IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

J.D. FIELDS & COMPANY, INC. **PLAINTIFF**

v. **Case No. 4:12-cv-00754-KGB**

NUCOR-YAMATO STEEL COMPANY and
NUCOR CORPORATION **DEFENDANTS**

NUCOR-YAMATO STEEL COMPANY **COUNTERCLAIMANT**

v.

J.D. FIELDS & COMPANY, INC. **COUNTERDEFENDANT**

ORDER

Before the Court is a motion to stay proceedings pending appeal filed by defendant Nucor-Yamato Steel Company ("NYS") and a motion for a stay filed by defendant Nucor Corporation ("Nucor") (Dkt. Nos. 209, 203). Plaintiff J.D. Fields & Company, Inc. ("Fields") has filed responses in opposition to both motions (Dkt. Nos. 217, 215), and NYS and Nucor have filed replies (Dkt. Nos. 219, 218). For the following reasons, the Court grants the motion to stay pending appeal as to both NYS and Nucor.

I. NYS

By prior Order, this Court denied NYS's motion to stay and compel arbitration (Dkt. No. 201). NYS filed an interlocutory appeal regarding this Court's Order (Dkt. No. 212). NYS now requests that this Court stay these proceedings while NYS's interlocutory appeal is on review at the Eighth Circuit Court of Appeals. This Court declines to find that a stay of this proceeding is mandatory, but the Court concludes that the stay is in the interest of justice and judicial economy. Therefore, the Court grants the motion.

NYS argues that, under *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56 (1982), an appeal divests the district court of jurisdiction over "those aspects of the case involved in the appeal." *Id.* at 58. NYS further contends that, as applied to interlocutory appeals from orders denying arbitration, this principle mandates a stay of proceedings in the district court during the pendency of the appeal (Dkt. No. 210, at 1). However, all parties agree that there is a circuit split on whether denials of motions to compel arbitration mandate that the district court stay the proceeding pending the appeal. *Compare Levin v. Alms & Assocs., Inc.*, 634 F.3d 260, 264−66 (4th Cir. 2011) (applying mandatory stay in context of denial of motion to compel arbitration); *Ehleiter v. Grapetree Shores, Inc.*, 482 F.3d 207, 215 n.6 (3d Cir. 2007) (same); *McCauley v. Halliburton Energy Servs., Inc.*, 413 F.3d 1158, 1160−62 (10th Cir. 2005) (same); *Blinco v. Green Tree Servicing, LLC*, 366 F.3d 1249, 1251−52 (11th Cir. 2004) (same), *with Weingarten Realty Inv'rs v. Miller*, 661 F.3d 904, 907−10 (holding that such a stay is not mandatory); *Motorola Credit Corp. v. Uzan*, 388 F.3d 39, 53−54 (2d Cir. 2004) (same); *Britton v. Co-op Banking Grp.*, 916 F.2d 1405, 1411−12 (9th Cir. 1990) (same). All parties further agree that the Eighth Circuit Court of Appeals has not yet squarely addressed this issue.

The Court agrees that it is prohibited from relitigating the literal question on appeal and that the appeal of certain questions, like double jeopardy, sovereign immunity, and qualified immunity, halts further district court litigation. *See Weingarten*, 661 F.3d at 907−10. Courts that view the stay as mandatory reason that arbitrability, because it concerns whether a case will be heard in the district court at all, involves the merits in the appeal. Other courts that take a narrower view generally rely on *Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1 (1983), and reason that the merits of a dispute are "easily severable" from the arbitrability issue − determining what forum will resolve the dispute, judge or arbitrator, does not itself

involve the merits of the dispute. Given the lack of controlling Eighth Circuit precedent, this Court declines to decide whether it is required under *Griggs* to issue a stay of this proceeding pending review of NYS's interlocutory appeal.

Instead, this Court determines that it should as a discretionary measure stay this case as to NYS pending review of NYS's interlocutory appeal because the interests of justice and judicial economy tip in favor of the Court doing so. When determining whether a court should exercise its inherent power to issue a stay pending appeal, courts examine the following four factors: (1) the likelihood that the stay applicant will succeed on the merits of its appeal; (2) whether the denial of a stay will irreparably harm the moving party; (3) whether issuance of a stay will substantially injure the non-moving party; and (4) the public interest. *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987); Fed. R. App. P. 8. Of these factors, the most important factor "is the appellant's likelihood of success on the merits." *Brady v. Nat'l Football League*, 640 F.3d 785, 789 (8th Cir. 2011).

As evidenced by the Court's Order denying NYS's motion to stay and compel arbitration, resolving the motion involved this Court's analysis of several issues, including certain issues for which there is no controlling Eighth Circuit precedent. Although this Court remains convinced that NYS waived its right to arbitration, it cannot say that NYS's appeal of the Court's denial of arbitration is frivolous. Respect for the Eighth Circuit's review of the proper forum and conservation of both judicial and party resources warrant a stay of the proceedings as to NYS in this Court.

II. Nucor

In a prior Order from this Court, the Court granted Nucor's motion to compel arbitration (Dkt. No. 203). In that same motion, Nucor requested that the Court stay the proceedings

pursuant to Section Three of the Federal Arbitration Act, which states that a district court shall stay the trial court proceedings pending arbitration if the subject dispute is arbitrable. 9 U.S.C. § 3; *Houlihan v. Offerman & Co. Inc.*, 31 F.3d 692, 695 (8th Cir. 1994) ("A federal court must stay court proceedings and compel arbitration once it determines that the dispute falls within the scope of a valid arbitration agreement.") (citing 9 U.S.C. §§ 3 & 4). Because this Court has determined that Fields's claims against Nucor are arbitrable, the Court grants Nucor's request for a stay of the district court proceedings.

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For the reasons stated above, the Court grants NYS's motion to stay (Dkt. No. 209) and Nucor's request for a stay (Dkt No. 203).

SO ORDERED this 2nd day of February, 2016.

Kristine G. Baker
United States District Judge