

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT 1

GEOFF DAVIDIAN,

Plaintiff-Respondent

v.

JPMORGAN CHASE BANK, N.A.,
AND JEFF CHILDS

Defendants-Petitioners

**PLAINTIFF-RESPONDENT'S OPPOSITION TO
TEMPORARY RELIEF UNDER WIS STATS. § 809.52**

**MILWAUKEE COUNTY CIRCUIT COURT
CASE NOS. 06-CV-011909 AND 06-SC-045116**

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Petitioners' Request for Temporary Relief is a frivolous delay tactic.

It is meant to deny Geoff Davidian access to witnesses who have experienced the same predatory consumer practices as Geoff Davidian and who would provide discoverable information relevant to this case.

There is no question that in 2005 and 2006 Chase Bank charged at least 221 people fees for insufficient funds although those customers had money on deposit, and many are still bank customers, according to Attorney Long:

“I can't say for certain that all 221 remain customers of Chase Bank, but we presume that most do.”

(P-Ap. 060)

The Petition incorrectly suggests that unless the Court of Appeals gives temporary relief from the Circuit Court's order to provide the names of the 221 customers, their privacy will be violated.

On October 16, Judge Dennis Flynn has issued a valid, well tailored, balanced and fair Order:

“ . . . that list is determined to be a protected customer list. Plaintiff may use the customer list and identifying information only for purposes of prosecuting his cause of action and this data may not otherwise be used for any reason.”

Thus, the order meets the exemption No. 8 it meets the requirement of The Gramm-Leach-Bliley Act. There is no issue.

JPMorgan Chase Bank, N.A. and Jeff Childs seek to stop discovery of who these customers are. How is Geoff Davidian to know the information these customers have?

JPMorgan Chase Bank, N.A. and Jeff Childs were asked to identify erroneously charged customers 10 months ago and delayed producing this partial list until October 12, 2007.

These 221 Wisconsin residents that JPMorgan Chase Bank and Jeff Childs admit were harmed is just the tip of the discovery iceberg; these are the names of the customers who have allegedly received refunds; JPMorgan Chase Bank and

Jeff Childs have still not produced the names of other Wisconsin customers who had money on deposit, were charge insufficient funds fees and were not credited.

JPMorgan Chase Bank and Jeff Childs seek to stop discovery of witnesses who will contradict their position, but the Rules of Civil Procedure and Judge Dennis Flynn I have the right to know who they are.

The extent of the pattern of taking fees to which JPMorgan Chase Bank and Jeff Childs are not entitled is legitimate information in these lawsuits, brought after JPMorgan Chase Bank repeatedly charged fees over four months against two accounts and Jeff Childs refused to refund them.

Judge Flynn has ordered that discovery end on November 30, 2007. By granting temporary relief and an interlocutory appeal Geoff Davidian's case will be hurt.

Judge Flynn did not err and his discretion was not reckless. The Gramm-Leach-Bliley Act sets an exemption to the release of financial records when by order of a court, JPMorgan Chase Bank is using the petition for temporary relief to make it impossible for Geoff Davidian to prove the extent of the bank's pattern of converting customer money until caught.

Regarding the depositions of James Dimon and William Harrison: the request is based on comments they made to stockholders. See Attachment A, which was in evidence October 16 before Judge Flynn.

Analysis

Interlocutory appeals are generally disfavored. In reviewing an interlocutory appeal, the court must examine whether the petitioner has a substantial likelihood of success on

the merits. In the instant case, there is patently no likelihood of success on the merits.

As to the issue of whether disclosure by Chase of information concerning its customers, it bears emphasis from the outset that Chase did not and could not cite a single case in the Circuit Court proceeding supporting its contention that disclosure would be in violation of [the federal law]. To the contrary, every court that has examined this issue, including the Supreme Courts of three states as well as several federal district courts, have rejected the contention Chase now wishes to make.

There is virtually no likelihood that Chase will prevail on this issue and this Court ought not to stay execution of this portion of the Circuit Court's order absent any showing whatsoever of merit to the issue raised by Chase. As to the Circuit Court's order allowing the depositions of Messrs. Dimon and Harrison, the record in this case plainly reveals that the Circuit Judge applied the proper legal standards and thoughtfully applied them to the facts of this case. It is well-established that trial court judges are

best positioned to issue discovery orders, and absent a clear error in the exercise of discretion, a court of appeals may not reverse a discovery order. Accordingly, here again, Chase has no substantial likelihood of success on the merits.

If Chase and its lawyers were to do something highly unusual for them in this case namely, exercise a modicum of intellectual honesty, they would inform this court that the only purpose served by this ill-conceived attempt to obtain interlocutory review is to delay the proceedings in the circuit court and to prevent its well-heeled executives from having to submit to deposition.

We review the circuit court's discovery order for an erroneous exercise of discretion. *See Borgwardt v. Redlin*, 196 Wis.2d 342, 350, 538 N.W.2d 581 (Ct.App.1995); *Swan Sales Corp. v. Jos. Schlitz Brewing Co.*, 126 Wis.2d 16, 28, 374 N.W.2d 640 (Ct.App.1985).

The burden is on [the appellant] to show that the trial court misused its discretion and we will not reverse unless such

misuse is clearly shown. Konle v. Page, 205 Wis.2d 389, 393, 556 N.W.2d 380 (Ct.App.1996). We will sustain a discretionary act if we find the trial court examined the relevant facts, applied a proper standard of law, and using a demonstrative rational process, reached a conclusion that a reasonable judge could reach. Paige K.B. v. Steven G.B., 226 Wis.2d 210, 233, 594 N.W.2d 370 (1999). Whether the circuit court utilized the proper legal standard, however, is a question of law we review independently of the circuit court, benefiting from its analysis. See Three & One Co. v. Geilfuss, 178 Wis.2d 400, 410, 504 N.W.2d 393 (Ct.App.1993).

This is not a case where interlocutory appeal of the discover orders at issue will advance the termination of this litigation in any manner whatsoever.

To the contrary, interlocutory appeal over the routine discovery orders at issue here will only serve to needlessly delay the termination of this litigation.

CONCLUSION:

This appeal has no merit and is just a tactic to avoid revealing the extent of consumer abuse by JPMorgan Chase Bank and to obtain discoverable information from executives who merged their banks then immediately began predatory consumer practices against Wisconsin residents.

Respectfully submitted this 19th day of October, 2007.

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