

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

DOROTHY B. WALTHER; and  
HOWARD WALTHER,

Plaintiffs,

v.

Case No. 6:13-cv-472-Orl-37GJK

ROBERT MCINTOSH; STENSTROM  
MCINTOSH, ET AL., P.A.; STEVEN  
KANE, ESQ.; and KANE & KOLTUN,  
Attorneys at Law,

Defendants.

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**ORDER**

This cause is before the Court on the following:

1. Plaintiffs Dorothy B. Walther and Howard Walther and Attorney Phillip P. O'Shaugnessy Rule 62 Motion for Stay of Order and of Case and Incorporated Memorandum of Law (Doc. 99), filed January 6, 2014; and
2. Defendants Robert McIntosh, Esq. and Stenstrom McIntosh, et al., P.A.'s Response to Plaintiff's Rule 62 Motion for Stay of Order and of Case and Incorporated Memorandum of Law (Doc. 100), filed January 8, 2014.

Upon consideration, Plaintiffs' Motion to Stay is due to be denied.

**Background**

This Court has entered Orders in this action which granted Defendants' Motion for Summary Judgment (Doc. 55) and imposed sanctions against Plaintiffs and their attorney (Doc. 82 ("Sanctions Order")). Plaintiffs and their counsel appealed the Sanctions Order to the U.S. Court of Appeals for the Eleventh Circuit. (Docs. 90–92.)

They now move to stay this action. (Doc. 99.) Defendants oppose. (Doc. 100.) The motion is now ripe for adjudication.

### **Legal Standard**

A party seeking stay of an action must “make out a clear case of hardship or inequity in being required to go forward.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254–55 (1936); e.g., *Clinton v. Jones*, 520 U.S. 681, 709 (1997) (“The proponent of a stay bars the burden of establishing its need.”). Upon a sufficient showing, the Court may exercise its inherent authority to stay an action. *Landis*, 299 U.S. at 254–55.

### **Analysis**

Plaintiffs and their counsel seek a stay because they “anticipate that the Eleventh Circuit may address the underlying merits of the claims that Plaintiffs had against” certain Defendants. (Doc. 99, pp. 2–3.) Further, if the Eleventh Circuit rules in Plaintiffs’ favor, then they intend to seek reconsideration of the Court’s Summary Judgment Order. (*Id.*) Given these anticipated events, Plaintiffs contend that a stay is warranted. Defendants counter that it is unlikely that the Eleventh Circuit will reverse the Sanctions Order, and even if it does, it is even more unlikely that reconsideration of the Summary Judgment Order would be warranted. (Doc. 100.) The Court agrees with Defendant and finds that Plaintiff has not met its burden to “make out a clear case of hardship or inequity” if the stay is denied. *Landis*, 299 U.S. at 254.

### **Conclusion**

Accordingly, it is hereby **ORDERED AND ADJUDGED** that Plaintiffs Dorothy B. Walther and Howard Walther and Attorney Phillip P. O’Shaughnessy Rule 62 Motion for Stay of Order and of Case and Incorporated Memorandum of Law (Doc. 99) is **DENIED**.

**DONE AND ORDERED** in Chambers in Orlando, Florida, on January 22, 2014.



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ROY B. DALTON JR.  
United States District Judge

Copies:

Counsel of Record