

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

JANET JENKINS, ET AL.,  
Plaintiff,

v.

KENNETH L. MILLER, ET AL.,  
Defendant.

Docket No. 2:12-cv-00184-wks

PLAINTIFFS' RESPONSE TO MOTION TO CERTIFY ORDER FOR  
INTERLOCUTORY REVIEW BY DEFENDANT LINDA M. WALL

NOW COME Plaintiffs Janet Jenkins, et al., by and through undersigned counsel Langrock Sperry & Wool, LLP, and respond in opposition to the Motion to Certify Order for Interlocutory Review by Defendant Linda M. Wall.

Defendant Wall's motion is frivolous. Defendant Wall already filed a Motion for Interlocutory Review after the Court denied her motion to dismiss (Dkt. #119). The Court rightfully denied that motion (Dkt. #125). Defendant's prior motion for interlocutory review was based in part on *Walden v. Fiore*, which was then pending before the U.S. Supreme Court. This Court denied Defendant's arguments, in particular rejecting Defendant's arguments that *Walden* could affect the outcome here. After that, Defendant Wall filed a renewed motion to dismiss that was ostensibly based on the Supreme Court's decision in *Walden v. Fiore*, 134 S.Ct. 1115 (2014). The Court, rightfully again, denied that motion, ruling that the facts of *Walden* are "fundamentally different" from the facts here. Opinion and Order, Dkt. #161, p. 10. Defendant Wall has now filed a groundless motion for interlocutory appeal of this Court's denial of a renewed motion to dismiss, and this Order must be denied. Further, Plaintiffs request sanctions.

Interlocutory appeals are rarely granted. “[F]ederal practice strongly disfavors discretionary interlocutory appeals. Appeals from interlocutory orders prolong judicial proceedings, add delay and expense to litigants, burden appellate courts, and present issues for decisions on uncertain and incomplete records, tending to weaken the precedential value of judicial opinions.” *In re World Trade Ctr. Disaster Site Litig.*, 469 F. Supp. 2d 134, 144 (S.D.N.Y. 2007); *see also Fogarazzo v. Lehman Bros., Inc.*, 03 CIV. 5194 (SAS), 2004 WL 1555136 (S.D.N.Y. July 9, 2004) (“the Second Circuit has long disfavored interlocutory review of pleadings”). Defendant Wall’s motion is merely a tactic aimed at delaying this litigation. Basic principles of judicial efficiency call for postponing appellate review until after entry of a final judgment, and only “exceptional circumstances” will justify a departure from that principle. *Coopers v. Lybrand v. Livesay*, 437 U.S. 463, 475 (1978). No such exceptional circumstances are present here. Further, as this Court set forth in its prior order denying Defendant’s motion for interlocutory appeal, an interlocutory appeal will not advance this litigation.

There are no substantial grounds for difference of opinion regarding the inapplicability of *Walden*. As this Court wrote, “*Walden* presented a very different set of facts, left undisturbed established Supreme Court precedent, and does not dictate an alteration here.” Opinion and Order, Dkt. #161, p. 11. It is unnecessary for the Second Circuit to address the parameters of a Supreme Court case before a district court can apply the precedent. It is clear that the facts of *Walden* are easily distinguished from those here, and this is a determination well within the discretion of this Court.

Plaintiffs request sanctions against Defendant Wall in the form of attorney’s fees and costs incurred in responding to this motion, along with other sanctions as this Court finds

appropriate. It is clear from the sheer quantity of motions filed by Defendant Wall and the other defendants that their goal is delay, regardless of the merits of their arguments. The arguments raised in the instant motion have been raised and rejected several times already by this Court, and it is clear that Defendant's arguments do not even approach the "exceptional circumstances" required for an interlocutory appeal.

DATED at Middlebury, Vermont this 1st day of August, 2014.

LANGROCK SPERRY & WOOL, LLP



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UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

JANET JENKINS, FOR HERSELF AND  
AS NEXT FRIEND OF ISABELLA  
MILLER-JENKINS, A/K/A ISABELLA  
MILLER,

Plaintiff,

Docket No. 2:12-cv-184

v.

KENNETH L. MILLER, ET AL,  
Defendant.

**CERTIFICATE OF SERVICE**

I, Katherine B. Kramer, Esq., counsel for Plaintiff Janet Jenkins, for herself and as next friend of Isabella Miller-Jenkins, a/k/a Isabella Miller, hereby certify that I caused the foregoing *Plaintiffs' Response to Motion to Certify Order for Interlocutory Review by Defendant Linda M. Wall* to be filed with the Court using the CM/ECF electronic filing system, which will provide electronic notification of such filing(s) to Counsel of Record for the Defendants, and to all other registered users.

Dated at Middlebury, Vermont, this 1<sup>st</sup> day of August, 2014.

/s/ Katherine B. Kramer

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