

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 07-cv-02503-WJM-MJW

STEVEN A. STENDER and
INFINITY CLARK STREET OPERATING, L.L.C., on
behalf of themselves and all others similarly situated,

Plaintiffs,

v.

ERNEST A. GERARDI, JR.,
RUTH ANN M. GILLIS,
NED S. HOLMES,
ROBERT P. KOGOD,
JAMES H. POLK, III,
JOHN C. SCHWEITZER,
R. SCOT SELLERS,
ROBERT H. SMITH,
STEPHEN R. DEMERITT,
CHARLES MUELLER, JR.,
CAROLINE BROWER,
MARK SCHUMACHER,
ALFRED G. NEELY,
ARCHSTONE-SMITH OPERATING TRUST,
ARCHSTONE-SMITH TRUST,
LEHMAN BROTHERS HOLDINGS, INC., and
TISHMAN SPEYER DEVELOPMENT CORPORATION,

Defendants.

MINUTE ORDER

Entered by Magistrate Judge Michael J. Watanabe

It is hereby **ORDERED** that Defendants' Motion to Vacate Hearing (docket no. 137) is **GRANTED** for the following reasons, and the Motions Hearing set before Magistrate Judge Watanabe on March 10, 2011, at 1:30 p.m. is **VACATED**.

It is **FURTHER ORDERED** that the parties shall seek an order from Judge Martinez at the Status Conference on March 21, 2011, at 9:00 a.m. as to whether he wants Magistrate Judge Watanabe to hear oral argument on the Plaintiffs' Motion for Leave to File an Amended Class Action Complaint Pursuant to Fed. R. Civ. P. 15(A)

and Supporting Memorandum of Law (docket no. 120) before or after ruling by the Tenth Circuit on the Katz case. The parties shall come to Magistrate Judge Watanabe's chambers immediately following their Status Conference with Judge Martinez and inform Magistrate Judge Watanabe or his chambers staff whether oral argument should be set on Plaintiffs' Motion for Leave to File an Amended Class Action Complaint Pursuant to Fed. R. Civ. P. 15(A) and Supporting Memorandum of Law (docket no. 120) before or after ruling by the Tenth Circuit on the Katz case.

The Katz case is currently on appeal before the Tenth Circuit and is set for oral argument on May 9, 2011. See docket no. 140. If Infinity prevails on its appeal in the Katz case, then the claims will proceed in that case and cannot, as a matter of law, proceed in this action. If the dismissal of those claims is upheld by the Tenth Circuit, then the Tenth Circuit in its ruling may provide guidance to this court on the propriety of Infinity now attempting to assert its claims in this case.

The decision to issue a stay of pretrial proceedings rests within the sound discretion of the trial court. Landis v. North American Co., 299 U.S. 248, 254 (1936)("[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the cases of its docket with economy of time and effort for itself, for counsel, and for litigants.").

In this case, District Judge William J. Martinez was recently reassigned this case from Judge Blackburn. On February 23, 2011, pursuant to Judge Martinez's Order, the parties filed a Joint Status Report (docket no. 135) identifying two outstanding issues. In that report, Defendants noted the overlap with the Katz appeal and requested that this court stay all further action on Plaintiffs' Motion for Leave to File an Amended Class Action Complaint Pursuant to Fed. R. Civ. P. 15(A) and Supporting Memorandum of Law (docket no. 120) and vacate the oral argument currently set before Magistrate Judge Watanabe on March 10, 2011 at 1:30 p.m. On Friday, March 4, 2011, Judge Martinez set a Status Conference for March 21, 2011, at 9:00 a.m. and indicated in his Minute Order that the court intends to address the matters included in the Joint Status Report- presumably including Defendant's request to stay all action on the Plaintiffs' Motion for Leave to File an Amended Class Action Complaint Pursuant to Fed. R. Civ. P. 15(A) and Supporting Memorandum of Law (docket no. 120).

Accordingly, in this court's discretion and in the interest of judicial economy, the Defendants' Motion to Vacate Hearing (docket no. 137) should be GRANTED. See S.E.C. v. Nacchio, 2005 WL 1799372 (D. Colo. July 28, 2005).

Date: March 9, 2011
