UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

MATTHEW DICKSON and JENNIFER DICKSON, each individually and on behalf of all others similarly situated — PLAINTIFFS

v. No. 5:16-CV-05027

GOSPEL FOR ASIA, INC.; GOSPEL FOR ASIA-INTERNATIONAL; K.P. YOHANNAN; GISELA PUNNOSE; DANIEL PUNNOSE; DAVID CARROLL; and PAT EMERICK — DEFENDANTS

ORDER

Before the Court is Defendants' motion (Doc. 41) to stay these proceedings pending appeal.[1] Defendants have filed a brief in support (Doc. 42), Plaintiffs have filed a response (Doc. 45), and Defendants have filed a reply (Doc. 47). The motion to stay will be denied.

Pursuant to 9 U.S.C. § 16, Defendants filed a notice of appeal (Doc. 40) on January 25, 2017. The Court of Appeals has docketed the case and the appeal scheduling order (Doc. 44) was entered on this Court's docket on January 27, 2017. Defendants appeal the Court's order (Doc. 39) denying their motion to compel arbitration. Defendants argue that the notice of appeal divests this Court of jurisdiction over aspects of the case involved in the appeal such that a stay is mandatory, and in the alternative argue that the Court should grant a discretionary stay.

The Eighth Circuit does not appear to have ruled on whether an interlocutory appeal of an order denying a motion to compel arbitration divests a district court of jurisdiction to continue with the adjudication on the merits of the lawsuit, and there is a circuit split on this issue. The issue of whether a stay is mandatory in this case stems from Supreme Court precedent. In *Griggs v.*

[1] The case on appeal is *Dickson v. Gospel for ASIA, Inc.*, Case Number 17-1191 (8th Cir. Jan. 27, 2017).

Provident Consumer Discount Co., 459 U.S. 56, 58 (1982), the Court held that "[t]he filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." Defendants cite to opinions from other circuits that have considered whether the merits of a case are involved in the appeal of an order denying a motion to compel arbitration, given *Griggs* a broad interpretation, and held that a stay is mandatory. *See Levin v. Alms & Assocs., Inc.*, 634 F.3d 260, 263, 266 (4th Cir. 2011); *Ehleiter v. Grapetree Shores, Inc.*, 482 F.3d 207, 215 n.6 (3d Cir. 2007); *McCauley v. Halliburton Energy Servs., Inc.*, 413 F.3d 1158, 1160–63 (10th Cir. 2005); *Blinco v. Green Tree Servicing, LLC*, 366 F.3d 1249, 1251–53, (11th Cir. 2004); *Bradford-Scott Data Corp. v. Physician Computer Network, Inc.*, 128 F.3d 504, 505–07 (7th Cir. 1997); *see also Bombardier Corp. v. Nat'l R.R. Passenger Corp.*, No. 02-7125, 2002 WL 31818924 (D.C. Cir. Dec. 12, 2002) (per curium) (holding with minimal analysis that a stay is mandatory). Plaintiffs cite to circuit court opinions reading *Griggs* more narrowly and holding that a stay is not mandatory. *See Weingarten Realty Investors v. Miller*, 661 F.3d 904, 906 (5th Cir. 2011); *Motorola Credit Corp.*, 388 F.3d 39, 54 (2d Cir. 2009); *Britton v. Co-op Banking Group*, 916 F.2d 1405, 1412 (9th Cir. 1990).

Having reviewed the cases, and following the reasoning in *McLeod v. General Mills, Inc.*, Civil No. 15-494, 2015 WL 7428548 (D. Minn. Nov. 20, 2015), the Court agrees with Plaintiffs that the Court's jurisdiction over the merits of this case is not divested by the appeal, and therefore that a stay is neither mandatory nor automatic. "The Court does not doubt that it is prohibited from relitigating the literal question on appeal, nor does it doubt that appeal of certain constitutional first-order jurisdictional questions automatically halts further district court litigation . . . But there is no reason to suggest that arbitration clauses—matters of private contract—are of the same

significance as the Constitution's limitations involving double jeopardy and sovereign immunity." *McLeod*, 2015 WL 7428548 at *2.

The aspect of this case involved in the appeal is whether or not the parties entered a valid arbitration agreement (this Court has ruled that they did not), and if they did, whether or not the dispute between them falls within the scope of that agreement (this Court has ruled that it does not). Whether or not an arbitration agreement exists, and whether or not this dispute is within the scope of that agreement, does not involve the merits of the dispute. Instead, the questions on appeal in this case are severable from the merits, which remain pending in this Court. *Accord Moses H. Cone Mem'l Hosp. v. Mercury Const. Corp.*, 460 U.S. 1, 21 (1983) (calling the issue of arbitrability as "easily severable from the merits of the underlying disputes"). No statute or Supreme Court precedent mandates stay in this case, and this Court does not believe the Eighth Circuit Court of Appeals would follow those circuits that have created such a requirement. This is not to say that the policy considerations relied on by those circuits that require mandatory stay are immaterial. In this Court's view, however, these are not considerations that necessitate a bright line rule divesting a district court of jurisdiction, but instead are factors that may be considered during the discretionary stay analysis, which directs the Court to consider:

> (1) the likelihood that a party seeking the stay will prevail on the merits of the appeal; (2) the likelihood that the moving party will be irreparably harmed absent a stay; (3) the prospect that others will be harmed if the court grants the stay; and (4) the public interest in granting the stay.

Iowa Utils. Bd. v. FCC, 109 F.3d 418, 423 (8th Cir. 1996). Though there would be benefits to a bright line rule, the Court is not convinced the Eighth Circuit would adopt such a rule where the discretionary stay analysis already accounts for factors cited in support of a mandatory stay.

Turning to the issue of whether the Court should grant a discretionary stay, the Court finds that the factors do not support a stay. Though the appeal is not clearly frivolous, for the reasons

set out when the Court denied the motion on appeal, Defendants are not likely to prevail on the merits of their appeal. There is no arbitration agreement to enforce, and even if there were, this dispute is clearly outside of its scope. This is the most important factor the Court considers when determining whether to stay a case. *Brady v. Nat'l Football League*, 640 F.3d 785, 789 (8th Cir. 2011). This factor weighs against a stay.

The threat of irreparable harm to Defendants does not weigh in favor of a stay. Defendants identify the potential harm of having to litigate in this Court, only to begin again in arbitration if they succeed on appeal. While this consequence might be "irreparable," Defendants have not shown that it is a harm at this stage of litigation. This case is still in the discovery stage, and assuming Defendants succeed on appeal, any information obtained will be no less helpful in arbitration than it will be in this Court. The only foreseeable "harm" of discovery in this forum is that it might reveal that Defendants have, in fact, committed fraud against Plaintiffs and the purported class. This is not the kind of harm a stay is intended to prevent. Furthermore, the harm to Defendants of being deprived of their chosen forum is minimal at this early stage of litigation.

The potential harm to Plaintiffs weighs against a stay. While this litigation has been pending, it remains in its early stages and is likely to continue for some time. A short stay likely would not harm Plaintiffs, but a longer stay would operate to deprive them of timely resolution of the merits of their case. Because this Court has no control over appellate dockets or calendars, the risk of harm a stay poses to Plaintiffs and putative class members is substantial.

The public interest weighs heavily against staying this matter. It is certainly the case that the Federal Arbitration Act's liberal preference for arbitration would favor a stay if Defendants were more likely to succeed on the merits of their appeal. However, the gravity of Plaintiffs' allegations—that between 2003 and 2014, Defendants fraudulently solicited $700,000,000 in

donations from putative class members, and that Defendants continue to fraudulently solicit such donations—and the publicity generated by those allegations give rise to a strong public interest in resolving the merits of this dispute. Having weighed all of these factors, the Court finds that a stay is not warranted at this time.

IT IS THEREFORE ORDERED that Defendants' motion to stay proceedings pending appeal (Doc. 41) is DENIED.

IT IS SO ORDERED this 8th day of February, 2017.

/s/ P. K. Holmes, III

P.K. HOLMES, III
CHIEF U.S. DISTRICT JUDGE