

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

L.S.S REALTY CORPORATION : CIVIL ACTION
 :
 v. :
 :
 :
 VANCHLOR CATALYSTS, LLC. and :
 ELEMENTIS CATALYSTS, INC. : NO. 04-197

MEMORANDUM AND ORDER

JACOB P. HART
UNITED STATES MAGISTRATE JUDGE March 16, 2005

The Plaintiff has filed a Motion for a Protective Order in this breach of lease case. The Plaintiff had previously filed an action in ejectment in the state court against the Defendants, which was dismissed. In response to the current breach of lease case, Elementis has filed a counterclaim for malicious prosecution relating to the prior ejectment action. In an effort to determine whether the Plaintiff plans to use an “advice of counsel” defense to the malicious prosecution counterclaim, Elementis has propounded certain discovery on the Plaintiff. At this juncture, what Plaintiff seeks is time. LSS has filed a Motion to Dismiss the Counterclaim, and requests that it not be required to commit to a defense which could jeopardize the attorney/client privilege until the Motion to Dismiss is decided. Considering the fact that the same counsel represents LSS in this action as did in the ejectment action, we believe it prudent to grant the motion.

We believe that delaying discovery relating to the advice of counsel defense best serves judicial economy. Although this ruling may delay discovery somewhat, pending disposition of the underlying Motion to Dismiss, the interests of the case are best served in avoiding needless discovery and imposition on the attorney/client privilege in the event the District Court looks favorably on the Motion to Dismiss.

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ORDER

AND NOW, this 16th day of March, 2005, upon
consideration of the Plaintiff's Second Motion for a Protective Order, the response, thereto, and
for the reasons stated in the accompanying Memorandum, IT IS HEREBY ORDERED that the
Motion is GRANTED.

BY THE COURT:

JACOB P. HART
UNITED STATES MAGISTRATE JUDGE