

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

---

ALEXANDER PANGBORN,	:	
Plaintiff	:	
	:	
v.	:	
	:	
CARE ALTERNATIVES OF	:	Civil Action No. 3:20-cv-30005-MGM
MASSACHUSETTS, LLC D/B/A	:	
ASCEND HOSPICE; and CARE ONE	:	
MANAGEMENT, LLC,	:	
Defendants	:	
	:	
	:	

---

**REPLY IN SUPPORT OF DEFENDANTS’ MOTION TO STAY PENDING SUPREME COURT DECISION IN R.G. & G.R. HARRIS FUNERAL HOMES, INC. v. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

Federal courts routinely stay actions while the Supreme Court considers issues of significance to those actions in unrelated cases<sup>1</sup> and the Court should do so here. In *Harris*, the Supreme Court will decide whether Title VII prohibits discrimination against transgender people based on (1) their status as transgender or (2) sex stereotyping under *Price Waterhouse*.<sup>2</sup> These questions are precisely at issue in this case. In his Complaint, Plaintiff alleges he was denied coverage under the Plan based on (1) his status as transgender and (2) “because of defendants’ stereotyped beliefs.” See Dkt. 1, ¶¶ 53, 54. Therefore, contrary to Plaintiff’s assertion in his Opposition<sup>3</sup>, it is difficult to imagine how the *Harris* decision could not have significant, possibly dispositive, consequences for the majority of the claims asserted against the Defendants

---

<sup>1</sup> See cases cited in Dkt. 12-1, Memorandum of Law in Support of Defendants’ Motion to Stay Pending Supreme Court Decision in R.G. & G.R. Harris Funeral Homes, Inc. v. Equal Employment Opportunity Commission, pp. 7-8.  
<sup>2</sup> *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989).  
<sup>3</sup> Dkt. 13, Plaintiff’s Opposition to Defendants’ Motion to Stay Pending Supreme Court Decision in R.G. & G.R. Harris Funeral Homes, Inc. v. Equal Employment Opportunity Commission (“Opposition”).

in this case. “True, a decision in the [*Harris* case] may not settle every question of fact and law in [this case], but in all likelihood it will settle many and simply them all.” *See Landis v. N. Am. Co.*, 299 U.S. 248, 253 (1936). The *Harris* decision is expected within the next six weeks, before the end of the term. The efficient administration of justice warrants the requested stay.

In his Opposition, Plaintiff questions how “outside counsel’s preparation and filing of an answer or other pleading would divert resources” from Defendants’ efforts to provide and support essential healthcare needs. *See* Dkt. 13, p. 6. The answer is simple. Outside counsel cannot, and indeed must not, prepare and file an answer to a complaint without conducting an investigation into the factual allegations set forth in the complaint, including gathering and reviewing documents and information from their clients and possibly interviewing witnesses.<sup>4</sup> Nor would it be prudent for outside counsel to prepare and file a motion to dismiss without conducting such an investigation. The suggestion that the Defendants themselves need not be involved at this stage is preposterous. Defendants should not be required to divert resources

---

<sup>4</sup> The documents, information and potential witnesses are all in New Jersey, where both Defendants have their respective principal places of business and where decisions regarding the Plan are made. In recognition of the ongoing critical need for the uninterrupted services of healthcare professionals, on April 24, 2020, the New Jersey Supreme Court issued a Second Omnibus Order providing in pertinent part:

As provided in the March 24 and March 27, 2020 Orders, all depositions and depositions and appearances for any doctors, nurses, or healthcare professionals involved in responding to the COVID-19 public health emergency were suspended through April 26, 2020, and will remain suspended for the additional period from April 27 through May 31, 2020, except for appearances and depositions (i) that are requested by the doctor, nurse or healthcare professional; or (ii) that are for matters related to COVID-19.

*See* April 24, 2020 Notice and Order – COVID-19 at <https://njcourts.gov/notices/2020/n200424a.pdf?c=QM3>.

away from providing and supporting essential healthcare services to respond to claims that the *Harris* decision may very well render moot in the next six weeks.

The timing of the filing of the Motion to Stay should not be held against Defendants as Plaintiff suggests. *See* Dkt. 13, n. 7. It bears repeating that the initial deadline for Defendants to respond to the complaint was March 16, 2020, at or about same time the World Health Organization declared the COVID-19 outbreak a pandemic and the President of the United States issued a proclamation declaring a National Emergency and urged medical facilities throughout the country (like the ones supported by Care One Management) to assess their preparedness posture and be prepared to surge capacity and capability. It was also at or about that time that numerous skilled nursing facilities supported Care One Management were asked, and later directed, by the New Jersey Department of Health to relocate all of their residents and serve exclusively as treatment facilities for COVID-19 positive patients. *See* Dkt. 12-2, ¶¶ 6, 7. The challenges presented by these requests, and by the pandemic more generally, are complex and the herculean efforts made by Defendants to respond to these challenges have, quite literally, been a matter of life and death for the population Defendants' serve. Defendants have been, and continue to be, on the front lines providing essential assistance in the protection of health and safety. Both organizations are operating under extreme conditions and their efforts have been, and continue to be, focused on supporting the best care and quality of life possible for the individuals they serve and maintaining the safety of their own staff, including Plaintiff. Plaintiff's suggestion that Defendants should somehow be penalized for not turning their attention to this case and to the Motion to Stay sooner should be rejected outright. Any harm Plaintiff may suffer by the short delay is neither excessive nor oppressive and the balance of harms tips overwhelmingly in favor of the stay. *See Landis*, 299 U.S. at 256.

WHEREAS, for the reasons set forth herein and in the Memorandum of Law in Support of Defendants' Motion to Stay Pending Supreme Court Decision in *R.G. & G.R. Harris Funeral Homes, Inc. v. Equal Employment Opportunity Commission*, Care Alternatives of Massachusetts, LLC d/b/a Ascend Hospice and CareOne Management, LLC respectfully request that the Court stay this action until 30 days after the United States Supreme Court issues its decision in the *Harris* case.

Respectfully submitted,

CARE ALTERNATIVES OF  
MASSACHUSETTS, LLC  
D/B/A ASCEND HOSPICE  
HOSPICE; AND CARE ONE  
MANAGEMENT, LLC,

/s/ Cheryl B. Pinarchick

Cheryl B. Pinarchick (BBO# 636208)

Monica P. Snyder (BBO#681573)

Fisher & Phillips LLP

200 State Street, 7th Floor

Boston, MA 02109

617-722-0044

[cpinarchick@fisherphillips.com](mailto:cpinarchick@fisherphillips.com)

[mpsnyder@fisherphillips.com](mailto:mpsnyder@fisherphillips.com)

Date: May 13, 2020

**CERTIFICATE OF SERVICE**

I, Cheryl B. Pinarchick, hereby certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic filing (NEF) on May 13, 2020.

/s/ Cheryl B. Pinarchick

Cheryl B. Pinarchick