

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2012-007665

02/17/2015

HONORABLE J. RICHARD GAMA

CLERK OF THE COURT
T. DeRaddo
Deputy

AMBER WINTERS, et al.

GEOFFREY M TRACHTENBERG

v.

BANNER HEALTH NETWORK, et al.

CHRISTOPHER L HERING

L ERIC DOWELL
B LANCE ENTREKIN

RULING

The Court has read and considered the briefing on Defendants' (1) Motion to Alter or Amend Judgment and (2) Motion to Stay Trial Court Proceedings. The Court finds that the briefing is sufficient, and that oral argument would not add to the Court's consideration of the issues presented. Accordingly, oral argument is waived pursuant to Ariz. R. Civ. P. 7.1(c)(2) to expedite the business of the Court.

I.

Defendants seek an order altering or amending the Judgment. *See* Ariz. R. Civ. P. 59(1). Instead of enjoining them from enforcing a health care provider lien after accepting "any" payment from AHCCCS for a patient's care, Defendants posit that the Judgment should enjoin them from enforcing such a lien "only to the extent of the covered services for which Defendant has received any payment from AHCCCS." (Mot. at 1.) The Court agrees with Plaintiffs that this field has already been plowed. (*See* Resp. at 2.) Accordingly,

IT IS ORDERED denying Defendants' Motion to Alter or Amend Judgment.

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II.

Defendants seek an order staying this action pending review of *Abbott v. Banner Health Network*, 2014 WL 7331031 (Ariz. App. Dec. 23, 2014), the Closed Lien Plaintiffs' appeal. Defendants foretell the Court's reliance on *Abbott* in ruling on post-trial motions, reliance they urge will come to naught if the Supreme Court vacates *Abbott*.

The proponent of a stay bears the burden of establishing its need. *Clinton v. Jones*, 520 U.S. 681, 708 (1997), citing *Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936). In determining whether to grant a stay, the Court considers whether a stay will (1) avoid increased costs; (2) prevent harassment by repeated suits involving the same subject matter; (3) avoid extra cost and burden to judicial resources; (4) avoid piecemeal litigation, (5) avoid unusually difficult questions of law that bear upon important policy issues; and (6) avoid conflicting judgments. *Tonnemacher v. Touche Ross & Co.*, 186 Ariz. 125, 130 (App. 1996); see also *Astorga v. Wing*, 211 Ariz. 139, 144-45 (App. 2005) (court may also consider other factors). A stay calls for an "exercise of judgment, which must weigh competing interests and maintain an even balance." *Landis, id.* at 254-55. The Court may stay an action pending resolution of another proceeding, whether such proceeding is "judicial, administrative, or arbitral in character." *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863 (9th Cir. 1979); see also *Ass'n of Irrigated Residents v. Fred Schakel Dairy*, 634 F. Supp. 2d 1081, 1094 (E.D. Cal. 2008) (resolving interlocutory appeal could alter remaining proceedings and not granting the stay would waste judicial and party resources).

As Defendants correctly note, once the Court rules on the fully-briefed motions for new trial, Defendants will be on the clock to appeal the Judgment, which appeal will proceed on a parallel track with the *Abbott* petition for review.¹ Yes, Defendants moved for entry of a Rule 54(b) judgment on the Closed Lien Plaintiffs' claims, so to an extent they invited the "procedural chaos" of which they now complain. (See Reply at 2.) But they argued, and the Court found, that Rule 54(b) relief was warranted because the Court of Appeals could decide the accord and satisfaction issue distinct from the merits of the underlying action. (See Feb. 26, 2013 Ruling.) Obviously the Court of Appeals concluded differently.

Plaintiffs urge that the Court cannot ignore *Abbott*. See *Francis v. Ariz. Dep't of Transp.*, 192 Ariz. 269, 271 (App. 1998). The Court fails to see how staying this action pending outcome of the petition for review is anything but deferential to both the Court of Appeals and the Supreme Court. Plaintiffs point out that the likelihood the review will be granted is slim, but this backhandedly cuts in Defendant's favor, establishing that unreasonable delay of this action is unlikely. In the interim, the Judgment in favor of Plaintiffs is still in place, enjoining Defendants

¹ See Defendants' Motion for New Trial (filed Nov. 26, 2014) and Plaintiffs' Motion for New Trial Re Breach of Contract (filed Dec. 29, 2014).

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from enforcing health care provider liens after accepting payment from AHCCCS for a patient's care.

Based on the foregoing, the Court finds that Defendants have met their burden under the factors set forth in *Tonnemacher*. Accordingly,

IT IS ORDERED granting Defendants' Motion to Stay Trial Court Proceedings.