

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 06-cv-02528-JLK

CHRISTOPHER BRAY, *et al.*,

Plaintiffs,

v.

QFA ROYALTIES LLC,

Defendant.

UNOPPOSED MOTION TO STAY PROCEEDINGS PENDING APPEAL

Defendant QFA Royalties LLC (“Quiznos”) by and through its undersigned counsel, respectfully requests this Court for a stay of proceedings pending its appeal. In further support of this motion, Quiznos states as follows:

COMPLIANCE WITH D.C.COLO.LR 7.1

Pursuant to D.C.Colo.LR 7.1, the undersigned counsel has conferred with counsel for Plaintiffs regarding this Motion. Counsel for Plaintiffs does not oppose the relief requested herein.

1. On May 3, 2007, this Court entered its Order on Motion for Preliminary Injunction [Doc 60]. By separate Order dated May 3, 2007 [Doc 58] this Court also ordered that the parties confer regarding filing a joint status report outlining a proposed course for preparing the case for trial.

2. The parties conferred and based on Quiznos’ intent to appeal this Court’s Order on Preliminary Injunction, the parties agreed that to the extent the appeal did not divest the Court of

jurisdiction or operate to stay the case pending that appeal, it made sense for the parties to seek such a stay. The parties notified the Court of this agreement in their Joint Status Report filed on May 18, 2007 [Doc 63].

3. Consistent with this agreement between the parties, on May 18, 2007, Quiznos filed an Unopposed Motion for Extension of Time to Answer or Otherwise Respond to Complaint (which would otherwise have been due 15 days after the Court's May 3, 2007 Order [*see* Docs 26 and 27]). In that Motion, Quiznos informed the Court that Quiznos intended to appeal the Court's order granting a preliminary injunction and that it intended to file "a request that the Court stay this matter pending the appeal process." (Motion at 2, ¶6.)

4. On May 22, 2007, this Court granted Defendant's Motion for Extension of Time allowing Quiznos to file an answer or other response to the Complaint.

5. On June 1, 2007, Quiznos filed a notice of appeal to the Tenth Circuit seeking review of this Court's Order granting a preliminary injunction under 28 U.S.C. § 1292(a).

6. The outcome of Quiznos appeal of the preliminary injunction may affect nature of the claims at issue and the focus, scope and timing for any necessary additional discovery and motions with respect to the remaining issues for full trial on the merits.

7. Additionally, staying the proceedings pending appeal promotes the efficient use of judicial resources. The parties are currently negotiating in an effort to reach a settlement of the present case. To the extent necessary, the parties also intend to utilize the Tenth Circuit's Mediation Office, as well as a third party private mediation service in this regard.

8. Granting the requested stay will cause no prejudice to Plaintiffs. The Court's injunction will remain in effect unless and until the Tenth Circuit reverses the grant of injunction

or further order of this Court and, therefore, both parties remain bound by their respective obligations under the controlling franchise agreements. Moreover, Plaintiffs do not oppose the relief requested in this Motion.

WHEREFORE, Quiznos respectfully requests the Court stay proceedings in this Court until the resolution of its appeal to the Tenth Circuit.

Dated this 5th day of June, 2007.

Respectfully submitted,

s/ Leonard H. MacPhee

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CERTIFICATE OF SERVICE

I hereby certify that on June 5, 2007, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following email addresses:

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s/ Leonard H. MacPhee

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