

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

RAJIN PATEL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
TEXAS TECH UNIVERSITY, et al.,	)	
	)	
Defendants.	)	Civil Action No. 5:17-CV-174-C

ORDER

On this day, the Court considered Defendants' Notice of Partial Automatic Stay and Opposed Motion to Stay Further Proceedings, filed October 18, 2017, and Plaintiff's Opposition to Defendants' Motion to Stay, filed October 31, 2017. It appears that Defendants have misinterpreted the Court's Order of September 26, 2017, and have thus sought an interlocutory appeal to challenge at least one "ruling" that this Court has not even made. Because the Court is of the opinion that Defendants' interlocutory appeal is not relevant to the remaining issues before this Court, and because the Court further concludes that the relevant factors weigh against the issuance of a stay, Defendants' Motion should be **DENIED**.

I. PROCEDURAL BACKGROUND

Plaintiff, Rajin Patel, brought this civil action against Defendant Texas Tech University and Defendants Duane Jones, William Pasewark, Robert Ricketts, and Brittany Todd (all officers or agents of Texas Tech) in their official and individual capacities. Defendants filed a joint Motion to Dismiss raising numerous (and sometimes conflated) arguments under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). That Motion also improperly attempted to assert the

affirmative defense of qualified immunity under Rule 12(b)(6).

On September 26, 2017, the Court issued its ruling on Defendants' Motion to Dismiss. The Court held that (1) Defendant Texas Tech was entitled to sovereign immunity from Plaintiff's § 1983 claims under the Eleventh Amendment; (2) Plaintiff had adequately pleaded a claim for injunctive relief against the individual Defendants in their official capacities, such that his § 1983 claims against those Defendants should be allowed to proceed under the *Ex Parte Young* exception; (3) Defendant Texas Tech had not sufficiently shown that it was entitled to sovereign immunity on Plaintiff's breach of contract claim;¹ (4) the individual Defendants' assertion of qualified immunity was improperly raised and would be addressed by a separate motion for summary judgment on the issue of qualified immunity at the appropriate stage of the litigation; and (5) Plaintiff's complaint was otherwise plausibly pleaded in a manner sufficient to withstand Defendants' 12(b)(6) arguments. Defendants filed a Motion for Reconsideration of that ruling, which the Court denied on October 2, 2017. Defendants then filed their Notice of Interlocutory Appeal on October 17, 2017.

II. STANDARD

A district court "has broad discretion to stay proceedings as an incident to its power to control its own docket." *Clinton v. Jones*, 520 U.S. 681, 706 (1997). "The factors the court assesses when considering a motion to stay are substantially similar to those weighted when determining whether to grant a preliminary injunction, and the movant bears the burden of

¹The Court reserved the right to revisit this jurisdictional argument if Texas Tech later asserted a new motion to dismiss and provided the Court with evidence that its student handbook disclaims express or implied contracts. See Order, ECF No. 25 at 5; *Tobias v. Univ. of Tex. at Arlington*, 824 S.W.2d 201, 211 (Tex. App.—Fort Worth 1991, writ denied).

showing the balance of equities weights heavily in favor of granting the stay.” *Sonnier v. Crain*, 649 F. Supp. 2d 484, 490 (E.D. La. 2009) (citing *United States v. Baylor Univ. Med. Ctr.*, 711 F.2d 38, 39 (5th Cir. 1983)). Those factors are: (1) whether the movant has shown that he is likely to succeed on the merits; (2) whether the movant will be irreparably harmed if a stay is not granted; (3) whether the issuance of a stay will substantially harm the other parties; and (4) whether granting the stay serves the public interest. *Sonnier*, 649 F. Supp. 2d at 490.

II. DISCUSSION

Defendants’ Notice of Appeal states only that the Defendants are appealing “the Order entered in this action on September 26, 2017.” The Notice does not state which portions of that Order the Defendants are appealing or explain why the entirety of the order is even subject to an interlocutory appeal. Defendants’ present Motion to Stay sheds some clarifying light on their appeal by stating that the Defendants have filed a Notice of Interlocutory Appeal “appealing the Court’s denial of sovereign immunity from Plaintiff’s breach of contract claim and qualified immunity from Plaintiff’s constitutional tort claims arising under 42 U.S.C. § 1983.” Defs.’ Opposed Mot. to Stay 3.

A. Denial of Sovereign Immunity

Defendant Texas Tech first appeals this Court’s denial of its sovereign immunity defense on Patel’s breach of contract claim. Guided by published authority from the Texas state courts, this Court concluded in its prior Order that the specific nature of Patel’s relationship with Texas Tech, combined with the provisions of Chapter 271 of the Texas Local Government Code, may overcome the general legal proposition that the Texas Legislature has not waived immunity from breach of contract suits. *See* Order, ECF No. 25, at 5. Specifically, the Court cited two cases to

compare factual scenarios where the Texas courts have (1) found a waiver of sovereign immunity as a result of a university student catalog and (2) found that a school catalog did not waive sovereign immunity because it expressly disclaimed any contractual relationship between the university and the student. *See Univ. of Tex. Health Sci. Ctr. at Houston v. Babb*, 646 S.W.2d 502, 506 (Tex. App.—Houston [1st Dist.] 1982, no writ); *Tobias v. Univ. of Tex. at Arlington*, 824 S.W.2d 201, 211 (Tex. App.—Fort Worth 1991, writ denied). Based on this case law, the Court found that Patel had adequately pleaded a valid *theory* by which Texas Tech had waived sovereign immunity and determined that Texas Tech was not entitled to dismissal of this claim based on the facts currently before the Court. The Court noted, however, that it “reserves the right to revisit this jurisdictional issue if Defendant Texas Tech can later produce evidence that it expressly disclaimed any contract with Patel.” Order, ECF No. 25, at 5. In other words, the Court did not definitively say that sovereign immunity does not exist, but only concluded that more evidence was required to determine whether sovereign immunity may have been waived in this case.

Texas Tech is certainly free to take an interlocutory appeal from this Court’s denial of its sovereign immunity defense. However, the Court notes that if Texas Tech is capable of producing the evidence previously found to be lacking from its motion to dismiss (in accordance with the Texas cases cited above), then Texas Tech is free to renew its motion to dismiss the breach of contract claim based on sovereign immunity. Texas Tech is capable of doing this at any time and does not need to wait for the resolution of its interlocutory appeal to raise a properly supported second motion to dismiss. To the extent that Texas Tech is incapable of producing such evidence, then this Court stands by its prior ruling and acknowledges that a resolution from

the Fifth Circuit will be necessary to determine whether this Court was correct in its decision.

Defendants are correct that any litigation on the breach of contract claim is automatically stayed by Texas Tech's interlocutory appeal. However, the question of whether Texas Tech is subject to sovereign immunity on the breach of contract claim under state law has no significance to Plaintiff's federal-law claims asserted against the other Defendants. The Court finds that Defendants have not met their burden to show that the relevant factors weigh in their favor and concludes that there is no good cause to stay the rest of this litigation (related to the Plaintiff's federal-law claims) while Texas Tech chooses to pursue an interlocutory appeal as to the breach of contract claim.

B. "Denial" of Qualified Immunity

The Defendants are also attempting to appeal "the Court's denial of . . . qualified immunity[.]" Defs.' Opposed Mot. to Stay 3. On this point, Defendants appear to have completely misinterpreted this Court's order. The Court clarifies, for the benefit of all parties, that it has *not* denied qualified immunity to any of the Defendants; the Court has not even reached the issue of qualified immunity at this stage of the litigation. The Court's Order of September 26, 2017, clearly stated that Defendants' Motion to Dismiss was denied *without prejudice* as to any qualified immunity arguments only because those arguments were not yet ripe for consideration. Further, the Court clearly stated that it would address qualified immunity "by calling for a separate motion for summary judgment (in accordance with the Court's normal procedures) after the Court has addressed Plaintiff's Motion for Preliminary Injunction." Order, ECF No. 25, at 6.

While Defendants are correct that the denial of qualified immunity is subject to

interlocutory appeal, the Court is of the opinion that the Defendants' appeal in this case is premature because qualified immunity has not been denied. The law is clear that qualified immunity is an affirmative defense that must be raised by a Defendant's answer. *Harlow v. Fitzgerald*, 457 U.S. 800, 815 (1982); *Schultea v. Wood*, 47 F.3d 1427, 1433 (5th Cir. 1995). Defendants have not yet properly raised that affirmative defense because they have not yet answered Plaintiff's complaint. The Court has taken no action with regard to qualified immunity other than refusing to allow the Defendants to improperly raise an affirmative defense in a Rule 12(b)(6) motion. *See id.*

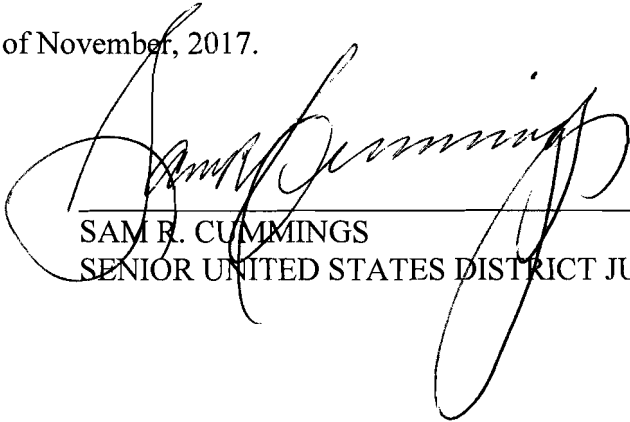
The Court concludes that Defendants' interlocutory appeal as to qualified immunity is likely premature (because it appeals from a "decision" that this Court has not even made).² Moreover, for the reasons stated in Plaintiff's response brief, qualified immunity relates only to the claims asserted against the individual Defendants in their individual capacities and has no bearing on the injunctive relief that Plaintiff seeks against their official capacities. The Court thus finds that Defendants have not met their burden of showing that they will suffer any irreparable harm if Plaintiff's official-capacity claims are allowed to proceed, nor have they demonstrated that the others factors weigh in favor of a stay. Accordingly, the Court concludes there is no good reason to stay this litigation pending the interlocutory appeal.

²Of course, it is for the United States Court of Appeal for the Fifth Circuit to consider the propriety of Defendant's interlocutory appeal, and this Court acknowledges that the Fifth Circuit must ultimately determine any questions related to its own jurisdiction over that appeal. This Order is not meant to make any conclusive findings regarding the merits of Defendants' notice of appeal or decide any issues of appellate jurisdiction (as both of these questions are beyond this Court's jurisdiction to consider). Instead, the Court raises these issues only for the limited purposes of (1) clarifying its September 26, 2017 ruling, which appears to have been misinterpreted by the Defendants; and (2) explaining its reasoning for denying the Defendants' requested stay.

IV. CONCLUSION

For the foregoing reasons, the Court is of the opinion that Defendants' Opposed Motion to Stay Further Proceedings should be **DENIED**. Plaintiff's breach of contract claim is automatically stayed pending Defendants' interlocutory appeal. Further, despite the issues related to Defendants' interlocutory appeal discussed above, the Court will (in an abundance of caution) presume that all claims against the Defendants in their individual capacities are stayed until otherwise instructed by the Fifth Circuit. The remainder of this case will proceed on the Court's docket as scheduled.

SO ORDERED this 1st day of November, 2017.



SAM R. CUMMINGS
SENIOR UNITED STATES DISTRICT JUDGE