

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

CHAMBERS OF
SUSAN D. WIGENTON
UNITED STATES DISTRICT JUDGE

MARTIN LUTHER KING COURTHOUSE
50 WALNUT ST.
NEWARK, NJ 07101
973-645-5903

January 16, 2018

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LETTER OPINION FILED WITH THE CLERK OF THE COURT

**Re: Garcia, et al. v. TEMPOE, LLC, et al.
Civil Action No. 17-2106 (SDW) (LDW)**

Counsel:

Before this Court is Plaintiffs Alicia Garcia and Priscila Dominguez's (collectively "Plaintiffs") letter request to stay this action pending their petition before the Third Circuit for leave to appeal this Court's December 19, 2017 Order. (ECF No. 35) This Court, having considered the parties' submissions, and having reached its decision without oral argument pursuant to Federal Rule of Civil Procedure 78, and for the reasons discussed below, **DENIES** Plaintiffs' request for a stay.

DISCUSSION

This Court assumes the parties' familiarity with the factual background and procedural history in this matter and thus will summarize only those facts relevant to the instant letter request. On December 19, 2017, this Court adopted Magistrate Judge Leda Dunn Wettre's Report and Recommendation, which denied Plaintiffs' Motion to Remand. (ECF No. 32.) Thereafter, on December 22, 2017, Defendant TEMPOE, LLC ("TEMPOE" or "Defendant") filed a Motion to Compel Arbitration and to Dismiss. (ECF No. 33.) On January 2, 2018, Plaintiffs filed a petition with the Third Circuit, seeking leave to appeal the Order that denied remand. (ECF No. 35.) By

letter dated January 3, 2018, Plaintiffs requested a stay pending their petition before the Third Circuit. (*Id.*) TEMPOE objected on January 4, 2018. (ECF No. 36.)

A stay pending appeal is an “extraordinary remedy” that is “rarely granted[.]” *Alpha Painting & Constr. Co., Inc. v. Del. River Port Auth. of Pa. & N.J.*, No. 16-5141, 2016 WL 9281362, at *1-2 (D.N.J. Nov. 2, 2016) (citing *Conestoga Wood Specialties Corp. v. Sec’y of U.S. Dep’t of Health & Human Servs.*, No. 13-1144, 2016 WL 1277419, at *1 (3d Cir. 2013)). In this case, there is no appeal pending, only a petition for leave to appeal. This Court finds no basis to stay litigation during the pendency of the petition. Plaintiffs will not suffer irreparable harm by resolving matters that are not being appealed. Regardless of whether litigation proceeds in state or federal court, the parties will invariably need to address the arbitration provision and engage in discovery proceedings.

CONCLUSION

For the reasons set forth above, Plaintiffs’ request to stay the action is **DENIED**. An appropriate Order follows.

/s/ Susan D. Wigenton
SUSAN D. WIGENTON, U.S.D.J

Orig: Clerk
cc: Parties
Leda Dunn Wettre, U.S.M.J.