

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

STEPHEN BEHNKE, <i>et al.</i> ,)	
)	
<i>Plaintiffs,</i>)	CASE NO. 2017 CA 005989 B
)	
v.)	Judge Todd Edelman
)	
DAVID H. HOFFMAN, <i>et al.</i> ,)	Next Event: Initial Scheduling
)	Conference February (TBD), 2018
<i>Defendants.</i>)	
_____)	

**RESPONSE TO PRAECIPE REGARDING DEFENDANTS' CONTESTED MOTION
TO STAY THIS ACTION AND TO EXTEND THE TIME TO FILE RULE 12(B)(6)
MOTIONS**

Plaintiffs submit this response to Defendants' Praecipe.

1. Prior to Defendants' filing of their October 11, 2017, motion to stay this lawsuit and again, in response to Defendants' Motion, Plaintiffs offered to dismiss the Ohio appeal if Defendants filed their 12(b)(6) motions in accordance with D.C. Superior Court Rule of Civ. Proc. 12(g), and if their motions demonstrated that Plaintiffs would not be prejudiced by abandoning the Ohio appeal. See *Satkar Hospitality Inc. v. Cook Cnty. Bd. of Review*, No. 10 C 6682, 2011 U.S. Dist. LEXIS 61554 *; 2011 WL 2182106 (N.D. Ill. June 2, 2011). As Plaintiffs previously stated in their Opposition, without seeing Defendants' motions Plaintiffs cannot be sure that Defendants will not raise an issue that can be cured only in Ohio.

2. Plaintiffs' offer remains open. Defendants have the power to end simultaneous actions by filing their 12(b)(6) Motions in the District of Columbia. Having repeatedly asserted to the Common Pleas Court of Montgomery County, Ohio that it did not have jurisdiction, that the Ohio Court should dismiss the Ohio action on the basis of *forum non conveniens* in favor of the District of Columbia, and that they had "no objection to Plaintiffs bringing this case in

Washington, D.C.,” they should now live up to that representation. Sidley Reply to Plaintiffs’ Opposition to Defendants’ Motions to Dismiss for Lack of Personal Jurisdiction (PJ Reply), p. 14; adopted by APA in its PJ Reply, p. 8.

3. Moreover, there is no basis for the relief requested by Defendants.

4. At this point, only the District of Columbia Superior Court has *in personam* jurisdiction over the Defendants. Although the Ohio Court of Appeals has jurisdiction over the appeal, the Common Pleas Court of Montgomery County, Ohio does not have *in personam* jurisdiction.

5. Even if both Courts had *in personam* jurisdiction, however, the possibility that one action may lead to a judgment first and then be applied as *res judicata* in another action “is a natural consequence of parallel proceedings in courts with concurrent jurisdiction, and not reason for an injunction.” *Advanced Bionics Corporation v. Medtronic*, 29 Cal.4th 697, 706 (Cal. 2002), citing *Auerbach v. Frank*, 685 A.2d 404, 407-409 (D.C. 1996).

6. Moreover, while requesting a stay, but without citing a single D.C. Superior Court Rule of Civ. Proc. under which they may proceed,¹ Defendants have also filed four additional motions requesting actions under statutes that require expedited hearings. In substance, therefore, they are proceeding to litigate in the District of Columbia.

7. Defendants’ praecipe establishes no new grounds for a stay, and their motion should be denied.

Dated: November 29, 2017

Respectfully submitted,

¹ See D.C. Superior Court Rule of Civ. Proc. 1 and D.C. Code § 11–946.

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