

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
MEDFORD DIVISION

JEFF BOARDMAN, et al.,
Plaintiffs,

No. 1:15-108-CL

v.

PACIFIC SEAFOOD GROUP,
et al.,

ORDER

Defendants.

MCSHANE, District Judge:

In this antitrust action, Plaintiffs are commercial fishermen who seek to prevent Defendant Pacific Seafood Group (Pacific Seafood), a West Coast seafood processor, from acquiring another seafood processor, Ocean Gold Seafoods (Ocean Gold). Plaintiffs claim the proposed merger would harm competition in the wholesale markets for whiting, groundfish, and coldwater shrimp.

This court has preliminarily enjoined the proposed merger. ECF No. 55. I denied Pacific Seafood's motion to compel arbitration. ECF No. 83. Pacific Seafood has filed interlocutory appeals of the preliminary injunction and the order denying arbitration. 9th Cir. Nos. 15-35257, 15-35504. On July 23, 2015, the Ninth Circuit consolidated the interlocutory appeals and set oral argument on October 13, 2015. ECF No. 101-1.

Trial is set in February 2016. Pacific Seafood now moves for a stay of proceedings pending the Ninth Circuit's resolution of the interlocutory appeal. I grant the motion for a stay.

LEGAL STANDARDS

This court has discretion in deciding whether to stay proceedings pending the appeal of an order denying arbitration. See Britton v. Co-op Banking Grp., 916 F.2d 1405, 1411-12 (9th Cir. 1990); but see Messina v. N. Cent. Distrib., Inc., 2015 WL 4479006, at *2 (D. Minn. July 22, 2015) ("the majority of circuits . . . have required stays pending the outcome of an appeal from an order denying arbitration"). The party requesting the stay has the burden of showing that a stay is justified. Nken v. Holder, 556 U.S. 418, 433-34 (2009).

In deciding whether to stay proceedings pending appeal, courts consider (1) whether the party seeking the stay has made a strong showing that the party is likely to succeed on the merits; (2) whether the party will be irreparably injured absent a stay; (3) whether a stay will substantially injure other parties interested in the proceeding; and (4) the public interest. Hilton

v. Braunskill, 481 U.S. 770, 776 (1987).

There is one modification here to the traditional four-factor test. On the first factor, parties seeking a stay pending appeal "need not demonstrate that it is more likely than not that they will win on the merits." Leiva-Perez v. Holder, 640 F.3d 962, 966 (9th Cir. 2011). At a minimum, the moving party must show that the motion to compel arbitration "presents a substantial question." See Britton, 916 F.2d at 1412; Leiva-Perez, 640 F.3d at 968 ("substantial case for relief on the merits"). The moving party then must show that the balance of hardships "tips sharply" in its favor. Leiva-Perez; 640 F.3d at 970.

DISCUSSION

I. Substantial Question

I denied Defendants' motion to compel arbitration because I concluded that the parties' settlement agreement in their prior litigation¹ did not require arbitration here. Although I disagree with Defendants on the arbitration issue, they have shown at least a substantial question on the merits. This factor favors granting a stay.

II. Irreparable Harm

"Generally, monetary expenses incurred in litigation are not considered irreparable harm. However, arbitration is unique in this aspect." Zaborowski v. MHN Gov't Servs., 2013 WL 1832638, at *2 (N.D. Cal. 2013). The benefits of arbitration, "speed and

¹Whaley v. Pacific Seafood Group, No. 1:10-cv-3057-PA (D. Or.), ECF No. 426-1 (settlement agreement).

economy," are lost if the party seeking arbitration "must undergo the expense and delay of a trial before being able to appeal." Alascom, Inc. v. ITT N. Elec. Co., 727 F.2d 1419, 1422 (9th Cir. 1984) (district court order denying stay pending arbitration is immediately appealable). If this action is not stayed, Defendants must prepare for trial on antitrust claims. This factor favors granting a stay.

III. Balance of Hardships

The stay will not harm Plaintiffs because this court has enjoined the proposed merger. The stay should be relatively short because the Ninth Circuit is holding oral argument on the interlocutory appeal in October 2015. On the other hand, denying the stay would harm Defendants, so the balance of hardships tips in Defendants' favor.

IV. Public Interest

Efficient use of court resources is in the public interest. A Ninth Circuit ruling for Defendants on the interlocutory appeals would moot proceedings in this court. See Zaborowski, at *3 ("judicial resources will be wasted if this case proceeds all the way to trial, only for the Court to later discover that the case should have proceeded through arbitration"). The preliminary injunction now in place addresses the public interest in preventing anticompetitive mergers. This factor favors Defendants.

I conclude that a stay of proceedings is justified until the Ninth Circuit resolves Defendants' pending interlocutory appeals.

CONCLUSION

Defendants' motion to stay pending appeal (#86) is granted. Proceedings are stayed pending resolution of Defendants' interlocutory appeals.

IT IS SO ORDERED.

DATED this 6 day of August, 2015.



MICHAEL J. MCSHANE
U.S. DISTRICT JUDGE