

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

RISEDELAWARE INC., <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	
)	C.A. No. N22C-09-526 CLS
Secretary Claire DeMatteis, in her)	
official capacity as Secretary of the)	
Delaware Department of Human)	
Resources and Co-Chair of the State)	
Employee Benefits Committee, <i>et al.</i> ,)	
)	
Defendants.)	
)	

**DEFENDANTS’ MOTION FOR ENTRY OF FINAL JUDGMENT OR IN
THE ALTERNATIVE, PARTIAL FINAL JUDGMENT PURSUANT TO
SUPERIOR COURT RULE 54(B)**

Defendants Secretary Claire DeMatteis, Director Cerron Cade, Delaware Department of Human Resources, Delaware State Employee Benefits Committee (the “SEBC”), and Delaware Division of Statewide Benefits (collectively, “Defendants”) hereby move for entry of a final order in the above-captioned matter or, in the alternative, an order for a partial final judgment pursuant to Superior Court Rule 54(b) and in support thereof states:

Background

1. On September 25, 2022. Plaintiffs RiseDelaware Inc., et al. (collectively “RiseDE”) filed their complaint (the “Complaint”) asserting three claims – two involving alleged violations of the administration procedures act (the

“APA Claims”), and one count for declaratory relief related to allegations of insufficient communications (the “Communications Claim”). *See* Compl. ¶¶ 72-105.

2. On October 4, 2022, Plaintiffs filed a Motion for Stay requesting the Court to order the Defendants to stay the implementation of the HAMP (Medicare) program the SEBC was planning to implement in January 2023. Trans. ID 68211112.

3. On October 19, 2022, the Superior Court entered an order granting a stay of governmental action. Trans. ID 68274838 (the “October Order”).

4. On November 18, 2022, the parties agreed to partially dismiss the Communications Claim and filed a stipulation stating the same. Trans. ID 68405138.

5. On December 16, 2022, the parties filed a joint Stipulation and [Proposed] Order for Entry of Final Judgment (the “Stipulation”) confirming that the parties agreed that the October Order was decisive of the APA Claims and the remaining portion of the Communications claim, and therefore final judgment could be entered on those claims. Trans. ID 68652107. However, the Proposed Order was never signed.

6. Upon filing the Stipulation, only two matters remained for decision by the Court – Plaintiffs’ Motion to Amend the Complaint (Trans. ID 68499047) and

Plaintiffs Motion for Attorney's Fees (Trans. ID 68384972). On December 19, 2022, this Court deemed the Motion to Amend moot (Trans. ID 68662262), and on February 8, 2023, the Superior Court entered its order denying Appellees' request for attorney's fees and stated, "[n]o further order of the Court is needed to close this case." Trans. ID 69104306 (the "February Order").

7. On February 15, 2023, Appellees filed a Notice of Transfer (the "Notice of Transfer") pursuant to 10 *Del. C.* §1902 ("the Transfer Statute"). Trans. ID 69157466, and Appellants filed their Notice of Appeal in the Delaware Supreme Court ("Supreme Court") (Trans. ID 69158390).

8. On February 16, 2023, the Supreme Court issued a Notice to Show Cause, asking why the appeal should not be dismissed as interlocutory and, after written submissions by the parties, the Supreme Court issued an Order dismissing Defendants' appeal as interlocutory (attached hereto as Ex. A). The Supreme Court acknowledged that this Court stated, as part of the February Order, that "No further order of this Court is needed to close this case." Ex. A at 5. Notwithstanding that language, the Supreme Court found that "the Superior Court's failure to enter the proposed order for entry of final judgment...renders the finality and scope of the [Superior Court's February 8, 2023] Order and the [Superior Court's October 19, 2022] Decision uncertain." Ex. A at 5.

Argument

A. This Court Should Enter Final Judgment

9. Although this Court made clear that the February Order would be the Court's final order and that "[n]o further order of the Court is needed to close this case" (Trans. ID 69104306), in response to an appeal of this Court's October Order filed by the Defendants, the Supreme Court found a final appealable judgment had not been granted because the stipulated proposed judgment was never entered. As a result, Defendants are unable to exercise their legal right to perfect an appeal.

10. The Court's February Order confirms that the Court agrees that all matters before the Court—including Plaintiffs' request for attorneys' fees—have been decided with finality, without leave to transfer. Additionally, it confirms that the Court based its decision on conclusions of law, not findings of fact. As such, Defendants have submitted a new form of order in substantially the same form as the original stipulated proposed order, based solely upon the Court's conclusions of law, and respectfully request that this Court enter an order of final judgment.

B. In The Alternative, This Court Should Enter Partial Judgment

11. In the alternative, Defendants aver that this matter is ripe for partial final judgment on Counts I, II and III, pursuant to Superior Court Rule 54(b).

12. To grant a Rule 54(b) motion for a partial final judgment, the Court must find: "(1) the action involves multiple claims or parties; (2) at least one claim...has been finally decided, and (3) that there is no just reason for delaying an

appeal.”¹ The Court has the authority to grant a Rule 54(b) motion to avoid “hardship or injustice through delay . . .”.² In this regard, the Court may consider “any factor relevant to judicial administrative interests or the equities of the case.”³

13. The first two elements of the Rule 54(b) test are easily satisfied. The case involved three claims. The conclusions of law found in the Court’s October Order fully decided the two APA Claims and as well as a portion of the Communications Claim. The remainder of the Communications Claim was dismissed by the parties. If any issue remains open, it can only be Plaintiffs’ claim for the award of attorney’s fees. Because final judgment is unavailable during the pendency of a motion for attorney’s fees, partial judgment under 54(b) is warranted.⁴

14. The third element is satisfied because there is no just reason for delay. Even if the Plaintiffs’ request for attorney’s fees remains undecided, that should not prevent Defendants from appealing fully decided questions of law.

¹ *Verizon Communications, Inc. v. Illinois Nat. Ins. Co.*, 2018 WL 2317821, at *6 (Del. Super. Ct. May 16, 2018).

² *Alcoa v. Glencore Ltd.*, 2016 WL 912158, at * 1 (Del. Super. Ct. March 10, 2016) (citing *In re Explorer Pipeline*, 2001 WL 1009302, at *2 (Del. Ch. Aug. 29, 2001)).

³ *Post Holdings Inc. v. NPE Seller Rep LLC*, 2018 WL 5429833, at *7 (Del. Ch. Oct. 29, 2018) (quoting *In re Tri-Star Pictures Litg.*, 1989 WL 112740, at *1 (Del. Ch. Sept. 26, 1989)).

⁴ *Sentinel Tech., Inc. v. Revolution Retail Systems, LLC*, 130 A.2d 931 (Table) (Del. 2015) (“This Court consistently has held that that a judgment on the merits is not final until an outstanding related application for an award of attorney’s fees has been decided.”).

15. Moreover, Defendants’ Rule 54(b) motion should be granted because Defendants will suffer hardship and injustice if not allowed to appeal the decision. The SEBC is statutorily tasked with healthcare plan selection, decision making, implementation, and management⁵ and is unable to do so under this Court’s October 19, 2022 Interim Order which requires Defendants to “ensure that the healthcare insurance and benefits available to State retirees prior to October 3, 2022...remain in full force and effect.”⁶

16. Thus, absent an opportunity to appeal to the Delaware Supreme Court immediately, the SEBC cannot discharge its statutory duty to select a healthcare plan it deems in the best interests of the State.

17. For these reasons, Defendants respectfully request that the Court enter the order attached hereto granting the Defendants’ motion and allowing the appeal to go forward at this time.

⁵ See 29 *Del. C.* § 5210.

⁶ See October Order, p. 13.

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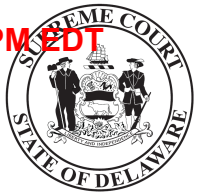
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Dated: April 21, 2023

EXHIBIT A



IN THE SUPREME COURT OF THE STATE OF DELAWARE

SECRETARY CLAIRE §
DEMATTEIS in her official § No. 57, 2023
capacity as Secretary of the §
Delaware Department of Human §
Resources and Co-Chair of the § Court Below–Superior Court
State Employee Benefits § of the State of Delaware
Committee, DIRECTOR §
CERRON CADE in his official §
capacity as Director of the § C.A. No. N22C-09-526
Delaware Office of Management §
and Budget and Co-Chair of the §
State Employee Benefits §
Committee, DELAWARE §
DEPARTMENT OF HUMAN §
RESOURCES, DELAWARE §
STATE EMPLOYEE BENEFITS §
COMMITTEE, and DELAWARE §
DIVISION OF STATEWIDE §
BENEFITS, §
§
§
Defendants Below, §
Appellant, §
§
v. §
§
RISEDELAWARE INC., §
KAREN PETERSON, and §
THOMAS PENOZA, §
§
§
Plaintiffs Below, §
Appellees. §

Submitted: March 3, 2023

Decided: April 3, 2023

Before **VALIHURA, VAUGHN,** and **TRAYNOR,** Justices.

ORDER

After consideration of the notice to show cause and the parties' responses, it appears to the Court that:

(1) The appellants—Secretary Claire DeMatteis in her official capacity as Secretary of the Delaware Department of Human Resources and Co-Chair of the State Employee Benefits Committee, Director Cerron Cade in his official capacity as Director of the Delaware Office of Management and Budget and Co-Chair of the State Employee Benefits Committee, Delaware Department of Human Resources, Delaware State Employee Benefits Committee, and Delaware Division of Statewide Benefits (together, the “State”)—have filed a notice of appeal from the Superior Court’s February 8, 2023 order denying an application filed by the appellees—RiseDelaware Inc., Karen Peterson, and Thomas Penozza (together, “RiseDelaware”)—for attorneys’ fees (the “Order”). Because the court’s order did not appear to be a final order, the Senior Court Clerk issued a notice to the State to show cause why this appeal should not be dismissed for its failure to comply with Supreme Court Rule 42 when taking an appeal from an apparent interlocutory order.

(2) The State has responded to the notice to show cause and argues that the Superior Court intended the Order to be its final act in the case. At the Court’s request, RiseDelaware also responded to the notice to show cause. RiseDelaware argues that this appeal should be dismissed as interlocutory. We agree.

(3) A recitation of the procedural history of this case is instructive. RiseDelaware filed its complaint against the State in September 2022, challenging the State’s decision to require that all State retirees enroll in a Medicare Advantage Plan or lose their State-funded health benefits (the “Policy”). Counts I and II of the complaint alleged violations of the Administrative Procedures Act. Count III sought a declaration that the Secretary of the Delaware Department of Human Resources failed to execute her duties in violation of then-extant 29 *Del. C.* § 9604(8)¹ (the “Communications Claim”) and a declaration that the State violated §§10115-10118 of the APA. On October 4, 2022, RiseDelaware filed a motion to stay the Policy, pending a final trial on the merits. On October 19, 2022, the Superior Court issued a decision granting the motion to stay (the “Decision”). Shortly after that, the State announced that it would extend health insurance and benefits to State retirees as ordered by the Decision through the calendar year 2023.

(4) In November 2022, RiseDelaware and the State filed cross-motions for summary judgment on the Communications Claim, and RiseDelaware filed an application for attorneys’ fees. On November 18, 2022, the parties stipulated to the dismissal of the Communications Claim. The parties also filed a proposed stipulation and order for the resolution of RiseDelaware’s application for attorneys’

¹ As of January 26, 2023, the duties of the Secretary of Human Resources are codified in 29 *Del. C.* § 9603.

fees. On December 2, 2022, RiseDelaware filed a motion to amend its complaint to add an additional claim for declaratory judgment and a request for attorneys' fees in its prayer for relief. On December 6, 2022, the Superior Court rejected the proposed stipulation and order and directed the parties to file a stipulation "reflective of the disposition of the case." Also on December 6, 2022, the Superior Court directed RiseDelaware to re-notice its motion to amend the complaint and for the State to respond to the motion by December 20, 2022. The State filed its opposition to RiseDelaware's motion to amend its complaint the following day.

(5) On December 16, 2022, in accordance with the Superior Court's direction, the parties filed a stipulation and proposed order for entry of final judgment. The parties stipulated that, with the exception of the Superior Court's ruling on RiseDelaware's motion to amend the complaint and application for attorneys' fees, the action was ripe for the entry of a final judgment. The stipulation and the proposed order for entry of final judgment also declares that "the Parties agree that the Decision effectively grants [RiseDelaware] the complete relief sought in Counts I, II and the remaining paragraph of Count III^[2] of the Complaint, and constitutes the [Superior] Court's findings of fact and conclusions of law on these claims." On December 19, 2022, the Superior Court denied RiseDelaware's motion

² Paragraphs 102-105 comprised Count III. The parties had previously stipulated to the dismissal of paragraphs 102-104 (the Communications Claim).

to amend its complaint as moot. The Superior Court took no action on the stipulation and proposed order for entry of final judgment.

(6) On February 8, 2023, the Superior Court issued the Order denying RiseDelaware’s fee application. In the Order, the Superior Court expressly disavowed that it had made any findings of fact in the Decision, despite the parties’ agreement to the contrary as recited in the stipulation and proposed order for entry of final judgment. Although the Order only addressed the issue of attorneys’ fees, it concludes with the sentence, “No further order of this Court is needed to close the case.” But the Superior Court’s failure to enter the proposed order for entry of final judgment—again, submitted at the Superior Court’s request and the form and substance of which was agreed to by the parties—renders the finality and scope of the Order and the Decision uncertain. Accordingly, we must dismiss this appeal for the State’s failure to comply with Rule 42 when taking an appeal from an interlocutory order.

NOW, THEREFORE, IT IS HEREBY ORDERED, under Supreme Court Rule 29(b), that the appeal be DISMISSED.

BY THE COURT:

/s/ Gary F. Traynor
Justice

STATE OF DELAWARE }
 } **ss.**
KENT COUNTY }

I, Lisa A. Dolph, Clerk of the Supreme Court of the State of Delaware, do hereby certify that the foregoing is a true and correct copy of the Order dated April 3, 2023, in *Claire DeMatteis in Her Official Capacity as Secretary of Delaware Dept. of Human Resources, et al. v. RiseDelaware Inc., et al.*, No. 57, 2023, as it remains on file and of record in said Court.

IN TESTIMONY WHEREOF,

I have hereunto set my hand and affixed the seal of said Court at Dover this 19th day of April A.D. 2023.

/s/ Lisa A. Dolph

Clerk of Supreme Court

CERTIFICATE OF SERVICE

I certify that on this 21st day of April 2023 that Defendants' Motion for Entry of Final Judgment of in the Alternative, Partial Final Judgment Pursuant to Superior Court Rule 54(B) was served via File & Serve*Xpress* on the following:

Sidney S. Liebesman, Esq.
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