

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)

MAYOR AND CITY COUNCIL OF
BALTIMORE,

Plaintiff,

v.

BP P.L.C. et al.,

Defendants.

Case No. 1:18-cv-02357-ELH

**CONDITIONAL MOTION TO STAY EXECUTION OF REMAND ORDER
SHOULD THE COURT GRANT THE PENDING MOTION TO REMAND¹**

Pursuant to Federal Rules of Civil Procedure 7 and 62(a), Defendants respectfully request that, should the Court grant Plaintiff's pending Motion to Remand (ECF No. 111), the Court issue an Order staying execution of the remand order for thirty days. In support thereof, Defendants state:²

1. On July 20, 2018, Plaintiff the Mayor & City Council of Baltimore ("Plaintiff") filed a complaint in the Circuit Court for Baltimore City.

2. On July 31, 2018, Defendants timely and properly removed the case pursuant to 28 U.S.C. §§ 1441, 1442, 1446, 1452 and 1367(a) and 43 U.S.C. § 1349. (ECF No. 1). 28 U.S.C. § 1442 permits removal based on actions of federal officers.

¹ This Motion is submitted subject to and without waiver of any defense, affirmative defense, or objection, including personal jurisdiction, insufficient process, or insufficient service of process.

² Defendants requested a temporary stay of any remand order in their Opposition to Plaintiff's Motion to Remand, *see* ECF No. 124 at 70 n. 37, and reiterate that request here out of an abundance of caution.

3. On September 11, 2018, Plaintiff moved to remand the case ("Remand Motion"). (ECF No. 111). Defendants opposed Plaintiff's Remand Motion (ECF No. 124), and Plaintiff filed a Reply. (ECF No. 133). Thus, Plaintiff's Remand Motion is fully briefed.

4. Defendants file this Conditional Motion to Stay now, before a ruling on Plaintiff's Remand Motion, so that, if the Court were to grant the Remand Motion, it could concurrently rule on this stay motion and grant a 30-day stay within which Defendants may exercise their appeal rights and seek a further stay pending appeal in an orderly manner.

5. Plaintiff initially requested a hearing on its Remand Motion. *See* ECF No. 111 at p. 1. On February 20, 2019, Defendants also requested a hearing on the Remand Motion. (ECF No. 154). Plaintiff then opposed Defendants' request and withdrew its own request for a hearing. (ECF No. 155). Defendants' Request for a Hearing is pending.

6. The pending Remand Motion should be denied for the reasons stated in Defendants' Opposition (ECF No. 124). Should the Court grant Plaintiff's Remand Motion, Defendants plan to appeal to the United States Court of Appeals for the Fourth Circuit, as expressly permitted by 28 U.S.C. § 1447(d).³

7. Defendants' right to appeal could be compromised if a remand order were executed too soon by the Clerk of Court mailing the remand order to the Clerk of the Circuit Court for Baltimore City. Pursuant to Fed. R. Civ. P. 62(a), Defendants thus request that, in the event the Court grants the Remand Motion, the Court stay its Order for 30 days and direct the Clerk of Court not to mail the certified remand order to the Clerk of the Circuit Court for

³ Remand orders in cases removed under 28 U.S.C. § 1442 are immediately appealable. 28 U.S.C. § 1447(d) (remand orders in cases removed pursuant to § 1442 "shall be reviewable by appeal"); *see also Northrop Grumman Tech. Servs., Inc. v. DynCorp Int'l, LLC*, 865 F. 3d 181, 189 n.4 (4th Cir. 2017) ("although orders remanding cases to state court generally are not reviewable on appeal, we may review such an order when, as here, the removal was made pursuant to the federal officer removal statute 28 U.S.C. § 1442") (citation omitted); *Wood v. Crane Co.*, 764 F.3d 316, 320 (4th Cir. 2014) ("This case was originally removed pursuant to §1442(a)(1) and is thus reviewable").

Baltimore City during that period.⁴ The 30-day stay will provide Defendants sufficient time to file a substantive motion to stay pending appeal that addresses the reasoning of any remand order the Court may enter. Imposition of a stay would avoid needless conflicts that might arise from the creation of concurrent jurisdiction with the Circuit Court for Baltimore City while Defendants exercise their statutory right to appeal.

8. In consolidated cases involving virtually identical removal issues and alleged global warming claims brought against many of the defendants named herein (and in which plaintiffs are represented by the same San Francisco law firm that represents Plaintiff here), Judge Chhabria of the United States District Court for the Northern District of California similarly stayed his remand order before the Clerk of the Court mailed it to the originating California state courts.⁵ Judge Chhabria noted that such a stay was “appropriate” to “sort out whether a longer stay pending appeal [was] warranted.” *See* Case Nos. 17-cv-04929-VC, ECF No. 223 (N.D. Cal.); 17-cv-04934-VC, ECF No. 207 (N.D. Cal.); 17-cv-04935-VC, ECF No. 208 (N.D. Cal.). Those California cases remain in federal court and stayed while the Ninth Circuit’s review is pending.

9. This approach has been adopted within, and endorsed by, the Fourth Circuit as well. *See Northrup Grumman Tech. v. DynCorp Int’l, LLC*, 2016 WL 3180775 (E.D. Va. June 7, 2016) (directing Clerk of Court to “refrain from executing the Court’s Order remanding the case back to the Circuit Court.”), *aff’d* 865 F.3d 181 (4th Cir. 2017). The stay in *Northrup Grumman*

⁴ *See* Fed R. Civ. P. 62(a) (“execution on a judgment, and proceedings to enforce it are stayed for 30 days after its entry, unless the Court orders otherwise”); *see also* Fed R. Civ. P. 54(a) (defining “judgment” as “any order from which an appeal lies”).

⁵ District Judge Alsup denied a motion to remand in a similar climate change case against many of the defendants in this action and dismissed the case on the merits. *See* Case Nos. 17-cv-06011-WHA, ECF No. 287; 17-cv-06012-WHA, ECF No. 239 (N.D. Cal.) The appeal of that decision is also pending in the Ninth Circuit. *See* Case No. 18-16663 (9th Cir.).

caused the district court to retain jurisdiction and allowed the parties to brief a stay of the remand order pending appeal to the Fourth Circuit.

For all the foregoing reasons, Defendants respectfully request that this Honorable Court stay the execution of any remand order that the Court may enter in this case, by either entering the conditional stay in the text of the remand order itself, or by concurrently entering the proposed Order to that effect, which is attached.⁶

Respectfully submitted,

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Dated: April 3, 2019

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⁶ Prior to filing this Conditional Motion, Defendants sought Plaintiff's position on the relief requested herein but Plaintiff indicated it did not consent.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of April 2019, the foregoing document was filed through the ECF system and was therefore served on all registered participants identified on the Notice of Electronic Filing.

/s/ Ty Kelly

Ty Kelly