

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

MICHAEL E. MANN, PH.D.,)	
)	Case No. 2012 CA 8263 B
Plaintiff,)	
)	Judge Frederick H. Weisberg
v.)	
)	
NATIONAL REVIEW, INC. <i>et. al.</i> ,)	
)	
Defendants.)	
)	

ORDER

This matter is before the court on Plaintiff’s motion for partial reconsideration of the court’s October 2, 2013, order, which stayed all proceedings in the trial court to await a ruling from the Court of Appeals on Defendants’ interlocutory appeal of the court’s (Combs Greene, J.) July 19, 2013, order denying Defendants’ special motions to dismiss. Plaintiff urges the court to rule now on Defendants’ pending special motions to dismiss Plaintiff’s amended complaint so that all issues relating to the motions to dismiss – and the appealability, *vel non*, of orders denying them – can be before the Court of Appeals at the same time. Defendants oppose the motion to lift the stay, and Plaintiff has filed a motion for leave to file a reply to Defendants’ opposition, which the court grants.

For the reasons previously stated in its order of October 2, 2013, the court continues to believe that it is not significantly more efficient to rule on the pending Anti-SLAPP Act motions to dismiss the amended complaint during the pendency of the interlocutory appeal and that it should follow the normal rule that trial and appellate courts should not be acting in the same case at the same time. If the Court of Appeals rules that the denial of an Anti-SLAPP motion to

dismiss is not immediately appealable, that ruling would control if this court after remand were to deny the pending motions to dismiss the amended complaint. If the Court of Appeals accepts jurisdiction over the interlocutory appeal and affirms, that ruling would be binding on this court as to six of the seven counts in the amended complaint and would undoubtedly provide guidance with respect to this court's ruling on the motions to dismiss the new seventh count. If the Court of Appeals accepts jurisdiction and reverses, that ruling would also be dispositive as to six of the seven counts in the amended complaint and would leave for this court only the one remaining count.

The only scenario likely to cause further delay of concern to Plaintiff is the possibility that the Court of Appeals will not rule on the jurisdictional issue or on the merits, but will dismiss the appeal as moot, concluding that the trial court should not have denied the motions to dismiss the first complaint **after** the Plaintiff had filed his amended complaint. In that event, this court would rule on the pending motions to dismiss the amended complaint and, if the court denies the motions, defendants would not be precluded from attempting another interlocutory appeal. Neither party argues that the Court of Appeals should – or is likely to – dismiss the appeal as moot, although this court does not necessarily share that view. However, if Plaintiff wishes to avoid delay attributable to successive interlocutory appeals, he has two options. He can file a motion in the Court of Appeals to dismiss the appeal as moot, which the Court could act on expeditiously.¹ Alternatively, if the Court of Appeals does not dismiss the interlocutory appeal for lack of jurisdiction, Plaintiff can urge the Court to consider Judge Combs Greene's ruling on

¹ As Defendants point out in their opposition, if the appeal is moot it is because the filing of the amended complaint mooted the motions to dismiss the original complaint prior to Judge Combs Greene's rulings on those motions. In that event, the law of the case doctrine would not apply, or would apply with substantially less force, and this court would be called upon to decide the motions to dismiss the amended complaint *ab initio*. From the court's perspective, this possible outcome counsels *against* acting before the Court of Appeals rules. The court recognizes that this is the one outcome likely to inject further delay into the case, which Plaintiff seeks to avoid. However, if Judge Combs Greene's order is not law of the case, the court will need to resolve Defendants' motions to dismiss the amended complaint on the merits, through a new set of eyes.

counts I-VI of the original complaint as if the ruling had been addressed to the identical counts of the amended complaint. As Defendants have argued, there is authority for Judge Combs Greene to have adopted that course in her July 19 ruling. Defendants' Joint Opposition at p. 3, n.2. Presumably the Court of Appeals could choose to follow that same approach in disposing of the pending appeal, if it decides appellate jurisdiction is proper.

Because this court continues to believe that it should not – and perhaps cannot – rule on Defendants' motions to dismiss the amended complaint until the Court of Appeals returns the matter to the trial court, it is this **9th** day of **October, 2013**,

ORDERED that Plaintiff's Consent Motion For Leave To File Reply Memorandum is granted; and it is further

ORDERED that Plaintiff's Motion for Partial Reconsideration is denied.



Judge Frederick H. Weisberg

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