

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHER DISTRICT OF TEXAS
DALLAS DIVISION

SUPERMEDIA, INC., ET AL.,)	
)	
Plaintiffs,)	CIVIL ACTION NO.
)	
VS.)	3:12-CV-2034-G
)	
LINTON BELL, ET AL.,)	

REPLY IN SUPPORT OF (Docket 26)
EMERGENCY MOTION TO STAY OR SUSPEND CASE

COMES NOW, Defendants Claire Palmer, Sandra Noe, Carol Foy, and Stanley Russo (hereinafter “Movants”) and file this reply in support of Docket 26, their emergency motion for a stay or suspension of all proceedings in this Civil Action No. 3:12-CV-2034-G and, as grounds, they show as follows:

1. In Docket 30, the SuperMedia Plaintiffs’ response in opposition to the motion, they contend the current lawsuit needs to go forward because “there is a genuine need for a resolution to the legal challenges” about whether SuperMedia should be able to amend its retiree benefit plans. (Docket 30, p. 2). No retiree filed a civil action, but simply, as requested by SuperMedia, over 900 retirees, in response to a notice, sent the corporation a completed internal claim form, as to which a challenge in court is premature. The SuperMedia Plaintiffs simply blind-sided almost two dozen retirees by naming them as defendant parties in this lawsuit.¹

2. The internal claims and objection forms submitted by over 900 retirees are not

¹ On June 26, 2012, the very same day this unnecessary lawsuit was filed, SuperMedia sent the notice to retirees that, among other planned changes, effective September 1, 2012 certain retirees would become responsible for 25% of their premium costs of health care coverage and effective January 1, 2014 all retirees would become responsible for 100% of the premium costs of health care coverage.

ripe for resolution here, and will not become ripe until the retirees' claims are fully addressed administratively and administrative remedies are exhausted. The Fifth Circuit has held that a claim arising under ERISA does not accrue until an administrative claim has been filed and denied. *Paris v. Profit Sharing Plan*, 637 F.2d 357, 361 (5th Cir. 1981), *cert. denied*, 454 U.S. 836, 102 S.Ct. 140 (1981). The SuperMedia Plaintiffs' behavior thwarts ERISA's goal of encouraging the resolution of benefits disputes by means of internal grievance procedures, rather than by means of costly litigation. The SuperMedia Plaintiff's excuse for terrorizing many elderly retirees is simply invalid. SuperMedia Plaintiffs proffer an insupportable contention that "the continued dispute impairs critical financial, business, and healthcare planning." (*Id.*, p. 3). If, in every instance where a U.S. based corporation announced plans to make future changes to retiree health care benefits, the plan sponsor instantly commenced a federal lawsuit, the federal judiciary would be overwhelmed. Indeed, the legal stunt pulled off by the SuperMedia Plaintiffs is not only ludicrous, but ethically questionable to the extent it is unprecedented and, thereby raises a serious Fed.R.Civ.Proc. Rule 11 issue.

3. The special circumstances warranting a delay or stay of this new case are clearly spelled out in the Movant's emergency motion. The SuperMedia Plaintiffs aver that "Movants will suffer very little private burden in defending the SuperMedia Suit before the Court rules on the pending summary motions in the Murphy Suit due to the status of the Murphy case." (*Id.*, p. 5). But, why should Movants, all older and with limited means, by definition, suffer any burden, especially attorney's fees, when the outcome of the *Murphy* case may very well obviate the need for the Movants and the *Murphy* Class to make any effort with respect to this second civil action? Indeed, the Answer efiled by *pro se* Defendant Joseph Gallagher from Salem, New Hampshire vividly demonstrates the burden presented, as he writes that he "ha[s] no further

resources or strength to pursue this matter any longer” and asks that his name be removed from this second civil action. (Docket 32, Answer of Joseph J. Gallagher).

4. The SuperMedia Plaintiffs erroneously contend that the outcome of the *Murphy* case will have no bearing on the retirees’ rights to retiree health care benefits. To the contrary, reinstatement of the Movants and the *Murphy* Class into Verizon pension plans will entitle them to receive Verizon sponsored health care benefits. As explained in the summary judgment motions and briefing pending in the *Murphy* action, it is undisputed that retiree health care benefits are intertwined with retiree pension benefits.² For instance, the Verizon Healthcare Plan Summary Plan Description issued to Movant Sandra Noe states that a retiree is “eligible for coverage if • You retired with a service or disability pension under the provisions of the Verizon Pension Plan for New York and New England Associates (formerly the NYNEX Pension Plan).” (*Murphy* Docket 87, Plaintiffs’ Brief in Opposition to Verizon Defendants’ Motion for Summary Judgment at pp. 48-49, referring to *Murphy* Docket 79, Verizon Defendants’ Appendix at p. 446; *Murphy* Docket 98, Reply in Support of Plaintiffs’ Motion for Partial Summary Judgment, p. 9-10). Moreover, Verizon pledged to “always cover the full cost of coverage” for the *Murphy* Class members who retired on or before January 1, 1992. (*Murphy* Docket 90, Plaintiffs’ Supplemental Appendix at p. 516). By involuntarily removing the *Murphy* Class members from Verizon’s pension plans, Verizon avoided its health care commitments to the retirees. The *Murphy* Class, since being involuntarily transferred to Idearc/SuperMedia, has been

² The *Murphy* Class have pled that they should be “restored to their former status as participants in Verizon’s pension and welfare plans.” (*Murphy* Docket 64, Second Amended Complaint ¶ 229, Prayer at ¶ C.8). The *Murphy* Class has made it especially clear that “they want to be removed from SuperMedia’s employee benefit plans and returned to Verizon’s employee benefit plans where they were and will remain much better off.” (See, e.g., *Murphy* Docket 89, Plaintiffs’ Opposition to SuperMedia EBC’s Motion for Summary Judgment pp. 10-11 and 19).

economically adversely impacted. (*Murphy* Docket 81, Plaintiffs’ Motion for Partial Summary Judgment, ¶ 47; *Murphy* Docket 86, Plaintiffs’ Opposition to Verizon Defendants’ Motion for Summary Judgment, ¶ 49). Now, the SuperMedia Plaintiffs have announced plans to make the *Murphy* Class of retirees even worse off.

5. The SuperMedia Plaintiffs speciously contend that the *Murphy* Class of 2,750 retirees “will presumably know whether or not they will go forward in the SuperMedia Suit before this case requires the parties to incur significant expense in its prosecution or defense.” (Docket 30, p. 8). Getting legal counsel lined up for 23 retirees based all over the United States whom the SuperMedia Plaintiffs unfairly ambushed is no easy task and has involved significant expense and attention by the undersigned counsel.³

6. Finally, the SuperMedia Plaintiffs whine that the planned changes to retiree benefits will save the corporate sponsor approximately \$315 million in anticipated future costs and that “[r]etaining the unfunded benefits amidst escalating healthcare costs in a continued sluggish economy is not a viable option for SuperMedia.” (Docket 30, p. 9). Not one person has sought any form of injunctive relief so as to prevent SuperMedia from carrying out its announced plans. Therefore, a stay of this second suit is not going to prevent SuperMedia from going forward with its announced plans.⁴ Likewise, it is complete balderdash for the SuperMedia Plaintiffs to argue that “delaying resolution of the key issues in the SuperMedia Suit—whether SuperMedia may amend the retiree health and welfare benefits it

³ The individuals targeted to be named defendants in this second action reside in California, New Jersey, Tennessee, Maine, New Hampshire, Texas, Arizona, New York, Ohio, Florida, and Massachusetts. (Docket 23, First Amended Complaint ¶¶ 8-30).

⁴ Yesterday, August 21, 2012, the media announced that SuperMedia and Dex One, two Yellow Pages publishers, said they agreed to merge with the goal of saving money in a dwindling business. See: <http://www.cnbc.com/id/48737713/>.

provides—ultimately prejudices all parties.” The SuperMedia Plaintiffs do not need to ask this Court for permission to make plan amendments. They have already made the plan amendments. (Docket 23, First Amended Complaint ¶¶ 52, 54-58, and 60-63).

WHEREFORE, for the above stated reasons and those set forth in their emergency motion, Docket 26, Defendants Claire Palmer, Sandra Noe, Carol Foy and Stanley Russo respectfully request that this Court stay or suspend all proceedings in this Civil Action No. 3:12-CV-2034-G until after this Court has ruled upon the motions for summary judgment pending in the *Murphy* action. A proposed order is efiled herewith.

DATED this 22nd day of August, 2012.

Respectfully submitted,

s/ Curtis L. Kennedy

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CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of August, 2012, a true and correct copy of the above and foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system causing a copy to be emailed to all counsel of record.

Also, copy of the same was delivered via email to Defendants Palmer, Noe, Foy, Russo and all other known individually named Defendants with Internet email access, and a copy was sent via first class mail postage prepaid to *pro se* Defendant Joseph J. Gallagher.

s/ Curtis L. Kennedy

Curtis L. Kennedy