

TENTATIVE Order Regarding Plaintiffs’ Renewed Motion to Stay Case
Pending Appeal

Before this Court is Plaintiffs’ Housing Corporation of America (“HCA”) and Palm Communities (“Palm,” and together with HCA, the “General Partners”) renewed motion to stay all proceedings, including discovery, against Defendants Centerline Housing Partnership I, L.P. – Series 2, f/k/a Related Capital Housing Partnership I, L.P.– Series 2’s (“Centerline”), RCHP SLP I L.P.–Series 2’s (“RCHP,” and together with Centerline, the “Limited Partners”), Alden Torch Financial, LLC (“Alden Torch”), and Macatawa Holdings, LLC (“Macatawa”) (collectively “Defendants”).

Palm and HCA seek to stay this matter until resolution of their appeal (the “Appeal”) and the Limited Partners’ cross-appeal (the “Cross-Appeal,” and together with the Appeal “the Appeals”) from the related action, Centerline Housing Partnership I, L.P. – Series 2, et al. v. Palm Communities, et al., No. 8:21-cv-107, 2022 U.S. Dist. LEXIS 15038 (C.D. Cal. Jan. 25, 2022), appeal filed, Nos. 22-55277, 22-55367 (9th Cir. filed Mar. 15, 2022) (the “Prior Action”). See Mot., Dkt. 60, at 3. Defendants oppose this motion. See Opp’n, Dkt. 63, at 1. Palm and HCA submit a reply in support of their Motion. See Reply, Dkt. 65.

For the following reasons, the Court **GRANTS** the motion.

I. BACKGROUND

This case arises from a dispute over the Frederick and 52 II L.P. (“the Partnership”) between the General Partners and the Limited Partners over their partnership agreement governing the ownership and sale of a qualified low-income housing project in Coachella, California (“the Property”) under the federal Low-Income Housing Tax Credit program (“Tax Program”), 26 U.S.C.S. § 42(i)(7).

A. Factual Background

Palm is the Administrative General Partner, and HCA is the Managing General Partner of the Partnership. First Amended Complaint (“FAC”), Dkt. No. 11, ¶ 5. Centerline is the Investor Limited Partner, and RCHP is the Special Limited Partner. Id. ¶ 13.

Palm and HCA entered into an agreement (“the AGP”) whereby Palm agreed to indemnify and finance HCA in exchange of having HCA acquire the Property and then continue “partnering to own and operate” the Property. Id. ¶ 12. Thereafter, they entered into the following agreements with the Limited Partners: Amended and Restated Agreement of Limited Partnership (the “Partnership Agreement”), Right of First Refusal Agreement, and an Option Agreement. See id. ¶¶ 2–7. Pursuant to these agreements, HCA held a right of first refusal, meaning that HCA had the right to purchase the Property at a Section 42(i)(7) price if the Partnership “shall desire to accept a bona fide offer from an unrelated third party to purchase the [Property].” Id. ¶ 117. Only Palm had the express power to authorize the sale of the Partnership’s assets, including the Property. Id. ¶ 112. But RCHP’s consent was necessary for any sale transaction to become binding on the Partnership. Id. ¶ 113.

Years after the parties entered into the Partnership Agreement, Alden Torch acquired interests in the Limited Partners, controlling and managing the Limited Partners. Id. ¶¶ 15–16. Palm and HCA allege that Alden Torch is an “Aggregator”—an entity that enters at the tail end of the fifteen-year compliance period under the federal program and uses unsavory tactics to extract value from affordable housing projects. See id. ¶¶ 16–18.

Palm allegedly received a bona fide offer from an unrelated party to purchase the Property, which Palm and HCA alleged triggered HCA’s Right of First Refusal to purchase the Property. See id. ¶¶ 21, 26. These events essentially gave rise to the Prior Action. See generally Opp’n, Dkt. No. 63, at 3–4.

B. Procedural History

In the Prior Action, this Court granted the Palm and HCA’s Motion for Partial Summary Judgment on January 12, 2022. Id. at 4. The parties stipulated

to award the Limited Partners nominal damages on their claim of breach of fiduciary duty on January 25, 2022. Mot., Dkt. 60, at 11. This Court entered judgment against Palm on February 14, 2022. Opp'n, Dkt. 63, at 5.

Approximately one week later on February 24, 2022, Palm and HCA initiated this action. Complaint, Dkt. 1. In this action, Palm and HCA seek (1) declaratory relief regarding the same facts and circumstances already litigated in the Prior Action; (2) breach of contract and implied covenant of good faith and fair dealing; (3) tortious interference with contract; (4) slander of title; and (5) defamation. See generally FAC. After filing this action, Palm and HCA appealed this Court's January 12, 2022 Order and February 14, 2022 Final Judgment. See Notice of Appeal, Prior Action, Dkt. 136. The Limited Partners filed their own Cross-Appeal. Notice of Cross Appeal, Prior Action, Dkt. 139.

On July 18, 2022, Palm and HCA sought to stay this case in light of (1) the pending appeals and (2) two non-Ninth Circuit decisions issued on May 2, 2022 and May 10, 2022, interpreting the Right of First Refusal under the Tax Program. See Mot., Dkt. 56. But on August 9, 2022, this Court denied the motion to stay because Palm and HCA had failed to meet their meet-and-confer obligations pursuant to Local Rule 7.3. Order, Dkt. 59. On August 18, 2022, the parties met and conferred regarding this motion and the motion for partial summary judgment filed by the Defendants. Declaration of Zaroogian at 4; Declaration of Petitt at 2. Counsel for the Defendants offered to stay all future discovery. Petitt Decl. at 2. No agreement was reached. Id.

On August 25, 2022, Palm and HCA renewed their motion to stay proceedings. Mot., Dkt. 60, at 3. Defendants opposed. Opp'n, Dkt. 63, at 1. Palm and HCA submitted a reply in support of their Motion. See Reply, Dkt. 65.

II. LEGAL STANDARD

District courts within the Ninth Circuit have the discretionary power to stay proceedings in their own court. Landis v. N. Am. Co., 299 U.S. 248, 254 (1936). A district court may stay proceedings pursuant to its inherent power to “control the disposition of the cases on its docket with economy of time and effort for itself, for counsel, and for litigants.” Id. “The exertion of this power calls for the exercise of a sound discretion.” CMAX, Inc. v. Hall, 300 F.2d 265, 268 (9th Cir. 1962).

The competing interests that a district court must weigh in deciding whether to grant a stay include the following: (1) “the possible damage which may result from the granting of a stay”; (2) “the hardship or inequity which a party may suffer in being required to go forward”; and (3) “the orderly course of justice measured in terms of the simplifying or complicating of issues, proof, and questions of law which could be expected to result from a stay.” Id. (citing Landis, 299 U.S. at 254–55).¹

Another proceeding that may have a substantial impact on the case may constitute a compelling reason to grant a stay. Leyva v. Certified Grocers of Cal., Ltd., 593 F.2d 857, 863 (9th Cir. 1979). A district court therefore may “find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it, pending resolution of independent proceedings which bear upon the case.” Id. “This rule applies whether the separate proceedings are judicial, administrative, or arbitral in character, and does not require that the issues in such proceedings are necessarily controlling of the action before the court.” Id. at 863–64.

III. DISCUSSION

The Court has considered the following factors: (1) the potential prejudice to the nonmoving party; (2) the hardship and inequity to the moving party if the action is not stayed; and (3) the conservation of judicial resources by avoiding duplicative litigation. See CMAX, 300 F.2d at 268. The Court finds that the facts and procedural posture justify a stay in the proceedings. The Court now considers the Landis stay factors in turn.

1. Hardship and Inequity to Moving Party

Palm and HCA argue that they are likely to endure financial hardship by (1) continuing to litigating their action if the Ninth Circuit resolves the primary issues and thus render the cost and time spent on discovery and motion practice pointless and (2) expending their scarce resources on litigating this matter when they “should be focused on resolving the Appeals quickly and efficiently.” Mot., Dkt.

¹ Hereinafter, the Court will refer to these competing interests as the “Landis stay factors.”

60, at 25. In response, Defendants argue that Palm and HCA cannot possibly suffer any more “financial hardship” of litigating this case than they already have, given that filing this action was their decision to make. See Opp’n, Dkt. No. 63, at 13.

The Court agrees with Defendants. Costs and expenses of litigation do not generally rise to the hardship required to support a stay. “Many courts . . . have concluded that incurring litigation expenses does not amount to an irreparable harm.” Guifu Li v. A Perfect Franchise, Inc., No. 5:10-cv-01189, 2011 WL 2293221, at *4 (N.D. Cal. June 8, 2011) (collecting cases); see also Bradberry v. T-Mobile USA, Inc., No. C-06-6567, 2007 WL 2221076, at *4 (N.D. Cal. Aug. 2, 2007) (“The cost of some pretrial litigation does not constitute an irreparable harm to Defendant.”). The harms alleged by Palm and HCA are generalized and merely associated with litigating in the courts. Essentially they argue that the costs of litigation are potentially wasteful and therefore harmful.

The Court finds that this factor does not favor a stay.

2. *Potential Prejudice to Nonmoving Party*

Palm and HCA argue that “Defendants will not be damaged or prejudiced by a stay . . . [because] their only claim here is for contractual indemnity, which seeks only monetary recovery, and should have been brought in the Prior Action.” Mot. at 19 (citing Grendene USA, Inc. v. Brady, No. 3:14-cv-2955, 2015 WL 4606261, at *4 (S.D. Cal. July 30, 2015) (“Delay in monetary relief alone is not a sufficient basis to deny a stay.”). They argue that “the need for contractual indemnity . . . will be lessened by allowing the Ninth Circuit to resolve the Appeals before proceeding with this action.” Id. Defendants respond that the requested stay would be “indefinite” and interfere with their “control over the Partnership and the Property.” Opp’n at 12–13. Specifically, they argue that their “ability to pursue a sale of the Property . . . is inhibited” by this action. Id. at 12.

However, the Court finds Defendants’ arguments unpersuasive. While their ability to sell the Property would be affected by a stay, Defendants also concede that a delay is inevitable given that they cannot sell the Property until the Appeals are resolved. Id. at 12–13. Thus, their chief complaint is that they must wait an “*additional delay after the Appeals are decided.*” Id. at 13 (italics in original).

Of course, this largely assumes that the “appeal[s] [are] resolved in [their] favor.” Id. at 12–13. The appeals may not be, and they admit that the “Ninth Circuit could . . . reverse the Court’s decision on summary judgment and remand the case for trial on the breach-of-fiduciary claim,” which would prolong their inability to sell the Property. Id. at 17. Thus there is no reason to conclude that granting a stay would inflict any more of a substantial delay on their ability to sell the Property than that which they must nevertheless endure.

The Court also briefly addresses Defendants’ argument that a stay should be denied because Plaintiffs unduly waited to file their motion to stay. Opp’n, Dkt. 63, at 10–11. The Court agrees that Palm and HCA should not have waited until nearly two months after *SunAmerica Hous. Fund 1050 v. Pathway of Pontiac, Inc.*, 33 F.4th 872 (6th Cir. 2022) (“*SunAmerica*”) was decided to bring its motion to stay the matter. They offer no justification or rationale for this delay. See Mots., Dkt. Nos. 56, 63; Reply, Dkt. 65. However, the Court nonetheless finds that this delay does not unduly prejudice Defendants for the reasons previously discussed.

The Court finds that this factor is neutral.

3. *Conservation of Judicial Resources & Orderly Course of Justice*

The Court finds that most importantly, judicial economy would not be served by this Court committing its limited resources to resolving the legal questions in this case when a case-narrowing decision from the Ninth Circuit will likely resolve them in the near future.

Palm and HCA essentially argue that both parties would benefit from a stay because the Ninth Circuit is likely to provide guidance and potentially new law in light of SunAmerica, 33 F.4th 872, and JER Hudson GP XXI LLC v. DLE Invs., 275 A.3d 755 (Del. Ch. May 2, 2022) (“JER Hudson”). As a result, they argue, these decisions have the potential to directly impact the core issues in the present action. They argue that it would be more efficient for all parties to wait until the Ninth Circuit resolves both issues of whether (1) the Right of First Refusal was triggered and (2) Palm breached its fiduciary duties. In opposition, Defendants correctly state that neither decision is binding on the Ninth Circuit. Opp’n at 15.

However, it is clear that however the Ninth Circuit chooses to decide the appeals, the decision will clarify the law and narrow the issues in this case. The rulings by this Court in the present action would not likely be conclusive in light of the pending appeals. On appeal to the Ninth Circuit are three issues: whether this Court erred in finding in the Prior Action that (1) Palm breached its fiduciary duties to the Partnership on liability; (2) HCA's Right of First Refusal was not triggered because Palm never actually "desired" to accept the third-party offer to purchase the Property; and (3) Palm had the power to express a desire on behalf of the Partnership to sell the property even though RCHP's consent was required to bind the Partnership to the sale.

This Court relied on the same legal standard in the now-reversed decision of SunAmerica Hous. Fund 1050 v. Pathway of Pontiac, Inc., No. 19-11783, 2021 WL 391420, at *3 (E.D. Mich. Feb. 4, 2021) when it found that Palm had breached its fiduciary duty to the Limited Partners. The parties' Right of First Refusal Agreement states HCA's right of first refusal is triggered when the Partnership "*shall desire* to accept a bona fide offer from an unrelated third party to purchase the Property." FAC ¶ 117. In its decision, this Court held that the Partnership Agreement's plain language ("shall desire") required Palm to "*actually* desire to accept" a third-party offer "to trigger the [right of first refusal]." Order, Prior Action, Dkt. 65, at 10 (emphasis added). Because Palm argued that it never needed to actually desire to accept a third-party offer and thus did not present evidence showing the same, this Court found that Palm had breached its duty when it "devised a scheme to acquire the Property" by purporting to manifest an intent to sell simply to trigger HCA's right of first refusal, thereby "enrich[ing] itself." Id. at 14.

Whether intent to sell was required to be directed toward a third-party offer to trigger the Right of First Refusal was addressed in SunAmerica, 33 F.4th at 882. To trigger the right, the general partners needed to manifest an intent to sell. Id. The parties' partnership agreement provided that the right of first refusal was triggered upon receipt of a bona fide offer. Id. at 876. The Sixth Circuit held that based on the "plain language of [section 42]," the general partners must have manifested "a *general* intent to sell." Id. at 883 (emphasis added). In other words, that the partnership intended to sell to the nonprofit rather than to a third party in order to trigger the Right of First Refusal did not "defeat the [partnership agreement]-required intent to sell." Id. And therefore, the district court erred in

finding that the general partner breached its fiduciary duty. See id. The Sixth Circuit reversed and remanded the district court’s findings as to the breach-of-contract claim and the breach-of-fiduciary claim to determine whether the General Partners had the requisite intent to trigger the Right of First Refusal. Id.

Defendants dispute SunAmerica’s applicability and persuasiveness because unlike here, the partnership agreement in SunAmerica did “not require that the general partner ‘desire to accept’ the offer or otherwise intend to sell the property” to trigger the Right of First Refusal. Opp’n at 16. In response, Palm and HCA argue that regardless, “the same rationale applies to a ‘desire to accept’ a third-party offer requirement.” Reply at 7. To do otherwise “would undermine Congress’s intent in providing the Section 42 [Right of First Refusal] with a below-market price, which *must* be intentionally triggered.” Id. (quoting SunAmerica, 33 F.4th at 881–83). The Sixth Circuit held that “to trigger the Section 42 [Right of First Refusal], the general partners must manifest an intent to sell.” SunAmerica, 33 F.4th at 882. To conclude that the “willingness to sell” would be undermined by the “knowledge of the “[Right of First Refusal]’s holder’s intention to exercise that right if a third party makes an offer” would “render the [Right of First Refusal] provision meaningless.” Id. at 883.

It remains to be seen whether the Ninth Circuit will adopt and apply the same rationale here. While it is true that the Ninth Circuit is not bound by SunAmerica, the Court agrees that a stay will narrow the issues in this case. While the Ninth Circuit may decide the issues differently than the Sixth Circuit did, there is enough indication that a stay in this case is warranted. If the Ninth Circuit holds that this Court applied an improper standard in the breach-of-fiduciary claim, it would likely remand the matter to this Court to determine whether Palm breached its fiduciary duty despite not having any actual desire to accept a third-party offer. In the Prior Action, the Palm did not present evidence to refute the claims that it never had an actual desire to accept; instead, they argued that a “genuine desire” to accept “was not required.” See Order, Prior Action, Dkt. 127, at 14.

The issue of whether Palm was required to show evidence of an actual desire to accept in its breach-of-fiduciary claim is the catalyst for the present action. Whether Limited Partners are entitled to remove the General Partners pursuant to the Partnership Agreement depends if the General Partner “materially violate[s] its fiduciary responsibility” to the Partnership. FAC ¶ 123. This Court

found in the Prior Action that Palm breached its fiduciary duty when it devised a scheme to trigger HCA's ROFR without actually intending to accept the third-party offer. Order, Prior Action, Dkt. 127, at 14. It follows that if the Court were to deny a stay but later be reversed on appeal on the breach-of-fiduciary issue, then significant judicial time and resources spent furthering this litigation will have been wasted.

This Court finds this factor weighs in favor of a stay.

IV. CONCLUSION

For the reasons set forth above, the Court **GRANTS** Plaintiffs' Motion to Stay. It is **ORDERED** as follows:

1. This case is **STAYED** pending a decision by the Ninth Circuit in the related case, Centerline Housing Partnership I, L.P. – Series 2, et al. v. Palm Communities, et al., No. 8:21-cv-107, 2022 U.S. Dist. LEXIS 15038 (C.D. Cal. Jan. 25, 2022), appeal filed, Nos. 22-55277, 22-55367 (9th Cir. filed Mar. 15, 2022).
2. As a result, the Defendants' Motion for Partial Summary Judgment, Dkt. 61, currently scheduled for hearing on August 26, 2022, is taken off calendar until the stay is lifted. Defendants may file renewed motion within thirty (30) days of the resolution of the appeals. If appropriate, the parties may renew their existing motions and responsive pleadings by filing a one-page notice cross-referencing their earlier filed motion or responsive pleading.
3. The parties are **ORDERED** to file a joint report on the status of the Ninth Circuit appeals every ninety (90) days from the date of this Order and to notify the Court within fourteen (14) days of a decision rendered in either appeal.

The hearing set for August 26, 2022 is **VACATED**. Any party may file a request for hearing of no more than five pages no later than 5:00 p.m. on Tuesday August 27, 2022 stating why oral argument is necessary. If no request is submitted, the matter will be deemed submitted on the papers and the tentative will become the order of the Court. If the request is granted, the Court will advise the parties when and how the hearing will be conducted. **IT IS SO ORDERED.**