



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

RISEDELAWARE INC., *et al.*, :
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 Plaintiffs, :
 :
 :
 v. : C.A. No. N22C-09-526-CLS
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 :
 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, *et al.*, :
 :
 :
 Defendants. :

**PLAINTIFFS’ NOTIFICATION OF THEIR ELECTION
TO REMOVE AND TRANSFER TO THE
COURT OF CHANCERY PURSUANT TO 10 DEL. C. § 1902**

Plaintiffs file this Notification of their election to remove and transfer this action to the Court of Chancery pursuant to 10 *Del. C.* § 1902 (the “Transfer Statute”). This Court’s February 8, 2023 Order (“Order”) denied Plaintiffs’ Petition for Attorneys’ Fees, holding that the Superior Court lacked subject matter jurisdiction to decide the full scope of Plaintiffs’ Petition. Plaintiffs’ transfer is for the limited purpose of petitioning the Court of Chancery to hear and determine Plaintiffs’ Petition for Attorneys’ Fees and to enter a final judgment. In support of their notification, Plaintiffs state as follows:

The Complaint

1. Plaintiffs brought this action on September 25, 2022 in response to Defendants' failure to comply with the State's APA and FIOA requirements under Title 29 when Defendants decided to switch State retirees' healthcare benefit from traditional Medicare to a Medicare Advantage plan, which is very different and far inferior. (Compl. ¶¶ 1-7). That switch would have had a profound, harmful impact on healthcare benefits for tens of thousands of individuals. Defendants' action, taken under the radar, constituted adoption of a regulation but without following open meetings and open government laws.

2. The Complaint sought a determination that the adoption of this regulation by the State Employee Benefits Committee ("SEBC") was unlawful because the SEBC had failed to comply with the APA (Compl. Count I and ¶¶ 83-89, 105) and had violated FOIA's open meetings requirements. (Compl. Count II and ¶¶ 94-100). Plaintiffs sought "a stay of executing a contract ..., or of any further implementation of Medicare Advantage Plan" for State retirees. (Compl. p. 37).

The Court's Grant Of Plaintiffs' Motion To Stay

3. The Court approved the parties' expedited schedule for Plaintiffs' Motion to Stay implementation of Medicare Advantage under 29 *Del. C.* 10144. (Trans. ID No. 68186800). Following full briefing and oral argument, on October 19, 2022, the Court granted in full Plaintiffs' Motion to Stay. *Rise Delaware Inc. v.*

DeMatteis, 2022 WL 11121549, at *5 (Del. Super.) (“Stay Decision”). The Court ordered, as Plaintiffs had requested, that:

Defendants’ implementation of a Medicare Advantage Plan for State retirees and acceptance of enrollment into the Plan, including by way of automatic enrollment in the open enrollment period currently in effect for State retirees is stayed until further Order by this Court.

During the stay, Defendants shall take all necessary and proper steps to ensure that the healthcare insurance and benefits available to State retirees prior to October 3, 2022, or in which they were enrolled prior to that time, remain in full force and effect.

Id. (emphasis added).

4. The parties have agreed that the Stay Decision “constitutes the findings of fact and conclusions of law on Counts I and II” of the Complaint. (Trans. ID No. 68652107 at Exhibit 1).

5. On November 14, Plaintiffs filed their Petition for Attorneys’ Fees (Trans ID No. 68384972) on grounds that: Defendants had violated the APA by virtue of their violation of FOIA’s open meetings laws; Plaintiffs had obtained an important common benefit for the State’s 30,000 retirees by achieving a stay of Medicare Advantage; and fees were justified because of the State’s vexatious conduct. (Opening Brief at 11-15).

6. The Court’s February 8, 2023 Order denied Plaintiffs’ Petition, stating: (a) “this Court is not permitted to award attorneys’ fees under Title 29 because enforcement of violations of open meeting laws is given to the Court of Chancery,

as such this Court may not award attorney fees and costs,” (Order at ¶10)¹; and (b) while “[t]he Court agrees it does hear cases which occasionally require the Court to apply equitable principles and if such occasion is presented then the Court does have jurisdiction to award attorneys’ fees even if no contract or statute requires it,” Plaintiffs “originally sought a declaratory judgment, which is not inherently equitable” so that this is not a jurisdictionally proper case for the exercise of such jurisdiction. (Order at ¶11).

Transfer

7. The Transfer Statute provides in pertinent part:

No civil action, suit or other proceeding brought in any court of this State shall be dismissed solely on the ground that such court is without jurisdiction of the subject matter, either in the original proceeding or on appeal. Such proceeding may be transferred to an appropriate court for hearing and determination, provided that the party otherwise adversely affected, within 60 days after the order denying the jurisdiction of the first court has become final, files in that court a written election of transfer, discharges all costs accrued in the first court, and makes the usual deposit for costs in the second court.

8. All of the above statutory requirements for removal and transfer to the Court of Chancery are satisfied. Specifically, the present filing constitutes Plaintiffs’ Election to Remove and Transfer to the Court of Chancery; (b) Plaintiffs have

¹ With regard to FOIA, the Court’s October 19, 2022 decision noted: “under 10 *Del. C.* § 1902, no civil action brought in any court of this State shall be dismissed solely on the ground that such court is without jurisdiction of the subject matter and if the action is transferred to the appropriate court, Plaintiffs’ original filing date in this Court will be considered the date Plaintiffs brought the action in Court of Chancery.” *Rise Delaware Inc.*, 2022 WL 11121549, at *4 n.10.

discharged all costs accrued in this action and will make the required deposit for costs in the Court of Chancery; and (c) in its Order denying Plaintiffs' Petition for Attorneys' Fees entered on February 8, 2023, this Court held that it "is not permitted to award attorneys' fees under Title 29 [of the Delaware Code] because enforcement of open meeting laws is given to the Court of Chancery, as such this Court may not award attorney fees and costs." (Order, ¶ 10, footnote omitted).

WHEREFORE, for the reasons set forth herein, Plaintiffs respectfully request that, consistent with 10 *Del. C.* § 1902, the Prothonotary take all necessary steps to accomplish Plaintiffs' removal and transfer of this action to the Court of Chancery.

Dated: February 15, 2022

/s/ David A. Felice
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CERTIFICATE OF SERVICE

I, David A. Felice, hereby certify that on February 15, 2023, I caused a true and correct copy of *Plaintiffs' Notification of Their Election to Remove and Transfer to The Court of Chancery Pursuant to 10 Del. C. § 1902* to be served via File& ServeXpress upon the parties listed below:

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Dated: February 15, 2023

/s/ David A. Felice
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