

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

RISEDELAWARE INC., KAREN)
PETERSON, and THOMAS PENOZA,)

Plaintiffs,)

v.)

C.A. No. N22C-09-526 CLS

SECRETARY CLAIRE DEMATTEIS)
in her official capacity as Secretary of)
Delaware Department of Human)
Resources and Co-Chair of the State)
Employee Benefits Committee,)

DIRECTOR CERRON CADE in his)
official capacity as Director of the)
Delaware Office of Management and)
Budget and CO-Chair of the State)
Employee Benefits Committee,)

DELAWARE DEPARTMENT OF)
HUMAN RESOURCES, DELAWARE)
STATE EMPLOYEE BENEFITS)
COMMITTEE, and DELAWARE)
DIVISION OF STATEWIDE)
BENEFITS,)

Defendants.)

Date Submitted: May 16, 2022

Date Decided: May 22, 2023

The Court's Order on Final Judgment.

ORDER

Sidney S. Liebesman, Esquire, Austen C. Enderby, Esquire, and Nathaniel J. Klepser, Esquire, Fox Rothchild LLC, Wilmington, Delaware, 19801, Attorneys for Plaintiffs RiseDelaware, Inc., Karen Peterson, and Thomas Peterson.

Patricia A. Davis, Esquire, Adria Martinelli, Esquire, and Jennifer Singh, Esquire, Delaware Department of Justice, Wilmington, Delaware, 19801, and Lisa R. Hatfield, Esquire, Max B. Walton, Esquire, and Shaun Michael Kelly, Esquire, Connolly Gallagher LLP, Wilmington, Delaware 19801, Attorneys for Defendants.

SCOTT, J.

This 22nd day of May 2023, upon consideration of Defendants’¹ Motion for Entry of Final Judgment or Partial Judgment, Plaintiffs RiseDelaware Inc.’s (“RiseDE”) Response, the record in this case, and oral argument, it appears to the Court that:

1. In Oral Argument, this Court’s jurisdiction was called into question due to Plaintiffs unilaterally transferring the issue of Attorneys’ Fees to the Court of Chancery.
2. The Court now examines its jurisdiction to render a decision on this matter.
3. According to 10 *Del. C.* 1902, a court, which by final order has declared it does not have jurisdiction over the matter, can transfer an action to another court by filing a written election of transfer. A motion to transfer should be filed within 60 days for this Court to grant or deny such motion.
4. In *West*, defendants moved this Court to transfer the case to the Court of Chancery to decide plaintiff’s equitable breach of fiduciary duty claim.² The Court granted the motion to allow Court of Chancery to exercise jurisdiction

¹ Secretary Claire DeMatteis, in her official capacity as Secretary of Delaware Department of Human Resources and Co-Chair of the State Employee Benefits Committee, Director Cerron Cade, in his official capacity as Director of the Delaware Office of Management and Budget and Co-Chair of the State Employee Benefits Committee, Delaware Department of Human Recourses, Delaware State Employee Benefits Committee, and Delaware Division of Statewide Benefits.

² *West v. Access Control Related Enterprises, LLC*, 2023 WL 2920675 (Del. Apr. 13, 2023).

over the legal and equitable claims.³ Instead of following the necessary steps to transfer the case, plaintiff then voluntarily dismissed its breach of fiduciary duty claim then moved to amend the complaint, which was granted by this Court, to drop the breach of fiduciary duty claim and to add new claims for breach of the implied covenant of good faith and fair dealing, tortious interference with contract, and tortious interference with prospective business relations.⁴ The *West* court explained under 10 *Del. C.* § 1902, a court can transfer an action to another court for lack of jurisdiction and such transfer orders are not self-executing but require a party to file a written election of transfer within 60 days of the order.⁵ Plaintiff did not file an election to transfer the case to the Court of Chancery.⁶ Because the case was never transferred from the Delaware Superior Court to the Chancery Court, the Superior Court retained jurisdiction.⁷

5. To properly transfer a case, Plaintiffs should have E-file/serve the following to the Superior Court: Election of transfer to Chancery Court, Motion to Transfer, proposed order granting Motion to Transfer, certificate of service of motion and proposed order. Then, Plaintiffs should have filed a letter to the

³ *Id.* at *1.

⁴ *Id.* at *2.

⁵ *Id.* at *5.

⁶ *Id.*

⁷ *West*, 2023 WL 2920675 at *5.

Superior Court Judge stating that the motion to transfer was unopposed (if true), enclosing courtesy copies of the documents of the election to transfer, Motion to Transfer, proposed order granting Motion to Transfer, and certificate of service of motion and proposed order, and E-file letter and hand-deliver letter with courtesy copies to the Superior Court Judge. Upon reception of an order transferring the case to Chancery Court, e-file/serve the Complaint filed in Superior Court, and Chancery case information sheet. Finally, Plaintiffs should have submitted a letter to the Chancellor stating the action originated in the Superior Court and the Superior Court granted a motion to transfer the case to Chancery Court, enclose courtesy copies of the Complaint and Chancery Court case information sheet, and state that the Complaint is substantially the same, with the exception of the name of the court and the civil action number.⁸

6. The concepts in *West and Transferring Cases From Chancery Court to Superior Court: A Step-by-Step Guide* apply to this case. Here, RiseDE did not file a Motion to Transfer in this Court, therefore the matter was never

⁸ Francis G.X. Pileggi and Chauna A. Abner, *Transferring Cases From Chancery Court to Superior Court: A Step-by-Step Guide*, LAW.COM (Mar. 10, 2021, 9:01 AM), <https://www.law.com/delbizcourt/2021/03/10/transferring-cases-from-chancery-court-to-superior-court-a-step-by-step-guide/>. (Noting the article's topic is about transferring from Chancery Court to Superior Court, however, the same procedure would be required in Superior Court).

properly transferred to the Chancery Court. As such, the Superior Court retains jurisdiction.

7. Plaintiffs filed a Complaint asking for Declaratory Judgment, as well as this Motion to Stay on September 29, 2022, the policy decision of the State Employee Benefits Committee's ("SEBC") decision to require all State retirees holding Medicare Supplemental Health Plans to switch to Medicare Advantage. Plaintiffs and Defendants agreed to a briefing schedule and oral argument date.
8. On October 19, 2022, after hearing oral argument and reviewing the parties' briefs, this Court issued an opinion on Plaintiffs' Motion to Stay. The Court granted the stay and found Plaintiffs showed that the issues before the Court were substantial and that Plaintiffs would likely suffer irreparable harm if the stay was not granted. Accordingly, the Court found that after balancing the required factors, Plaintiffs' Motion for Stay of the Requirement All State Retirees Holding Medicare Supplemental Health Plans to Use Medicare Advantage was granted. Further, this Court concluded that Defendants' implementation of a Medicare Advantage Plan for State retirees and acceptance of enrollment into the Plan, including by way of automatic enrollment in the open enrollment period currently in effect for State retirees is stayed until further Order by this Court. Additionally, a final trial on the

merits was scheduled for November 28, 2022, so the Court could make a final determination of facts.

9. On November 7, 2022, the State made the decision to extend the current Medicare Supplemental Health Plan for a year. The parties represented to this Court that the trial, scheduled for November 28, 2022, at 2:00 P.M. was not necessary. As a result, no trial was held on the assigned trial date.
10. Since representing to this Court no trial was necessary, Plaintiffs and Defendants filed excessive motions, resulting in, asking the Court to make a factual determination, which should have been addressed at Trial.
11. As a Trial Court, the expectation is that the Court will hear testimony from witnesses, judge their credibility, and examine exhibits to reach its Final Decision.
12. This Court was asked to decide Plaintiffs' Petition for Attorneys' Fees taking into account that there had been no trial.
13. The Parties did not find trial necessary, therefore no final determination of facts or conclusions of law occurred under these circumstances. Since this Court granted Plaintiffs' Motion to Stay, the parties have settled the matter without adjudication from this Court.
14. On February 8, 2023, the Court denied Plaintiffs' Petition for Attorneys' Fees because it did not believe Attorneys' Fees were warranted.

15. RiseDE appealed the February 8, 2023 Order. The Delaware Supreme Court **DISMISSED** the appeal because it was interlocutory.

16. Defendants' now move for entry of final judgment or in the alternative, partial final judgment on a record that is undeveloped due to the parties' mutual agreement.

17. The only issue remaining in this case is of Attorneys' Fees. Therefore, because Plaintiffs are not entitled to Attorneys' Fees by Statute or for any other reason, this Court enters judgment against Plaintiffs for Attorneys' Fees.

IT IS SO ORDERED.

/s/ Calvin L. Scott
Judge Calvin L. Scott, Jr.