

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

Alexandra R. Trunzo and Anthony Hlista,
individually, and on behalf of other similarly
situated former and current homeowners in
Pennsylvania,

Plaintiffs,

vs.

Phelan Hallinan & Schmiege, LLP; a law firm
and debt collector,

Defendant.

Civil Action # 2:11-cv-01124-MRH

MOTION TO STAY

And now come Plaintiffs, Alexandra R. Trunzo and Anthony Hlista, individually, and on behalf of other similarly situated former and current homeowners in Pennsylvania (hereinafter “Plaintiffs” or the “Hlistas”) and make this their Motion to Stay.

1. Attorney Evans and the undersigned had a face-to-face meeting on Wednesday, March 4, 2020 at Attorney Evans’ office to, inter alia, discuss internal guidelines that should be adopted between themselves to determine how best to represent their clients, the Hlistas, in this protracted class case. The March 4, 2020 meeting between Attorney Evans and Attorney Malakoff concluded after four and a half hours. In this respect, currently Attorney Evans and his associated class counsel are primary counsel and undersigned counsel is not. Nonetheless, the undersigned has the only written retainer agreement with the Hlistas, which is attached hereto as Exhibit A(attached) At the request of this Court, a declaration placing this retainer into the evidentiary record can be promptly provided.

2. The Hlistas commenced this lawsuit in 2011 and, as a result of Defendants' timely removal, have been litigating before this Court since September 1, 2011. See Document 1. Attorney Malakoff was the sole class counsel for most of this litigation. See e.g. Documents 263; 281.

3. At the March 4 conference, it was discussed how best to protect the Hlistas and the putative class, as well as other matters. Pursuant to those oral understanding, a written confirmation of all the monetary terms insofar as agreed upon in 2017 was created to re-conform that Attorney Malakoff would not duplicate any activities of Attorney Evans and Attorney Echard. Therefore, all such activities (including the preparation and filing of this Motion to Stay) would not result in any time charges being submitted to this Court and, thus, it was understood that Attorney Malakoff would only proceed if his fiduciary duties as an attorney in this case.. Unfortunately, this is such a situation. Thus, Attorney Malakoff is proceeding on his own dime as he has repeatedly done in this case in the past after the entrance of the appearance of co-class counsel .¹

4. On March 17, 2020, the Third Circuit Court of Appeals issued its notice regarding operations to address the COVID-19 pandemic.

5. Earlier on March 13, 2020, this Court (perhaps one of the first in the nation) issued an Administrative Order relative to the same.

6. Late on Monday March 16, 2020, Attorney Malakoff had completed his legal research for that day and listened to the President televised news interview to obtain guidance to determine what prompt action was necessary to protect the Hlistas and the class. On or about 12:27 AM, he caused an email to be transmitted to Attorney Evans outlining how best to protect their name clients (the name class representative and putative class in this very case) light of the ongoing pandemic.

¹ With the authorization of Attorney Evans, Attorney Malakoff is willing to provide this Court in-camera review of any of the written documents relied on herein, including those created as a result of the March 4 for the 4 1/2 hour conference.

This was all in accordance with the March 4, 2020 operating guidelines that Attorney Evans and Attorney Malakoff had agreed upon. This transmittal was provided to advise Attorney Evans (and the other counsel for Plaintiff) that prompt and immediate steps must be taken at this time and therein it was made clear that: (1) Attorney Malakoff would proceed on his own dime, (2) unless a determination was made otherwise, he would file a Motion to Stay on March 18th, (3) if timely requested, he would prepare such a Motion and internally calculate between all class counsel promptly and before filing, and, (4) he was available to consult at any time on Tuesday based his belief that such a Motion had to be immediately prepared and filed. ²

7. Federal Rule of Civil Procedure 1 provides:

These rules govern the procedure in all civil actions and proceedings in the United States district courts, except as stated in Rule 81. They should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.

8. In this connection, on October 16, 2019, this Court recognizing that that this case had commenced in 2011 and issued a Memorandum Order. See Document 418. That Order speaks for itself and directed the Parties to proceed. However, they cannot proceed until and unless this Court selects between one of the two proposed Case Management Orders (see Documents 419, 421).

² Attorney Malakoff was particularly concerned that defense counsel (except for Attorney Goodkind) are the same in another action that repeatedly and unexplainably has delayed a written settlement agreement from being filed and, after months of delay, a mere six weeks after it was filed their client belatedly and precipitously notified plaintiff's counsel that the client would not pay a penny. See Kaymark [Hill] v. Udren Law Offices, P.C., No. 2:13-cv-00419-CB-CRE, Document 176-1 (W.D.Pa. Aug. 9, 2018). Thus, the defendant represented (apparently falsely, see Good v. Nationwide Credit, Inc., 137 F.Supp.3d 794 (E.D.Pa. 2015)) to the court and to plaintiff's counsel on August 8, 2018 that it had a net worth of \$6 million or more (pursuant to the FDCPA statutory maximum), but despite that firm having upward of 350 employees in three states apparently lost approximately \$2 million a month such that the class could not recover a penny. See William J. Mansfield, Inc. v. Udren Law Offices, P.C., No. 2:18-cv-03569-GEKP, Document 57 (E.D.Pa. May 1, 2019); William J. Mansfield, Inc. v. Udren Law Offices, P.C., No. CV 18-03569, 2019 WL 3858002, at *12 (E.D. Pa. Aug. 16, 2019).

9. Thus, the selection of a case management order by this Court would enable the Parties to promptly proceed during the length of the pandemic stay (currently one that will likely last many months). Such an order would enable all Parties to jumpstart this litigation, after it has been effectively stopped) on October 16 and thereby protect their respective clients. Stated differently would appear that all parties would be benefit by obtaining this Court's prompt directions.

10. Respectfully, to allow this class proceedings to continue out-of-court during this pandemic would be completely consistent (and may be called for) within this Court's Administrative Order addressing COVID-19 matters.

11. It is, therefore, respectfully requested that this Court grant this Motion for Stay with the exception of this Court determining which case management order the parties should proceed.³

12. Significantly, the matters which this case can reasonably progress today fall squarely within this Court's Administrative Order, i.e., Court is "committed to the sound administration of equal justice under law, this Court believes that it should take reasonable and prudent actions to further that mission." Order p. 1. To "further public health and safety, the health and safety of Court personnel, counsel, litigants, other case participants, jurors, security personnel and the general public" this court emphasized the need to reduce the number of gatherings despite remaining open for the conduct of official business. This Court recognized that it encouraged that judicial officers "conduct proceedings by telephone or videoconferencing where practical and as permitted by law, and to take reasonable measures to avoid the necessity of out-of-town travel (especially by public convenience) of any litigant, witness, counsel or the public." Order at ¶ 8 p 4.

³ Plaintiffs' counsel have previously prepared their document requests, interrogatories, and (if appropriate) provide notices of video deposition within five business days of the date this Court's order.

13. Repeatedly over the last two years, Defendant and its counsel has repeatedly stressed that this litigation has been in this Court since 2011. The Parties disagree as to why. Thus, , this Motion presents an unusual opportunity for this Court to restart this case and direct the parties on how best work together to conclude it.

14. Thus, given the state of our Country and Nation as a result of the Coronavirus pandemic, which is shutting down businesses, school and entire cities, Defendant wish to follow the guidance of our Nation’s leaders and adhere to social distancing to, as put by this Court in the Administrative Order Concerning Jury Trials and Certain Other Proceedings Relative to COVID-19 Matters, “reduce exposure [] and slow the spread of the disease.” Order p. 1.

15. Despite the fact that the undersigned’s office has been operating virtually for three years, (undersigned counsel has attempted to semi retire) doing so has become difficult in recent days due to the rise in others working from home, which is slowing internet service speeds and causing significant delays in the ability to receive technology support.

16. Thus, respectfully, Plaintiffs request that this Hon. Court stay these proceedings for ninety (90) days. It is recognized that Administrative Order provides for “deadlines or scheduling orders in all civil and criminal cases remain in effect unless modified,” ¶ 3 p. 2. However, there will be no prejudice to staying these proceedings. Also see ¶ 2,p. 2 “The court may issue further orders concerning future general continuances of any matters as may be deemed necessary and appropriate”. ¶ 2, p 2.

WHEREFORE, for the reasons stated above, it is respectfully requested that this Honorable Court grant this Motion to Stay and stay these proceedings for ninety (90) days. A proposed order is attached.

Respectfully Submitted,
MICHAEL P. MALAKOFF, P.C.

/s/ Michael P. Malakoff

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