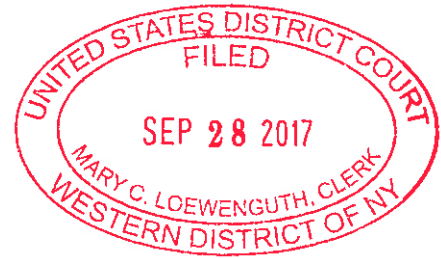


UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ROBERT TESTA,

Plaintiff,



DECISION AND ORDER

10-CV-6229L

v.

LAWRENCE BECKER, as plan administrator of the Xerox Corporation Retirement Income Guarantee Plan, and XEROX CORPORATION RETIREMENT INCOME GUARANTEE PLAN, an Employee Pension Benefit Plan,

Defendants.

On May 9, 2017, the Court issued a Decision and Order (Dkt. #57) granting certain relief to the plaintiff, Robert Testa, in this case arising under the Employee Retirement Income Security Act, 29 U.S.C. § 1101 *et seq.*

Both plaintiff and defendants (the Xerox Corporation Retirement Income Guarantee Plan (“RIGP”) and the administrator of the RIGP) appealed from that Decision and Order to the Court of Appeals for the Second Circuit.¹

Defendants have moved in this Court for an order staying enforcement of the Court’s May 9 Decision and Order pending the outcome of the appeals, pursuant to Fed. R. Civ. P. 62(d) and Fed. R. App. P. 8(a).

¹The reason for the plaintiff’s appeal was that the relief ordered by this Court differed from the specific relief that plaintiff sought.

Whether to grant a stay pending appeal of a final judgment is a matter committed to the court's discretion. *See, e.g., Lair v. Bullock*, 697 F.3d 1200, 1203 (9th Cir. 2012) (“[a] stay is not a matter of right It is instead an exercise of judicial discretion ... [that] is dependent upon the circumstances of the particular case”) (internal quotation marks omitted); *Wells Fargo Bank, N.A. v. ESM Fund I, LP*, No. 10 Civ. 7332, 2012 WL 3023985, *1 (S.D.N.Y. July 24, 2012) (“A determination to stay enforcement of a judgment pending appeal is an exercise of judicial discretion depending on the circumstances of the case and requires consideration of whether the appellant has shown a substantial possibility of success on appeal, whether the appellant will be irreparably harmed absent a stay, the balance of hardships, and the public interest”).

Obviously this Court is well familiar with the facts of this case, and having considered the arguments presented by both sides, I find that a stay is not warranted here. Defendants have not demonstrated a substantial possibility of success on appeal, nor have they shown that they will be irreparably harmed absent a stay, or that the balance of hardships tips in their favor. Defendants' motion is therefore denied.

CONCLUSION

Defendants' motion for a stay of this Court's May 9, 2017 Decision and Order (Dkt. #57) is denied.

IT IS SO ORDERED.

Dated:

September 28, 2017
October , 2017
Rochester, New York



DAVID G. LARIMER
United States District Judge