

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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

APPELLEES' [CONTINGENT] NOTICE OF CROSS-APPEAL

Plaintiffs Below, Appellees, RiseDelaware Inc., Karen Peterson and Thomas Penoza, file this Notice of Cross-Appeal solely as a protective measure in response to the Notice of Appeal filed on February 15, 2023 by Defendants Below, Appellants.

1. By this Notice, Plaintiffs Below cross-appeal from the Order of the Superior Court entered on February 8, 2023 denying Plaintiffs' Petition for Attorneys' Fees (Trans. ID 69104306), as well as from the Superior Court Order denying Plaintiffs' Motion To Amend And Supplement Their Complaint entered on December 19, 2022 (Trans. ID 68662262). That Motion To Amend sought to reflect in the Complaint that Plaintiffs, as the prevailing party below, also sought relief in the form of attorneys' fees.¹ The February 8, 2023 Order is attached as Exhibit B to the Defendants Below, Appellants' Notice of Appeal; and the December 19, 2022 Order is attached to this Notice of Cross-Appeal as Exhibit 1.

2. Currently pending before this Court is a proceeding arising out of an Order of the Supreme Court Clerk directing Defendants Below, Appellants to show cause why their appeal should not be dismissed. Appellants filed their response on February 23, 2023 and the Clerk instructed Appellees to file a response to Appellants' Response by March 7, 2023. In their Response in that show cause proceeding, the Plaintiffs Below, Appellees take the position that the Defendants' appeal should be dismissed because: (i) neither of the Superior Court Orders being appealed is a final order; (ii) no final order or final judgment has been entered in the

¹ That Plaintiffs Below were seeking attorneys' fees was already reflected in stipulations of the parties filed with the Superior Court after the Complaint, but Defendants Below argued in their briefing opposing the Petition for Fees that the Complaint should expressly make that request.

case; and (iii) the alleged final order (the Order of February 8, 2023) from which the Defendants Below, Appellants have appealed is interlocutory and they have not satisfied the procedural requirements for an interlocutory appeal imposed by Supreme Court Rule 42.

3. The Supreme Court has not yet determined whether the appeal by Defendants Below, Appellants should be dismissed. If that issue were to be decided in Plaintiffs' favor before the expiration of the March 10, 2023 statutory deadline for filing a cross-appeal, then the appeal by Defendants Below/Appellants would be dismissed and no cross-appeal would be necessary. But, it is uncertain whether this Court will decide that issue before that deadline. Therefore, out of an abundance of caution, the Plaintiffs Below, Appellees file this Notice of Cross-Appeal to avoid any risk of forfeiting their entitlement, as the prevailing party below, to seek attorneys' fees, should this Court later determine to allow the Defendants' primary appeal to proceed. In other words, the filing of this Notice of Cross-Appeal is to avoid a contingency that may not occur and is not intended to waive the position of the Plaintiffs Below, Appellees that the Defendants' primary appeal, which is improperly based on a non-final order, should be dismissed.

4. The parties against whom this cross appeal is taken are all of the Defendants Below, Appellants here: 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; the Delaware Department of Human Resources; the Delaware State Employee Benefits Committee; and the Delaware Division of Statewide Benefits.

5. The name and address of the attorneys of record for the Defendants

Below, Appellants are as follows:

Max B. Walton
Shaun Michael Kelly
Lisa R. Hatfield
Connolly Gallagher LLP
1201 N. Market St., 20th floor
Wilmington, DE 19801

Patricia A. Davis
Adria Martinelli
Delaware Department of Justice
820 N. French Street, 6th Floor
Wilmington, DE 19801

6. The name and address of the attorneys of record for the Plaintiffs

Below, Appellees are:

David A. Felice
Bailey & Glasser, LLP
Red Clay Center at Little Falls
2961 Centerville Road, Suite 302
Wilmington, Delaware 19808

7. The transcript of the only hearing below was previously transcribed
(Trans. ID 68418618).

March 10, 2023

Respectfully submitted,

FOX ROTHSCHILD LLP

/s/ Sidney S. Liebesman

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*Attorneys for Appellees, Cross-Appellants
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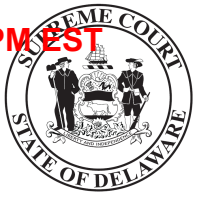


EXHIBIT 1



Moot
/s/ Calvin Scott Dec 19, 2022

IN THE SUPERIOR COURT FOR 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.	:	

[PROPOSED] ORDER APPROVING PLAINTIFFS’ MOTION TO AMEND AND SUPPLEMENT THEIR COMPLAINT

Plaintiffs’ Motion to Amend and Supplement their Complaint, having been presented and considered by the Court,

IT IS HEREBY ORDERED this ____ day of _____, 2022, that Plaintiffs’ Motion is GRANTED. Plaintiffs will file their Amended Complaint within three (3) days of the date of this Order.

Judge

This document constitutes a ruling of the court and should be treated as such.

Court Authorizer

Comments:

Seemingly, this case ended after the Court entered its October 19, 2022, order. After that date, it is unclear what additional action by the attorneys, or the Court was needed to end the case, other than an order closing the case. There was no trial, no facts for the Court to determine and no need to amend the complaint.