

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-23023-CIV-UNGARO/SIMONTON

LUIS GONZALEZ,

Plaintiff,

v.

TRW CONTRACTING, INC., et al.,

Defendants.

ORDER GRANTING, IN PART, DEFENDANTS' *ORE TENUS* MOTION TO STAY

This matter was before the Court for a hearing on July 14, 2010, with respect to Plaintiff's Motion for Sanctions (DE # 64) and Defense Counsel's Motion to Withdraw (DE # 71). During the hearing, the Defendants made an *ore tenus* motion to stay this case pending the disposition of six consolidated FLSA cases presently pending in the Eleventh Circuit Court of Appeals which concern the issue of the jurisdictional interstate commerce requirement. The lead case is *Polycarpe v. E&S Landscaping Service*, Case No. 08-15154-EE. At the conclusion of the hearing, based upon a review of the record as a whole, including the fact that defense counsel is permitted to withdraw, the need for additional discovery which bears upon the existence of jurisdiction under the FLSA, and the fact that the issues pending in the Eleventh Circuit are substantially similar to the issues pending in this case, the undersigned determined that it was appropriate to stay the case, in part. The Defendants have been given twenty days to obtain new counsel, and the case has been stayed during that time. Additional discovery permitted by the Court's Order on the Motion for Sanctions shall be completed on or before August 17, 2010. It is appropriate to extend the deadline for responding to the cross-motions for

summary judgment until the completion of discovery. Therefore, it is appropriate to have a status conference following the completion of discovery to determine whether the case, as a whole, should be stayed pending the decision of the Eleventh Circuit Court of Appeals in *Polycarpe*. It also appears likely that a decision in *Polycarpe* may be rendered by that time. Therefore, based upon a review of the record as a whole, it is hereby

ORDERED AND ADJUDGED that the *ore tenus* Motion to Stay (DE # 79) is **GRANTED IN PART**, to the extent that the responses to the cross-motions for summary judgment are stayed, and the pretrial conference, trial, and related deadlines are continued, until further Order of the Court.

A telephonic status and scheduling conference is set for August 23, 2010 at 2:00 p.m. to reset the dates for filing responses to the cross-motions for summary judgment, the pretrial conference, trial and related deadlines. At that time, the Court will consider any renewed motion to extend the stay pending disposition of *Polycarpe* by the Eleventh Circuit Court of Appeals. Counsel for Plaintiff shall initiate the conference by placing a telephone call to the chambers of the undersigned Magistrate Judge (305-523-5930), with all parties on the line.

DONE AND ORDERED in chambers in Miami, Florida on July 14, 2010.



ANDREA M. SIMONTON
UNITED STATES MAGISTRATE JUDGE

Copies to:
All counsel of record