

United States Court of Appeals For the First Circuit

No. 17-1593

SEXUAL MINORITIES UGANDA

Plaintiff - Appellee

v.

SCOTT LIVELY, individually and as President of Abiding Truth Ministries

Defendant - Appellant

PLAINTIFF-APPELLEE’S REPLY IN SUPPORT OF MOTION TO STAY PROCEEDINGS PENDING RESOLUTION OF ITS MOTION TO DISMISS

Plaintiff-Appellee Sexual Minorities Uganda’s (“SMUG”) Motion to Stay Proceedings Pending Resolution of its Motion to Dismiss (Motion to Stay), dkt. 6103418, states with particularity the basis of its request for a stay and was timely filed, satisfying Fed. R. App. P. 27 and Local Rule 27.0(b). Defendant-Appellant Scott Lively opposes SMUG’s motion but can point to no plausible reason why SMUG’s well-founded request should not be granted. In the interest of judicial economy, the Court should grant SMUG’s motion and stay the proceedings.

Fed. R. App. P. 27 requires that a motion “state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to

support it.” SMUG’s Motion to Stay satisfies this standard by clearly and concisely requesting that this Court stay proceedings of Lively’s appeal, dkt. 17-1593, pending resolution of SMUG’s Motion to Dismiss Defendant-Appellant’s Appeal (Motion to Dismiss), dkt. 6103417. The Court’s dismissal of the appeal would render moot any briefing on the merits. Lively’s opposition to SMUG’s stay motion thus amounts to an argument that SMUG’s motion must fail because SMUG opted not to engage in verbosity on an uncomplicated procedural request. This is simply no basis to deny a motion and is contrary to the very purpose of a stay – to promote judicial efficiency.

Courts routinely issue stays pending resolution of related proceedings when doing so furthers judicial economy. *See, e.g., Marquis v. Fed. Deposit Ins. Corp.*, 965 F.2d 1148, 1154 (1st Cir. 1992) (“By staying all proceedings in a pending action until the administrative claims process has run its course, efficacy will be promoted”); *Sevinor v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 807 F.2d 16, 20-21 (1st Cir. 1986) (finding that it was “in the interest of both efficiency and judicial economy” to stay proceedings pending the resolution of potentially governing arbitration); *Securities v. Telexfree, Inc.*, 52 F. Supp. 3d 349, 352 (D. Mass. 2014) (“Courts ultimately possess the inherent power to stay pending litigation when the efficacious management of court dockets reasonably requires such intervention.”) (internal quotations omitted). It would be a highly inefficient

use of this Court's, and the parties', time and resources to proceed with briefing the merits of an appeal that may ultimately be dismissed.

SMUG's Motion to Stay was also timely. The stay motion was necessitated by the filing of the Motion to Dismiss, which SMUG filed only minutes before the Motion to Stay. It would have been inappropriate to move for a stay prior to filing the Motion to Dismiss, when there would have been no basis to request a stay.¹

CONCLUSION

For the foregoing reasons, the Court should grant SMUG's motion to stay the proceedings pending resolution of its Motion to Dismiss.

Dated: July 31, 2017

Respectfully submitted,

Mark S. Sullivan
Joshua Colangelo-Bryan
Kaleb McNeely
DORSEY & WHITNEY, LLP
51 West 52nd Street,
New York, New York 10019-6119
Tel. 212-415-9200
sullivan.mark@dorsey.com

/s/ Pamela C. Spees
Pamela C. Spees
First Circuit Bar No. 1161704
Jeena D. Shah
Baher Azmy
Judith Brown Chomsky
A. Azure Wheeler
CENTER FOR CONSTITUTIONAL
RIGHTS
666 Broadway, 7th Floor
New York, NY 10012
Tel. 212-614-6431

¹ The heightened standard for emergency relief invoked by Lively has no application here. Lively points to authorities involving requests for drastic forms of emergency relief, such as an injunction, a stay of enforcement of judgment, or a writ of mandamus, *see* Def. Br., dkt. 6108186, at 2, n.2, which is far from what SMUG is asking this Court to do.

Fax 212-614-6499
pspees@ccrjustice.org

Luke Ryan
First Circuit Bar No. 1158006
100 Main Street, Third Floor
Northampton, MA 01060
Tel. 413-586-4800
Fax 413-582-6419
lryan@strhlaw.com

Attorneys for Plaintiff-Appellee

CERTIFICATE OF SERVICE

I hereby certify that on July 31, 2017, I electronically filed the foregoing document with the United States Court of Appeals for the First Circuit by using the CM/ECF system. I certify that the following parties or their counsel of record are registered as ECF Filers and that they will be served by the CM/ECF system:

Roger K. Gannam
Liberty Counsel
PO Box 540774
Orlando, FL 32854
Email: rgannam@LC.org

Philip D. Moran
Suite 202
265 Essex Street
Salem, MA 01970-0000
Email:
philipmoranesq@aol.com

Mary Elizabeth McAlister
Liberty Counsel
PO Box 11108
Lynchburg, VA 24506-1108
Email: court@lc.org

Daniel Joseph Schmid
Liberty Counsel
PO Box 540774
Orlando, FL 32854
Email: dschmid@lc.org

Horatio Gabriel Mihet
Liberty Counsel
PO Box 540774
Orlando, FL 32854
Email: hmihet@lc.org

Mathew D. Staver
Liberty Counsel
PO Box 540774
Orlando, FL 32854
Email: court@lc.org

/s/Pamela Spees

Pamela Spees
Counsel for Plaintiff-Appellee,
Sexual Minorities Uganda

Certificate of Compliance With Type-Volume Limit

Certificate of Compliance With Type-Volume Limit, Typeface Requirements, and Type-Style Requirements

1. This document complies with the
because, excluding the parts of the document exempted by

this document contains _____ words, **or**

this brief uses a monospaced typeface and contains _____ lines of text.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5)
and the type style requirements of Fed. R. App. P. 32(a)(6) because:

this document has been prepared in a proportionally spaced typeface using
_____ in
_____, **or**

this document has been prepared in a monospaced typeface using
_____ with
_____.

(s) _____

Attorney for _____

Dated: _____