No. ~~21-1407~~
21A838

IN THE SUPREME COURT OF THE UNITED STATES

Symon Manadawala,
Applicant,

v.

TENET CORPORATION et al,
Respondents.

From the Fifth Circuit United States Court of Appeals

EMERGENCY RULE 23 APPLICATION FOR STAY OF ENFORCEMENT JUDGMENT AND ON GOING DISTRICT COURT PRECEEDING INCLUDING ALL MANDATORY MEDIATION ORDERS.

Symon Mandawala
Post Office Box 5512
San Antonio, Texas 78201
Telephone: (206) 931-5636

Pro-se Applicant

INDEX OF APPENDICES

TABLE OF AUTHORITIES

CASES

RULES

To: Justice Samuel A. Alito, Jr., Associate Justice and Justice for the Fifth Circuit

Applicant and non-prevailing party below, Symon Mandawala, asks that enforcement of the underlying judgment and current district court preceedings be stayed pending the disposition of this case in this court, subject to Symon Mandawala believed that the respondents failed timely to file responsive pleading for the amended complaint in district court. See Appendix D, dist.dkt 22 dated 5/20/2020 its pleading response is Appendix D, dist.dkt 39 dated 09/17/2020 (120days instead of 14 days)

The question presented raised this application is relate to Fed.R.Civ.P12(g)(2)&(h)(2),(3) this: Whether a defendant file a rule 12(b)6 motion to dismiss amended complaint (Appx D. dist.dkt 23) automatically extend/toll/stay the time for filing responsive pleading or replaces the answer (Appx D. dist.dkt 39) to the amended complaint? (Appx D. dist.dkt22)

A number of Federal circuits has already hold that motion to dismiss, Motion for summary judgement is not a responsive pleading that are said in Fed.R.Civ.P 8 and 15. 2nd circuit, (motion to dismiss not responsive pleading for the purpose of Fed.R.Cv.P. 8) see Miller v. American export Lines, inc.,313F.2d 218 n.1(2d cir.1963). 10th

circuit (motion to dismiss not responsive pleading for the purpose of Fed.R.Cv. R. 15) see Hanraty v Ostertag, 470 F.2d 1096 (10th Cir. 1973). 11th circuit on Chilivis v. SEC, 673 F.2d 1205, 1209 (11th cir. 1982)

As you may notice or see that other circuits considers motion to dismiss amended complaint not an answer to the amended complaint for the purpose of federal Rules of civil procedure. Letting the district court proceed with court mandatory mediation or waiting for parties discovery and trial as the district judge told parties on the conference when he sent the case for mediation is a denial of fair court preceding to Applicant.

A. Mandawala has satisfied the procedural prerequisites of Supreme Court Rule 23.

Upon realize that the district presiding judge is appearing having problematic fair view (bias) on parties as you may see his reaction to a ghost motion (motion that is not filed yet in court). see petition's appendix *infra* 59a The judge immediately without being requested or consult applicant the need of court appointed attorney, he appointed one and prohibit applicant form contact/filing anything with the court. See Petition's appendix *infra* 52a.

Applicant then requested the Presiding judge himself and 5th circuit to ask the presiding judge to recuse himself from the case and

stay the district court proceedings pending a writ of Mandamus. It was turned to be a notice of appeal upon died a writ by 5th circuit. The 5th circuit dismissed the writ citing that appeal was the best avenue of addressing the merit of the request and the views of dismissing the petition for writ of mandamus are not based on merit which will considered on appeal review.

As noted on Appendix A 18a, the 5th circuit is turning its back pushing that applicant allegations of judge bias including those of petition's Appendix A 52a and 59a as frivolouse despite that its judge's orders not applicant's letter of hearsay. The 5th Circuit then denied a stay as unnecessary. See Appendix D at Dist.Dkt 73

B. The on going district court preceding are fruit of bias and applicant is being prejudice and letting the district proceed will create ockward, continuation of prejudice and unfair outcome to applicant.

Applicant filed suit in Federal district court because he feared the Texas state court of appeals will deny his appeal of state action for lack of jurisdiction. The fear come because the state district court expertly granted out - of - time motion to dismiss amended complaint then fraudulently enter a document titled "case dismissed by Plaintiff" despite it was the defense's out of time

motion to dismiss was granted. The so called "case dismissed by plaintiff" document was raising an impression of plaintiff voluntarily dismiss the case in order to manufacture appellate jurisdiction*.

That was when the federal district court original complaint was filed on December 5, 2019 alleged the issue above including other federal law questions and state law claims.

It was unclear what is Tenet's business with the Baptist System School of health Professions at the time of original complaint.

Respondents then filed Rule 12(b)6 motion to dismiss (Appx D, dist.dkt6) the original complaint (Appx D, dist.dkt1) Applicant by then did not found that the school is part of Tenet health care corporation (AKA, Tenet or Just Tenet corporation). Applicant then file a motion for leave to amend the complaint with a proposed amendment attached. The district court granted the leave to amend the complaint(Appx D, dist.dkt19) and ordered applicant not to reference any material or pleadings in original complaint and applicant complied with that order at the time of amending the complaint. Applicant serve the amended complaint (Appx D,

dist.dkt22) to the respondent counsel with her name on envelope "attention Mrs. Elgie."

Although Mrs. Elgie after failed to claim insufficiency of service in respondents motion to dismiss amended complaint (Appx D, dist.dkt23), she later claimed and request to dismiss her through case schedule and management (Appx D, dist.dkt27) which the district court pretext claim suo-ponty (Appx D, dist.dkt34).

Though it is a federal standard for all district court preceding that when the district court grant a leave for a plaintiff to amend the complaint, defendant has 14 days (or any length upon court order) to file responsive pleading (an answer) if the motion to dismiss has been denied like it is Appx D, dist.dkt19. So that the defenses' response can avoid the consequence Fed.R.Civ.P12(g)(2)&(h)(2),(3) which is a waiver of defense.

Unfortunately, this case, the district court biasly waived Fed.R.Civ.P12(g)(2)&(h)(2),(3) where rule 12(b) were used twice (see Appx D, dist.dkt 6 and 14-17)before the responsive pleading (Appx D, dist.dkt39 &40) was filed. After the district court entertained the second Rule 12(b)6 motion to dismiss (Appx D, dist.dkt 34)the amended complaint(Appx D, dist.dkt22).

C. A stay is warranted here.

First, As noted above, applicant has satisfy the prerequisite of staying the proceedings from the lower courts (Appx D, dist.dkt73).

Second reason, warrant a stay is based on the question of this application in which it has also been include in the petition itself: **Whether a defendant file a motion to dismiss amended complaint automatically extend/toll/stay the time for filing a responsive pleading or replaces the answer to the amended complaint?**

Because the outcome of deposing this question undisputedly respondent must have filed a responsive pleading in dist.dkt 23 or else motion to dismiss in Appx D, dist.dkt 23 must have a court leave to file out -of-time (untimely) responsive pleading. Since there is no district court docket showing respondents seeking a leave to file an Answer/responsive pleading (Appx D, dist.dkt 39 &40). the outcome of deposition is immediately termination of this case and only remaining part of preceding is applicant providing proof of his claims court assessing the damage (damage discovery).

Muchmore, such outcome is not favoring of court mandatory mediation as it brings more and more appearance of denying applicant a fair court preceedings and justice.

Third, possibility of **all chambers** agree to take up this case is 99.9% because the 5th Circuit court reasoning/objections (Mistake of proper party identity) to dismiss Tenet was rejected already by anonymously court decision in Krupski v. Costa Crociere 130 S. Ct. (2010) in which you, yourself was part of rejecting the dismissal of parties mistakenly unidentified, applicant believe your view on that has not changed since 2010.

Respondents is not going to suffer any correlate injury by this court's staying the district proceedings, because respondents has been requesting a stays and all the time were granted by district court only applicant was denied his one time request stay and was denied as unnecessary. See Appx D, dist.dkt 73

CONCLUSION

For the reasons above, Mr. Symon Mandawala asks that the judgment and orders of the district court for mandatory mediation or further proceedings to stayed conditioned to automatically resume when the U.S. Supreme Court depoistions are completed or petition has been denied.

Symon Mandawala
P.O. Box 5512
San Antoni, TX 78201
(206) 631-5636

Pro-se Applicant