

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

BEYOND PESTICIDES,

Plaintiff,

v.

EXXON MOBIL CORP.,

Defendant.

Civil Action No. 1:20-cv-
01815-TJK

**EMERGENCY MOTION FOR A TEMPORARY STAY OF
EXECUTION OF THE REMAND ORDER**

Defendant Exxon Mobil Corporation (“ExxonMobil”) respectfully moves for a temporary stay of execution of the Court’s Order (ECF No. 14) granting Plaintiff’s motion to remand to allow ExxonMobil time to file a motion for a stay pending appeal, which ExxonMobil will file by April 1, 2021, or as soon as the Court requests. ExxonMobil further requests that the Court instruct the Court Clerk not to send a certified copy of the Order to the D.C. Superior Court, in order to preserve the status quo until such time as ExxonMobil’s request for a stay pending appeal has been fully resolved. In accordance with Local Rule 7(m), ExxonMobil notified Plaintiff of this motion, but was not informed of Plaintiff’s position prior to the filing of this motion on an emergency basis.

1. On May 15, 2020, Plaintiff filed the Complaint in this matter against ExxonMobil in the Superior Court of the District of Columbia. *See* ECF No. 1, Ex. 3. The Complaint asserts one cause of action alleging that ExxonMobil violated the Consumer Protection Procedures Act, D.C. Code §§ 28-3901 *et seq.* On July 6, 2020, ExxonMobil timely filed a Notice of Removal, removing the case to the U.S. District Court for the District of Columbia. *See* ECF No. 1. ExxonMobil contended that federal jurisdiction existed over Plaintiff’s claims on two grounds:

(i) diversity jurisdiction and (ii) that the case is a putative class action under the Class Action Fairness Act (“CAFA”) brought on behalf of a class of District of Columbia consumers.

2. On August 5, 2020, Plaintiff filed a motion to remand this case to the Superior Court of the District of Columbia. *See* ECF No. 10. Earlier today, this Court granted Plaintiff’s motion to remand, but denied Plaintiff’s request for fees and costs “given the lack of binding precedent on the issues presented.” ECF No. 14 at 6.

3. While parties generally cannot appeal orders remanding a case to state court, *see Republic of Venezuela v. Phillip Morris Inc.*, 287 F.3d 192, 196 (D.C. Cir. 2002), Congress has expressly exempted from that bar cases removed under CAFA, *see* 28 U.S.C. § 1453(c)(1) (“[A] court of appeals may accept an appeal from an order of a district court granting or denying a motion to remand a class action.”). ExxonMobil intends to petition the United States Court of Appeals for the District of Columbia Circuit for permission to appeal by April 1, 2021. ExxonMobil also intends to file a motion for a stay pending appeal by April 1, 2021, or as soon as this Court requests.

4. ExxonMobil therefore requests at this time a temporary stay of execution of the remand order until this Court can rule on ExxonMobil’s forthcoming motion for a stay pending appeal. If the Clerk of Court were to transmit the remand order to the D.C. Superior Court, then “[t]he State court may thereupon proceed with such case.” 28 U.S.C. § 1447(c). A temporary stay is warranted here to preserve ExxonMobil’s appellate rights and spare the parties and the D.C. Superior Court from what could be a substantial amount of unnecessary and ultimately futile litigation. *See, e.g., Northrup Grumman Tech. v. DynCorp Int’l, LLC*, No. 16-534, 2016 WL 3180775, at *2 (E.D. Va. June 7, 2016) (directing clerk to “refrain from executing the Court’s Order . . . remanding this case back to the Circuit Court” so the parties could brief a stay of the remand order pending appeal), *aff’d*, 865 F.3d 181 (4th Cir. 2017). Absent a stay, ExxonMobil

faces irreparable harm whereas a stay would cause Plaintiff no prejudice and, in fact, would serve the public interest and the interests of judicial economy.

5. Indeed, in prior climate change-related cases, federal district courts in California, Hawaii, Rhode Island, and Maryland allowed defendants time to brief a motion to stay pending appeal after a grant of remand. *See, e.g.*, Order Granting Motions to Remand, *County of San Mateo v. Chevron Corp.*, No. 17-4929 (N.D. Cal. Mar. 16, 2018), ECF No. 223 at 5-6; Order, *City & County of Honolulu v. Sunoco LP*, No. 20-163 (D. Haw. Feb. 16, 2021), ECF No. 130; Order, *County of Maui v. Chevron U.S.A. Inc.*, No. 20-470 (D. Haw. Feb. 16, 2021), ECF No. 101; Opinion and Order, *State of Rhode Island v. Chevron Corp.*, No. 18-395 (D.R.I. July 22, 2019), ECF No. 122 at 16; Memorandum Opinion, *Mayor & City Council of Baltimore v. BP P.L.C.*, No. 18-2357 (D. Md. June 20, 2019), ECF No. 182 at 3. ExxonMobil seeks only a temporary stay of execution of the remand order so that the parties can brief, and the Court can resolve, the question of whether a longer stay pending appeal is warranted.

6. For the foregoing reasons, ExxonMobil respectfully requests that the Court temporarily stay execution of its remand order until it resolves ExxonMobil's forthcoming motion for a stay pending appeal to be filed on April 1, 2021, or as soon as the Court requests.

7. ExxonMobil, by filing this emergency motion, does not waive any rights, defenses, affirmative defenses, or objections, including lack of personal jurisdiction.

DATED: March 22, 2021

Respectfully submitted,

EXXON MOBIL CORPORATION,

By its attorneys,

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/s/ Theodore V. Wells, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that, on March 22, 2021, I caused the foregoing Emergency Motion for a Temporary Stay of the Remand Order to be electronically filed using the Court's CM/ECF system, and service was effected electronically pursuant to Local Rule 5.3 to all counsel of record.

/s/ Theodore V. Wells, Jr.
Theodore V. Wells, Jr. (D.C. Bar No. 468934)