

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 07-22913-CIV-AMS  
CONSENT CASE

LUIS A. PALMA, et al.,

Plaintiffs,

v.

SAFE HURRICANE SHUTTERS, INC., et al.,

Defendants.

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ORDER GRANTING DEFENDANTS' MOTION TO STAY  
UNTIL THE LAMONICA APPEAL IS DECIDED

This matter is before the Court upon Defendants' Motion to Stay Case Until *Lamonica* Appeal is Decided, or in the Alternative, for Extension of Time to File Motion for Summary Judgment (DE # 87). Plaintiffs have filed a Response in Opposition to the Defendants' Motion (DE # 90). Defendants have not filed a Reply and the time to do so has passed. For the reasons stated below, the Defendants' Motion to Stay is GRANTED.

Luis Palma, Roberto Sanso, Fernando Acuna, Yerko Aguirre, Rolando Ibacache, Armando Catalan and Gabriel Antinao filed this lawsuit requesting relief pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201, *et seq.* According to their Amended Complaint, Plaintiffs worked for Defendant, Safe Hurricane Shutters, Inc., without being paid at all for weeks at a time and without being paid overtime wages for the hours that they worked in excess of forty hours per week [D.E. 17]. The Amended Complaint added Edward Leiva, Steve Heidelberger and Francis McCarroll as Defendants, based upon the allegation that they are the corporate officers, owners and/or managers responsible for running the day-to-day operations of Safe Hurricane Shutters, Inc.; and, that they were responsible for paying Plaintiffs' wages. The Amended Complaint alleges, *inter alia*, that

the Defendants' business and each Plaintiff's work for the Defendant affected interstate commerce and thus subject Defendants' business activities to the FLSA.

Defendants have filed the instant motion seeking to have this matter stayed because the case of *Reinaldo Ramon Lamonica, Renaldo Gomez Morsa, et al., v. Safe Hurricane Shutters, Inc.*, Appellate Case No. 08-15963-X, ("Lamonica") which involves similar dispositive legal issues related to application of the FLSA to Safe Hurricane Shutters, the same Defendant in this case, is currently pending before the Eleventh Circuit Court of Appeals. In the *Lamonica* case, the district court granted summary judgment for the defendant and concluded that there was not sufficient evidence to demonstrate that defendant Safe Hurricane Shutters, Inc., was engaged in interstate commerce to establish enterprise liability under the FLSA. The *Lamonica* Plaintiffs then appealed that decision to the Eleventh Circuit. Although the Plaintiffs in this matter acknowledge that this action is a "sister" case to the *Lamonica* case, Plaintiffs argue that this matter should not be stayed because additional evidence has been presented in this case to distinguish it from *Lamonica*.

Although there may be additional evidence regarding the jurisdictional issue in the case at bar, the undersigned concludes that the Eleventh Circuit may nevertheless provide valuable guidance regarding this issue; and, a ruling by the Eleventh Circuit in the *Lamonica* case may well affect and determine the issues presently before the Court in this action. Accordingly, in an effort to preserve judicial resources and to avoid inconsistent results, it is appropriate to stay this matter until the *Lamonica* case is resolved.

In addition, on May 11, 2009, the United States Court of Appeals for the Eleventh Circuit issued an Order granting a motion to consolidate the appeal in *Lamonica* with the

appeals in *Reisas Polycarpe v. E &S Landscaping Service*, App. Case No. 08-15154-EE and 08-15290-EE, *Richard Milbourn v. Aarmada Protection Systems 2000, Inc.*, App. Case No. 08-17055-FF, *Edgardo Flores, Jose Roasles, Nestor Benitez v. Nuvoc, Inc.*, App. Case No. 08-17109-FF, and *Juan Carlos Vallecillo v. Wall to Wall Residence Repairs, Inc.*, App. Case No. 09-10938-FF. All of those cases also involve issues related to the application of the FLSA to certain businesses. The consolidation of these cases, which resulted in the removal of the *Lamonica* case from the oral argument calendar, leads the undersigned to conclude that the Eleventh Circuit is likely to issue a written opinion which clarifies the law in this area. Moreover, that decision may prompt the parties to settle the case at bar.

Thus, the interests of judicial economy will be served if the instant action is stayed pending disposition by the Eleventh Circuit of the consolidated cases identified in that Court's May 11, 2009 Order, including the *Lamonica* case.

Therefore, it is hereby

**ORDERED AND ADJUDGED** that the Defendants' Motion to Stay Case Until *Lamonica* Appeal is Decided or in the Alternative, for Extension of Time to File Motion for Summary Judgment (DE # 87) is **GRANTED** to the extent that it seeks to stay this matter until *Lamonica v. Safe Hurricane Shutters, Inc.*, is resolved by the Eleventh Circuit. Therefore, this case **CLOSED** for statistical purposes only, is removed from the trial calendar, and all pending motions are **DENIED** as moot. This Order shall not prejudice the rights of the parties to this litigation. The Court retains jurisdiction, and the case shall be restored to the active docket upon Court order following motion of a party, made within 90 days from the entry of the mandate in *Lamonica*. If no timely Motion to

Reactivate is filed, this case may be dismissed without prejudice by the Court, without further notice.

**DONE AND ORDERED** in chambers in Miami, Florida, on May 20, 2009.

  
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ANDREA M. SIMONTON  
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:  
All counsel of record

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