Pacific. However, the burden on Anderson to give up her ability to testify or lose her fifth amendment privilege at her criminal trial is great. The court has not scheduled trial dates and any delay will not inconvenience the court. In fact, evidence gleaned from the criminal trial may assist the parties to move forward on the civil action. This is not a case where the public or third parties have any discernable interest.

Pacific argues that the fifth amendment privilege applies only to specific questions, and cannot serve as a "blanket" protection against all questioning. U.S. v. Drollinger, 80 F.3d 389 (9<sup>th</sup> Cir. 1996). That is a correct statement of law. However, the question here is different. Staying a civil action turns on the test outlined above which is a function of the court's discretion and will not affect the criminal trial. Here, Pacific has stated that it intended to depose Security about the database, the very same item at issue in the criminal trial. That is enough for the court to make its determination.

#### V. CONCLUSION

Accordingly, Anderson's motion is granted staying further progress of the civil action until her criminal proceeding has concluded. The issues of whether Ron Young's testimony was sufficient and whether Pacific could compel Anderson's testimony are not reached at this time.

Pacific's request to preclude is denied as it is premature. Further, Pacific's request for attorneys fees is denied.

So ordered this 28 day of August, 1998.

/s/ Edward Manibusan  
EDWARD MANIBUSAN, Presiding Judge