

NO. 17-1593

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

SEXUAL MINORITIES UGANDA

Plaintiff-Appellee,

v.

SCOTT LIVELY, individually and as President of Abiding Truth Ministries,

Defendant-Appellant.

**DEFENDANT-APPELLANT SCOTT LIVELY'S RESPONSE IN
OPPOSITION TO PLAINTIFF-APPELLEE'S
MOTION TO STAY APPELLATE PROCEEDINGS**

Mathew D. Staver
Horatio G. Mihet
Roger K. Gannam
Daniel J. Schmid
Mary E. McAlister
LIBERTY COUNSEL
P.O. Box 540774
Orlando, FL 32854
Phone: (407) 875-1776
Facsimile: (407) 875-0770
Email: court@LC.org

INTRODUCTION

The Motion to Stay Proceedings (EID 6103418) filed by Plaintiff-Appellee, Sexual Minorities Uganda (“SMUG”), should be denied. The motion contains no hint of a justification for the requested stay, and fails to satisfy even the rudimentary requirements for motions under Rule 27, Fed. R. App. P., and Local Rule 27.0.¹

ARGUMENT

I. SMUG’S STAY MOTION SHOULD BE DENIED BECAUSE THERE ARE NO GROUNDS FOR A STAY IN THE MOTION OR OTHERWISE.

A. The Stay Motion Fails to State Sufficient Grounds Under the Applicable Rules.

SMUG’s stay motion feigns that it is brought under Rule 27, Fed. R. App. P., and Local Rule 27.0(b), but it utterly fails to satisfy the requirements of those rules. To be sure, **the motion states no grounds**, and no emergency. These failures require denial.

Rule 27 requires, at a bare minimum, that “[a] motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it.” Fed. R. App. P. 27(a)(2)(A). Though SMUG tells the Court what it wants—a stay of this case pending resolution of its concurrent motion to

¹ The stay motion is also procedurally improper because seven of SMUG’s nine attorneys are not admitted in this Court, nor have they filed appearance forms. L.R. 46.0(a)(2).

dismiss (EID 6103417)—SMUG makes no effort to “state with particularity the grounds for the motion” and “the legal argument necessary to support it.” “Judges are not expected to be mindreaders. Consequently, a litigant has an obligation to spell out its arguments squarely and distinctly, or else forever hold its peace.” *Rivera-Gomez v. de Castro*, 843 F.2d 631, 635 (1st Cir. 1988) (internal quotation marks and citation omitted). SMUG’s grounds and authority for a stay reduce to a mere, “because we want one.” SMUG apparently feels so entitled to a stay from this Court that it made a paltry, bare-bones request for relief, and backed it up with nothing.

SMUG also cites Local Rule 27.0(b), governing “Motions for stay, or **other emergency relief**” (emphasis added). But, SMUG discloses no grounds justifying a stay, let alone emergency grounds sufficient to invoke Local Rule 27.0(b).² Furthermore, Local Rule 27.0(b) instructs that stay motions “may be

² To obtain the closely-related emergency relief of a stay pending appeal, a movant must demonstrate, among other factors, a significant risk that irreparable harm will occur if the relief is withheld. *See Nken v. Holder*, 556 U.S. 418, 434 (2009). The risk of irreparable harm must be “likely,” *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008), and the movant must “have no other adequate means of obtaining relief,” *Towns of Wellesley, Concord and Norwood, Mass. v. F.E.R.C.*, 829 F.2d 275, 277 (1st Cir. 1987). A risk of irreparable harm also exists when constitutional rights are substantially impaired absent emergency relief, *In re Perry*, 859 F.2d 1043, 1047 (1st Cir. 1988), or when the movant would suffer “incalculable loss of reputation and prestige” absent relief, *Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 217 F.3d 8, 13 (1st Cir. 2000). To the extent this corollary standard is applicable, SMUG’s motion falls far short because it shows no risk of irreparable harm whatsoever.

denied for failure to present promptly.” SMUG’s lack of urgency in filing its five-sentence motion—twenty-five days after Lively filed his notice of appeal (*see* EID 6099384)—belies any notion of emergency.

B. SMUG’s Motion States No Grounds for a Stay Because There Are No Grounds.

The most obvious reason for SMUG’s failure to state any grounds for a stay, is that there are no grounds for a stay. SMUG has already challenged Lively’s appeal with its concurrent motion to dismiss under Local Rule 27.0(c), which rule offers no provision for a stay. There is no reason to believe, and SMUG certainly has not shown, that this Court cannot resolve SMUG’s motion to dismiss in due course. There is no imminent ruling on the merits of Lively’s appeal. There is a merits briefing schedule, but no obligations for SMUG under that schedule until thirty days after Lively serves his initial brief, which is not due until August 21, 2017. SMUG is neither pressed for time nor vulnerable to imminent injury absent a stay.

Furthermore, SMUG’s motion to dismiss Lively’s appeal is no cause for a stay, because it is utterly without merit and borderline frivolous. As shown in Lively’s Response in Opposition to SMUG’s Motion to Dismiss Appeal, filed concurrently herewith, this Court clearly has jurisdiction to correct the district court’s failure to dismiss SMUG’s state law claims with prejudice, whether because the district court illegally relinquished its original, diversity jurisdiction over those claims, or abused its discretion in relinquishing supplemental jurisdiction over those

claims, which had been litigated to maturity for over five years, leaving only their summary disposition or trial. This Court likewise has jurisdiction to reform the district court's prejudicial and extra-jurisdictional adjudication of SMUG's baseless international law claims, which adjudication SMUG intends to wield as a sword against Lively in other courts according to SMUG's own public statements. The obvious lack of merit of SMUG's motion to dismiss this appeal obviates any need for this Court to delay Lively's appeal while the motion to dismiss proceeds to its inevitable disposition.

CONCLUSION

As shown herein, there are no grounds for granting SMUG's request to halt the proceedings in this appeal. Accordingly, SMUG's stay motion should be denied.

Respectfully submitted,

/s/ Horatio G. Mihet

Mathew D. Staver

Horatio G. Mihet

Roger K. Gannam

Daniel J. Schmid

Mary E. McAlister

LIBERTY COUNSEL

P.O. Box 540774

Orlando, FL 32854

Phone: (407) 875-1776

Facsimile: (407) 875-0770

Email: hmihet@LC.org

Attorneys for Defendant-Appellant

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of July, 2017, I caused the foregoing to be electronically filed with this Court. Service will be effectuated on all counsel of record via this Court's ECF/electronic notification system.

/s/ Horatio G. Mihet
Horatio G. Mihet
Attorney for Defendant-Appellant

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Dated: July 24, 2017

/s/ Horatio G. Mihet
Attorney for Defendant-Appellant