VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday, the 22nd day of January, 2026.

Present: Powell, Kelsey, McCullough, Chafin, Russell, and Mann JJ., and Millette, S.J.

COVE POINT LNG, LP, APPELLANT,

against Record No. 240751
Court of Appeals No. 0896-23-2

MATTAWOMAN ENERGY, LLC, APPELLEE.

UPON AN APPEAL FROM A
JUDGMENT RENDERED BY THE
COURT OF APPEALS OF VIRGINIA.

Upon consideration of the record, briefs, and argument of counsel, the Court is of the opinion that there is no reversible error in the judgment of the Court of Appeals.

Cove Point LNG, LP ("Cove Point") challenges the Court of Appeals' ruling that the trial court erred by granting summary judgment before discovery was complete, thereby denying Mattawoman Energy, LLC ("Mattawoman") the opportunity to adduce evidence relevant to its purported defenses. *See Mattawoman Energy, LLC v. Cove Point LNG, LP*, No. 0896-23-2, 2024 Va. App. LEXIS 450 (Aug. 6, 2024). As the parties are fully conversant with the record in this case, a recitation of the facts is not necessary for the parties' understanding of the disposition of this appeal.

Rule 4:1(b)(1) expressly provides that "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery." Further, "the granting or denying of discovery is a matter within the discretion of the trial court and will not be reversed on appeal unless 'the action taken was improvident and affected substantial rights.'" *O'Brian v.*

Langley Sch., 256 Va. 547, 552 (1998) (quoting *Rakes v. Fulcher*, 210 Va. 542, 546 (1970)). In applying this rule, the Court has consistently held that a trial court abuses its discretion when it enters summary judgment "before permitting the defendants to conduct discovery" of a cognizable defense because doing so "substantially affect[s] the [defendant's] 'ability and right to litigate' his defense." *Nizan v. Wells Fargo Bank Minn. Nat'l Ass'n*, 274 Va. 481, 501 (2007) (quoting *O'Brian*, 256 Va. at 549).[1] Just as the Court has repeatedly admonished that summary

[1] Cove Point points to the Court's decision in *Dick Kelly Enters. v. City of Norfolk*, 243 Va. 373 (1992), to assert that the Court of Appeals erred in its interpretation of *Nizan* and *O'Brian*. Specifically, Cove Point states that *Dick Kelly* explicitly provides that a trial court may limit discovery when a motion for summary judgment is pending. However, a review of the facts of Dick Kelly demonstrates that this Court only limited discovery on defenses that were either wholly inapplicable or did not involve any factual disputes. *Id.* at 381-83. For the remaining defense, the Court noted that the trial court not only permitted discovery, it "force[d]" the defendant's counsel "to question the four deponents, one City councilman and three City employees . . . to afford the [defendant] every opportunity to demonstrate there were material facts genuinely in dispute on that issue." *Id.* at 383 n.*. Stated differently, the trial court ensured that discovery was complete on any viable claims and defenses before granting summary judgment. Thus, *Dick Kelly* does not stand for the proposition that a circuit court can limit discovery in response to a motion for summary judgment; rather, *Dick Kelly* is consistent with *O'Brian* and *Nizan*, as the trial court did not grant summary judgment before the defendants had conducted discovery on the sole remaining defense.

Cove Point's reliance on *Dick Kelly* is not wholly misplaced, however. In concluding that the trial court erred in granting summary judgment in the present case, the Court of Appeals based its decision, in part, on the fact that several of Mattawoman's defenses remained "live," meaning that those defenses had not been explicitly struck by the trial court. *Mattawoman Energy*, 2024 Va. App. LEXIS 450, at *8. This was incorrect. If no material facts were in dispute, including those related to an asserted defense, it would not be error to grant summary judgment even though the asserted defense was still "live." *See Dick Kelly*, 243 Va. at 383 ("Where, as here, the relevant facts were undisputed and a dispositive motion for summary judgment was pending, we cannot say that the trial court abused its discretion in limiting discovery until the court had ruled upon the motion."). Similarly, where the defenses raised are inapplicable as a matter of law, summary judgment may be granted, regardless of whether the defenses are still "live." *See id.* at 381 (permitting summary judgment without completing discovery for defenses that could not be asserted as a matter of law). In other words, the proper focus when deciding to grant summary judgment while discovery is ongoing is on whether the asserted defenses are legally cognizable and whether discovery could adduce evidence demonstrating a disputed issue of material fact, not whether a specific defense is still considered "live."

judgment "should not be used to short-circuit litigation by deciding disputed facts without permitting the parties to reach a trial on the merits," *Stockbridge v. Gemini Air Cargo, Inc.*, 269 Va. 609, 618 (2005), *Nizan* and *O'Brian* stand for the proposition that summary judgment should not be used to short-circuit a party's ability to conduct discovery related to a legally cognizable defense.[2]

Here, the record demonstrates that the trial court relied on a decision it made before Mattawoman had filed any of its defenses to curtail any additional discovery related to those defenses once the summary judgment motion was filed. Specifically, the trial court limited discovery to the capacity issue – i.e., whether Cove Point had sufficient capacity to reserve the contractually obligated amount – that was raised in Mattawoman's demurrer, but it did not allow any further discovery on the defenses raised in Mattawoman's subsequently filed Answer and Counterclaim. The Court further notes that discovery on the capacity issue was also significantly limited. Mattawoman was only permitted to depose a single Cove Point corporate designee; its relevant document requests remained unfulfilled, and its relevant interrogatories remained unanswered.[3] By denying discovery on all of the defenses raised in its Answer and Counterclaim

[2] A central theme to Cove Point's argument on this issue is that Mattawoman's motion to compel was not timely because it waited until after Cove Point had moved for summary judgment. However, under the Uniform Pretrial Scheduling Order entered by the trial court in the present case, Mattawoman had until 30 days prior to the trial date to "complete discovery." The trial date was set for May 22, 2023, meaning that discovery was required to be complete before April 22, 2023. Therefore, when Cove Point filed its motion for summary judgment on January 25, 2023, Mattawoman still had almost three months to conduct further discovery, which necessarily includes any motions to compel discovery. As Mattawoman's motion to compel discovery fell squarely within the time period it was given to complete discovery, it was, by definition, timely.

[3] Mattawoman eventually relied upon publicly available FERC filings rather than any discovery produced by Cove Point to challenge Cove Point's assertion that it had sufficient capacity. Cove Point, in turn, disputed the evidence derived from these filings via a supplemental affidavit. This conflict in the evidence regarding the actual capacity of Cove

and limiting discovery on the capacity issue, the trial court affected Mattawoman's ability and right to litigate its defenses. Accordingly, the Court affirms the Court of Appeals' determination that the trial court abused its discretion by granting summary judgment and preventing Mattawoman from conducting discovery that could produce evidence relevant to its cognizable defenses.[4]

This order shall be certified to the Court of Appeals of Virginia and the Circuit Court of Henrico County.

A Copy,

Teste:

Clerk

Point's pipeline not only demonstrates why Mattawoman should have been permitted to complete discovery, but it also raises significant questions about the propriety of the trial court's decision to grant summary judgment.

[4] In its brief, Mattawoman asserts that the Court should not "review the trial court's summary judgment rulings . . . if it affirms the Court of Appeals' decision based on hampered discovery." Appellee's Br. at 46. Therefore, the Court will not address whether the trial court erred in denying Mattawoman's motion for summary judgment.