IN THE FRANKLIN COUNTY COURT OF COMMON PLEAS
GENERAL DIVISION

State of Ohio ex rel. Ohio Attorney General Mike DeWine, et al.,	:	
	:	**Case No. 18-CV-001864**
Plaintiffs,	:	**Judge Jeffrey M. Brown**
vs.	:	
Precourt Sports Ventures, LLC, et al.,	:	
Defendants.		

JOURNAL ENTRY AND ORDER:
(1) GRANTING IN PART PLAINTIFFS' MOTION TO TOLL R.C. 9.67;
(2) GRANTING IN PART DEFENDANTS' MOTION TO STAY DISCOVERY;
(3) HOLDING PLAINTIFF'S MOTION TO COMPEL DISCOVERY IN ABEYANCE;
(4) DEFERRING RULING ON DEFENDANTS' MOTION TO DISMISS;
AND
(5) NEGOTITIONS AND SCHEDULING ORDER

BROWN, J.

This matter came before the Court for a Status Conference on May 3, 2018, at which time the Court addressed the following motions: (1) Motion to Toll R.C. 9.67 Six-Month Notice Period filed by Plaintiff City of Columbus on April 9, 2018; (2) Motion to Toll[1] filed by Plaintiff Ohio Attorney General Mike DeWine ("the state") on April 23, 2018[2]; (3) Motion to Stay Discovery Pending this Court's Disposition of Defendants' Motion(s) to Dismiss filed by Defendants Precourt Sports Ventures, LLC ("PSV"), Major League Soccer, L.L.C. ("MLS"), Team Columbus Soccer, L.L.C., and Crew Soccer Stadium Limited Liability Company (collectively "Defendants")

[1] The state's Motion to Toll is contained within its Memorandum Contra Defendants' Motion to Stay Discovery Pending this Court's Disposition of Defendants' Motion(s) to Dismiss.
[2] The state originally filed its response and motions on April 20, 2018, but the filing was missing a signature. The refiled document on April 23, 2018 (identified on the docket simply as "Motion to Compel Discovery" is identical to the April 20, 2018 filing, save for the previously omitted signature.

on April 13, 2018; (4) the state's Motion to Compel Discovery[3] filed April 23, 2018; and (5) Defendants' Motion to Dismiss the Complaint.

I. BACKGROUND[4]

Columbus Crew SC ("the Crew") is one of 23 professional soccer teams owned by MLS. (Am. Compl. at ¶¶ 1, 12.) MLS formed in 1993, and awarded the City of Columbus one of the league's first ten teams in 1994. (*Id.* at ¶¶19-20.) Lamar Hunt and family were the first operator/investors of the Crew. *Id.* MLS's inaugural season was in 1996. (*Id.* at ¶ 21.) The Crew played its home games in The Ohio State University's football stadium from 1996 through the 1998 season. *Id.* Crew Soccer Stadium [LLC] then entered into a twenty-five (25) year lease with the State of Ohio in 1998 for land owned by the Ohio Expo Commission, on which MLS's first soccer-specific stadium would be constructed. (*Id.* at ¶ 22.) The Crew now plays most of its home games in the Crew Soccer Stadium [LLC]-owned MAPFRE stadium, which sits on the aforementioned 15.25-acre state-owned property located within the city's territorial boundaries—Crew Soccer Stadium [LLC] leases the property from the State of Ohio. (*Id.* at ¶¶ 10, 14.)

The Hunt family sold its operator/investor interest in the Crew back to MLS in 2013. (Id. at ¶ 25.) PSV purchased said interest in the Crew from MLS that same year and now manages the team. (*Id.* at ¶¶ 11, 25.) Plaintiffs' Amended Complaint states that when PSV purchased the operator/investor interest in the team, it also became the sole member of Team Columbus Soccer, L.L.C. with rights to operate the Crew. (*Id.* at ¶¶ 1, 13, 27.) PSV also, according to the Amended

[3] Like the state's Motion to Toll, its Motion to Compel is also contained within its Memorandum Contra Defendants' Motion to Stay Discovery.

[4] The factual background is gleaned from the pleadings and motions filed thus far and is accepted as true exclusively for the purpose of deciding the motions addressed herein.

Complaint, became the sole member of Crew Soccer Stadium [LLC], the entity which leases the grounds upon which MAPFRE stadium is located.

Anthony Precourt ("Mr. Precourt") is the chief executive officer of PSV. (*Id.* at ¶ 1.) In October 2017, Mr. Precourt announced that PSV was seriously considering moving the Crew from Columbus if the city or private investors could not guarantee that a downtown stadium would be built for the team, naming Austin, Texas as the new home city for the relocated team. (*Id.* at ¶¶ 2, 11, 28.) More specifically, Mr. Precourt held a press conference with reporters on October 17, 2017, in which he stated that Defendants "would pursue the possible relocation of Crew SC * * *." (April 9, 2018 Pl.'s Mot. to Toll R.C. 9.67 Six-Month Notice Period at 3-4.)

MLS Commissioner Don Garber ("Mr. Garber") allegedly endorsed PSV "explor[ing]" its "options in Austin" during his state "State of the League" address in December 2017. (Am. Compl. at ¶ 2.) In fact, Mr. Garber purportedly acknowledged a so-called "Austin Clause" whereby MLS agreed in the 2013 operator/investor agreement with PSV that the team could move there. *Id.* Plaintiffs contend that Mr. Garber also acknowledged that MLS and PSV had intentionally not made the "Austin clause" public. *Id.* Prior to Mr. Garber's "State of the League" address in December, representatives from PSV and MLS met with City of Columbus Mayer Andrew Ginther and Columbus Partnership[5] CEO Alex Fischer "to discuss the possibility of relocation and steps that could be taken to improve Crew SC's long-term ability to operate and compete in Columbus given the potential of relocation." (*See* Ex. A, April 9, 2018 Pl.'s Motion to Toll R.C. 9.67 Six-Month Notice Period, March 16, 2018 letter from PSV to Mayor Ginther ("Precourt letter").)

[5] "The Columbus Partnership is a non-profit, membership-based CEO organization of more than 65 CEOs from Columbus' leading businesses and institutions. The Columbus Partnership's primary goal is to improve the economic vitality of the Columbus Region." (http://www.columbuspartnership.com/who-we-are/about-us/, last accessed May 7, 2018.)

Defendants state that while considering relocation of the Crew, PSV has been open to hearing offers from interested buyers. (Defs.' Mot. to Dismiss at 6.) Moreover, they state that "Mr. Precourt has engaged in discussions with at least one potential local investor regarding keeping Crew SC in Columbus." *Id.* Plaintiffs contend, however, that the city "has had no meaningful indications from Mr. Precourt or Mr. Garber about the Crew remaining in Columbus * * *." (Am. Compl. at ¶ 30.)

As a result of the relocation developments, Ohio Attorney General Mike DeWine sent Mr. Precourt a letter on December 8, 2017. (Ex. A, March 5, 2018 Compl.) In addition to urging Mr. Precourt "keep the Crew in Columbus," the letter states "in light of continued accounts that you are 'exploring * * * potentially relocating the Club to the city of Austin, Texas,' I write to reiterate your obligations under Ohio law." (*Id.* at first paragraph.) The "Ohio law" Attorney General Mike DeWine refers to in his letter is R.C. 9.67.

III. THE STATUTE AT ISSUE: OHIO REVISED CODE 9.67

In response to the-owner Art Modell relocating the National Football League's Cleveland Browns to the city of Baltimore, the Ohio General Assembly enacted R.C. 9.67 in June of 1996, which in common parlance is known as "the Modell law." The Browns played their home games in Cleveland's Municipal Stadium, an outdoor sports facility shared with Major League Baseball's Cleveland Indians until a newly-constructed baseball park opened in 1994.

Mr. Modell had come to believe that the city of Cleveland would not upgrade the aging stadium or build a new venue for home games. He announced the team's impending departure on November 6, 1995, one day before Cuyahoga County voters approved an extension of a tax on

cigarettes and alcohol to fund stadium renovations[6]. The move spawned much debate about the use of public funds to support professional sport teams. The enactment of R.C. 9.67 was viewed as part of a compromise to bring professional football back to Cleveland.

The text of the statute, upon which the ultimate resolution of this case will turn, is as follows:

> **Restrictions on owner of professional sports team that uses a tax-supported facility.**
>
> No owner of a professional sports team that uses a tax-supported facility for most of its home games and receives financial assistance from the state or a political subdivision thereof shall cease playing most of its home games at the facility and begin playing most of its home games elsewhere unless the owner either:
>
> (A) Enters into an agreement with the political subdivision permitting the team to play most of its home games elsewhere;
>
> (B) Gives the political subdivision in which the facility is located not less than six months' advance notice of the owner's intention to cease playing most of its home games at the facility and, during the six months after such notice, gives the political subdivision or any individual or group of individuals who reside in the area the opportunity to purchase the team.

R.C. 9.67.

III. DISCUSSION

At the outset, the Court makes clear that for the purpose of ruling on the instant motions, the Court is not at this time commenting on the constitutionality of R.C. 9.67. Nor should it be inferred in any way from the Court's rulings that the statute necessarily applies to Defendants or that any statutory notice—if indeed given—was done properly.

[6] http://blog.cleveland.com/pdextra/2012/09/nov_7_1995_browns_bolt_modell.html

1. MOTIONS TO TOLL R.C. 9.67 SIX-MONTH NOTICE PERIOD

As noted above, R.C. 9.67 provides that an owner of a professional sports team accepting public support for a privately-owned team and its facilities that decides to "cease playing most of its home games" at a public-supported facility must either (1) obtain "an agreement with the political subdivision . . . to play most of its home games elsewhere," or (2) must provide "not less than six months' advance notice of the owner's intention" in order to give the "political subdivision or any individual or group of individuals who reside in the area" a reasonable "opportunity to purchase the team." The city's motion requests seeks an order tolling the six-month time period to preserve the opportunity to purchase until the central legal questions involving the statute are resolved, either by agreement of the parties or until final resolution of the lawsuit, including any appeals.

The city alleges that Defendants intend to use this litigation to run out the clock on the six-month notice period—hoping to thereby render the city's rights moot—while Defendants challenge the applicability of the statute. For evidence of this allegation the city cites the March 16, 2018 "Precourt letter" that was sent to Mayor Ginther in response to the institution of this action and attached as Exhibit A to the motion. While asserting that R.C. 9.67 does not apply, the Precourt letter also claims that, even if the statute did apply, the requisite "notice" was provided on three separate occasions: (1) at the earliest on October 17, 2017, in the oral announcement to reporters in a press conference that Defendants "would pursue the possible relocation of Crew SC"; (2) alternatively, in an November 15, 2017 meeting between Defendants and Mayor Ginther;

and (3) in the alternative—and at the latest—notice was provided by the Precourt letter dated March 16, 2018[7].

Under the first scenario above, the six-month notice period would have expired on April 17, 2018; under the second it expires May 15, 2018. If the March 16 Precourt letter is determined to be the date when notice was given, then the six-month period elapses on September 16, 2018[8]. The city's motion claims that equity demands such an unjust result, i.e., allowing the six-month notice period to expire during this litigation, be avoided. Thus, the city claims that equitable tolling of the statutory six-month notice period and its concomitant rights is necessary to (1) protect the taxpayers whose money was used to support the Crew, (2) prevent Defendants from circumventing Ohio law [arguably, prevent them from using this very litigation to challenge the law to avoid its effects], and (3) ensure that local investors have a reasonable opportunity to purchase the Crew.

The state contends that equitable tolling "does not delay the start of the limitations clock, but rather halts its ticking after the limitations period has accrued." *Brown v. Ohio Dep't of Job & Family Servs.*, 10th Dist. Franklin No. 08AP-239, 2008-Ohio-6523, ¶ 13, quoting *Amini v. Oberlin College*, 259 F.3d 493, 498-500 (6th Cir. 2001). Further, the doctrine "does not expand the limitations period beyond its statutorily mandated boundaries; it, instead, merely halts the limitations clock from ticking during the tolling period." *In re Regency Vill. Certificate*, 10th Dist. Franklin No. 11AP-41, 2011-Ohio-5059, ¶ 36, quoting *Neves v. Holder*, 613 F.3d 30, 36 (1st. Cir. 2010). The state concedes that equitable tolling is to be applied "sparingly," *Byers v. Robinson*, 10th Dist. Franklin No. 08AP-204, 2008-Ohio-4833, ¶ 56, but maintains it is appropriate in

[7] The letter states, "[t]o the extent such notice is deemed not to have already been given, this letter shall constitute such notice."

[8] The Court reiterates that the question of if and when notice has been given is reserved for ruling at a later time.

circumstances where a litigant shows "he or she diligently pursued his or her rights, but some extraordinary circumstances stood in his or her way and prevented timely action." *McCaulsky v. Appalachian Behavioral Healthcare*, 10th Dist. Franklin No. 17AP-476, 2017-Ohio-8841, ¶ 18, citing *In re Regency Vill. Certificate* at ¶ 37. The state argues that here, Defendants have opted to charter a course that involves not complying with discovery or committing to and establishing compliance with their continuing obligations under R.C. 9.67. These, the state asserts, are the types of "extraordinary circumstances" justifying stoppage of the six-month statutory notice period. *Id.* Put differently, the state claims that Defendants are blocking the path to the determination as to whether they have complied with R.C. 9.67, thereby running out the clock before that determination can be made.

The crux of Plaintiffs' Motions to Toll is the claim that the Precourt letter reveals Defendants' strategy to use this litigation to run out the clock on their six-month notice obligation set forth in the statute they argue does not apply (presumably as a safeguard against losing the applicability argument), knowing that said period would expire during the pendency of this litigation and thereby resulting in a complete denial of Plaintiffs' claimed rights under the statute. Plaintiffs maintain that Defendants have created a great deal of uncertainty regarding the notice date from which the six-month time period emerges, resulting in confusion as to how long local investors have to make offers and engage in negotiations to purchase the team. They claim this is especially true given that there are bona fide local investors interested in purchasing the team who have not had access to (confidentially or otherwise) Defendants' financial records which are imperative to a proper assessment of the team's value. Employing a soccer analogy concerning the extra time a referee adds to regulation play, Plaintiffs plea for the Court to add "stoppage time" to

the six-month notice period to account for Defendants' actions. The city in its Reply specifically cites the following examples of "inequitable conduct" which warrants a toll:

- Defendants rely upon documents that are undated and not attached to their pleadings (e.g., the "LLC Agreement. . . between MLS and its members" referenced on page 23 of the Motion to Dismiss, and the non-disclosure agreements referenced in two affidavits attached to the Motion to Dismiss).

- MLS claims to be the owner of the Crew at the same time the other Defendants claim to be the owner of the Crew.[9]

- Defendants claim to have provided notice under R.C. 9.67 on October 17, 2017, and November 15, 2017, (see Exhibit A to the City's Motion to Toll), while counsel for MLS admitted in a letter dated November 17, 2017 that "Mr. Precourt has not formally notified MLS of an intention to relocate his club to Austin nor have the conditions that would need to be satisfied for any such relocation been met."[10]

- MLS claims to have provided notice under R.C. 9.67 of the Crew's intent to relocate in the March 16, 2018 letter to Mayor Ginther attached as Exhibit A to the City's Motion to Toll) despite MLS's counsel having previously admitted that the "MLS Board of Governors has the sole and exclusive right to decide where MLS clubs will be located."[11]

- Defendants filed a blanket motion to stay discovery in its entirety despite creating genuine issues of material fact as to the ownership of the Crew, and whether an authorized representative of the owner provided the proper notice under R.C. 9.67.

- Defendants continue to ignore the good faith offers of the State of Ohio to try to mitigate any of their concerns regarding discovery.[12]

- Plaintiffs first learned of the contents of Defendants' Motion to Dismiss from an article in an Austin, Texas newspaper after Defendants chose to "serve" the newspaper before the parties in the case.

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[9] *Compare* pages 3 and 5 of the Motion to Dismiss *with* Anthony Precourt (@APrecourt), Twitter (Apr. 19, 2018, 9:55 pm) available at https://perma.cc/L2YT-2T5A (referring to himself as "Owner/Chairman of Columbus Crew SC and MAPFRE Stadium"), and the March 16, 2018 letter attached as Exhibit A to the City's Motion to Toll (where the so-called "PSV Entities" attempt to provide notice under R.C. 9.67 as the owners of Crew SC).

[10] See Ex. 1, Pl.'s May 1, 2018 Reply in Support of Mot. to Toll (November 17, 2017 letter from Attorney Bradley Rushkin to Judge Nelson W. Wolff).

[11] Ex. 1, Pl.'s Reply in Support of Mot. to Toll.

[12] Exhibits to Defs.' Mot. to Stay Discovery.

Defendants claim that what Plaintiffs actually seek is to turn the six-month notice period into a ban that could last for years. They ask the Court to deny the city's Motion to Toll for four main reasons.

First, as they claim in their Motion to Dismiss, Defendants argue the statute does not apply to them both on its terms and because it's unconstitutional. What they mean by "on its terms" is their argument that the statute applies to an "owner" that plays in a tax-supported stadium, and one that receives financial assistance from the state or a political subdivision. Because, as Defendants argue, the Plaintiffs admit that MLS is the owner, then MLS is the only Defendant that could be subject to the statute. But the Amended Complaint, Defendants claim, makes no allegation that MLS receives any financial support triggering the statutes application. This argument, however, is to be considered on another day, i.e., upon consideration of the Motion to Dismiss.

Secondly, Defendants argue that even if the statute applies to one or more of them, the Court lacks the authority to alter the six-month notice period the statute provides. They claim that Ohio law "expressly" prohibits courts from overriding provisions of statutes like R.C. 9.67 that attempt to regulate commercial behavior rather than mere judicial filing deadlines. Defendants fail to provide any authority, however, for such an *express* prohibition.

Thirdly, Defendants assert that the city fails to justify why it should be entitled to a toll, shunning the city's claim that a failure to extend would somehow "result in the complete denial of the [city's] rights." Defendants insist that nothing about this litigation has prevented or currently prevents interested bidders from making offers to purchase the rights to operate the Crew. For support of this claim Defendants note that the city was the one that instituted the litigation and thus cannot argue that its rights and interests are being thwarted by its own lawsuit. To the contrary,

Defendants claim that extending the notice period would cause them irreparable harm by further interfering with their business operations.

Lastly, Defendants argue that the city's motion is nothing more than a thinly veiled effort at obtaining a preliminary injunction without demonstrating the necessary requirements. Defendants point to a recent press release from the city in which it admitted the Motion to Toll is a "tactic" to keep the Crew in town so investors will bid on the team. Defendants correctly state that the statute, however, does not authorize an indefinite notice period (or any extension for that matter). Defendants assert that although R.C. 9.67 is grossly and unconstitutionally vague, on one point the legislature was clear: the length of notice period an owner owes to local government is six months during which bidders can pursue an opportunity to purchase the operating rights.

Defendants also request that if the Court does not immediately deny the Motion to Toll, then they want the Court to defer ruling until after it has fully evaluated and ruled on the Motion to Dismiss, since a ruling in their favor on that motion would dictate the correct result on the Motion to Toll.

As the city correctly notes, application of equitable doctrines is within the sound discretion of the Court. *Gombach v. Laurie*, 2015-Ohio-3584, 41 N.E.2d 858, ¶ 43 (8th Dist.). In equitable matters, the Court "has considerable discretion in attempting to fashion a fair and just remedy." *Winchell v. Burch*, 116 Ohio App.3d 555, 561, 688 N.E.2d 1053, 1057 (11th Dist. 1996). The Court does not find, as Defendants suggest, that Plaintiffs are asking this Court to "rewrite the terms" of R.C. 9.67 and turn the six-month notice period into a years-long ban. Moreover, Plaintiffs are not requesting the Court to issue what amounts to an injunction. The Court finds that this case involves "exceptional circumstances" and falls withim the category of "compelling cases which justify a departure from established procedure." *McCaulsky*, 2017-Ohio-8841 at ¶ 18.

Accordingly, upon consideration thereof, Plaintiffs' Motions to Toll R.C. 9.67 Six-Month Notice Period is **GRANTED IN PART.** The Court hereby **ORDERS** a toll of the six-month notice period set forth in R.C. 9.67 for a period of ninety (90) days from the date of this Order. This is a 90-day "hold" or "pause" on the six-month notice period clock. Determination of the date upon which this six-month clock began ticking, i.e., the date upon which Defendants provided the requisite statutory "notice," is saved for a later time. Upon the expiration of this 90-day toll or "pause" of the six-month notice period, the clock will pick up where it left off, if necessary, unless the Court orders otherwise.

Analogy, perhaps, is the best way to clarify the Court's ruling. When the batteries run out in a battery-powered analog clock, time stops at the point the batteries no longer possess the energy sufficient to drive the gears which move the clock's hands. When the expired batteries are replaced with operative ones, the clock begins ticking again from the time at which the old batteries died. Like the analog clock that runs out of batteries, the six-month notice clock will begin ticking from the point at which it stopped when the Court replaces the clock's batteries in 90 days from the date of this Order.

The Court's ruling on the Motions to Toll is premised on the notion that R.C. 9.67 is applicable. This presumption is made solely for the purpose of ruling on the instant motion to toll. The Court saves ultimate resolution of the applicability, and for that matter the constitutionality, questions for a later time.

2. MOTION TO STAY DISCOVERY

Defendants' main opposition to discovery (and thus their push for a stay) is that it would be unduly burdensome and cause unnecessary expense to all parties because no discovery is needed to decide the Motion to Dismiss, which is a purely legal issue. They allege that Plaintiffs seek to

misuse the discovery process by serving Defendants with burdensome discovery requests that have no bearing on the exclusively legal issues at play in this case. Defendants note that Plaintiffs' discovery requests total 86 pages. According to Defendants the discovery requests seek production of 45 categories of documents from PSV, 25 categories of documents from MLS, 14 categories of documents from Team Columbus Soccer, L.L.C., and 20 categories of documents from Crew Soccer Stadium [LLC]. Defendants claim that none of the requested information or materials are relevant to the determination as to whether R.C. 9.67 applies to Defendants or whether the statute is constitutional.

Defendants claim that Plaintiffs are attempting to abuse the discovery process by submitting the requests for information and materials for the express purpose of turning that information over to private entities to help those entities make offers to purchase the Crew. They contend that this is an improper attempt to commandeer the Court to interfere with the rights of private parties to negotiate potential arm's-length transactions. Defendants claim, however, that they are nevertheless willing and fully prepared to make *appropriate* information available to bona fide potential offerors subject to a Non-Disclosure Agreement ("NDA"). This offer to assist with non-party due diligence, Defendants claim, makes the expensive undertaking of burdensome discovery unnecessary. Otherwise, Defendants argue, there is simply no justification for permitting private parties to use this Court and other public entities "as a tool through which to conduct due diligence." (Mot. to Stay Discovery at 4.)

Plaintiffs counter that the requested discovery is, in fact, relevant to establishing whether R.C. 9.67 is applicable and to determining whether Defendants are in compliance with the statute's terms. For example, the state notes it has requested documents related to financial assistance or subsidies Defendants have received or sought from the City of Columbus, the State of Ohio, or

Franklin County. Particularly, the state claims nearly all of its Requests for Admissions directed to Crew Soccer Stadium [LLC] relate to tax-exempt status and below-market rents. Plaintiffs contend that this and similar requests for discovery are directed towards establishing the statute's triggers, i.e., establishing that a professional sports team's owner received financial assistance from the state or a political subdivision.

Plaintiffs assert that the same is true for the "reasonable opportunity to purchase" clause in R.C. 9.67. They insist that the question of whether Defendants are, in fact, providing a reasonable opportunity to purchase as required by the statute turns in significant part on the team's value and the purchase price Defendants demand. Plaintiffs state that the complicated task of valuing a MLS team entitles them to all material and relevant discovery to determine the Crew's value and whether a reasonable opportunity to purchase has been or is being provided. Examples of these "valuation metrics" Plaintiffs cite include ticket-sale revenue, sponsorship revenue, annual revenue, merchandise revenue, and the overall value of the Crew, generally.

The state points-out that it has made efforts to assuage Defendants' concerns, going so far as to propose a protective order to Defendants. (Ex.1, Pl.'s Memo Contra Mot. to Stay Discovery, [Proposed] Stipulated Protective Order.) Resultantly, the state argues that Defendants cannot credibly claim that Plaintiffs seek to improperly use the discovery process when the state has offered to protect it. Defendants, however, find a protective order insufficient. They claim a protective order would merely characterize documents and the information contained therein as confidential. Furthermore, Defendants claim that a protective order does nothing to guard against engaging in unnecessary and unduly burdensome discovery at this early stage of litigation.

The state also offered in a March 28, 2018 e-mail to narrow the scope of discovery requests Defendants deemed overly broad. (Ex. A, Defs.' Mot. to Stay Discovery, March 28, 2018 e-mail

chain.) Moreover, Plaintiffs contend that Defendants' willingness to enter into a NDA and assist with non-party due diligence is not a replacement for discovery propounded by a party to litigation, and does not justify avoiding basic discovery obligations.

The city has not, at the time of the parties' status conference, served any discovery requests upon Defendants. The city nevertheless filed a Memo Contra Defendants' Motion to Stay Discovery to protect its ability "to obtain targeted discovery" in this case. (Pl. City of Columbus Memo Contra at 2.) The city urges the Court to deny Defendants' request for a blanket stay of discovery in this case "because it would usurp the city's right to targeted discovery regarding:

> (i)the corporate structure of Defendant [MLS] (the alleged owner of the Crew SC; (ii) whether notice has been properly provided under the statute by an authorized representative of the owner; and (iii) other information relating to the "opportunity to purchase" statutorily guaranteed to the city and other potential purchasers.

(*Id.* at 3.) The city argues that a blanket stay of discovery here is unreasonable. It claims that other remedies are available to mitigate the burden and expense claimed by Defendants, such as the state's offer to narrow the scope of its discovery requests.

As Defendants correctly note, trial courts have discretion to stay discovery pending the resolution of dispositive motions in order to protect parties form undue burden or expense. *State ex rel. Ebbing v. Ricketts*, 133 Ohio St.3d 339, 2012-Ohio-4699. The city notes in its Memo Contra that a stay of discovery and grant of equitable tolling goes hand-in-hand. (Pl.'s Memo Contra Mot. to Stay Discovery at 3.) The Court agrees.

Accordingly, upon consideration thereof and consistent with this Court's ruling on the Motions to Toll, Defendants' Motion to Stay Discovery Pending this Court's Disposition of Defendants' Motion(s) to Dismiss is hereby **GRANTED IN PART.** Discovery is hereby **STAYED** during the 90-day toll of the R.C. 9.67 six-month notice period ordered herein. This is

a general stay of discovery in this case; however, Defendants are still required to provide information and materials necessary for potential bone fide purchasers to make a valuation and offer to purchase. The parties herein shall have fourteen (14) days from the date of this Order to agree upon what information and materials should be provided. If the parties are unable to reach an agreement, the Court will decide. Additionally, potential investors may receive additional information if requested and approved by the Court.

Within seven (7) days from the date of this Order, the parties shall agree upon the terms of a NDA to be signed by all parties to this case, any and all potential purchasers and investors, and any other persons (individually or in a representative capacity) or entities ordered by the Court. If the parties cannot agree upon the terms of the NDA, Plaintiffs and Defendants shall each submit to the Court for its consideration a Proposed NDA within seven (7) days after the expiration of the Stipulated NDA deadline.

3. MOTION TO COMPEL

The state filed a one-paragraph Motion to Compel in its opposition to Defendants' Motion to Stay Discovery. It argues that a determination as to whether Defendants have complied with 9.67 cannot be made without discovery. In connection with its motion, that state has provided a proposed protective order. Defendants claim, however, that the state's proposed protective order merely keeps information and documents confidential and does not prevent or protect against engaging in unnecessary and unduly burdensome discovery at this early stage of the litigation.

In light of the foregoing, the state's Motion to Compel Discovery is hereby **HELD IN ABEYANCE** until further order of the Court.

4. MOTION TO DISMISS

A ruling on Defendants' Motion to Dismiss this action is hereby **DEFERRED** until the expiration of the 90-day toll of the R.C. 9.67 six-month notice period issued in Part 1, Section III of this Order, or until further order of the Court.

IV. SCHEDULING ORDER AND NEGOTIATIONS

Within twenty-one (21) days of the date of this Order, the Court will conduct separate meetings with Plaintiffs and Defendants to explore the potential for resolution of this matter through a mutually agreed settlement. At said meetings, the parties and the Court will also determine what constitutes of a bona fide purchaser and the imposition of preconditions, if any; interested bona fide purchasers are herein encouraged to contact the Court. Any other matters which lend to a potential settlement will also be discussed.

Negotiations between the parties for settlement of this case, with the assistance of this Court, shall continue during the 90-day tolling period ordered herein. Any bona fide purchaser(s)' offer shall be submitted directly to this Court **under seal**, and such offers will then be provided to counsel as received. The 90-day tolling period and 90-day general stay of discovery may be extended, decreased, or otherwise modified by the Court as the aforementioned discussions proceed.

IT IS SO ORDERED.

Copies electronically to all counsel.

Franklin County Court of Common Pleas

Date: 05-08-2018

Case Title: OHIO STATE ATTORNEY GENERAL MIKE DEWINE ET AL -VS- PRECOURT SPORTS VENTURES LLC ET AL

Case Number: 18CV001864

Type: JOURNAL ENTRY

It Is So Ordered.

/s/ Judge Jeffrey M. Brown