

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

JOSHUA J. ANGEL,	)	
	)	
Plaintiff,	)	No. 22-867C
	)	(Senior Judge Margaret M. Sweeney)
v.	)	
	)	
THE UNITED STATES,	)	
	)	
Defendant.	)	

**REPLY IN SUPPORT OF MOTION TO STAY PROCEEDINGS**

Defendant, the United States, respectfully replies to the response filed by plaintiff, Joshua J. Angel, ECF No. 7, and in support of our request that the Court stay all proceedings in the above-captioned case until the decision of the United States Court of Appeals for the Federal Circuit in *Fairholme Funds, Inc. v. United States*, 26 F.4th 1274 (Fed. Cir. 2022) (*Fairholme*), is final and unappealable, ECF No. 6.

Mr. Angel opposes a stay and requests that the Court grant only 30 days of the 60-day enlargement of time that we requested in the alternative, in the event that the Court does not issue a stay. Pl. Response, ECF No. 7, at 1; Def. Mot., ECF No. 6. In his response, Mr. Angel does not explain his strategy of voluntarily withdrawing his previous complaint in *Angel v. United States*, Court of Federal Claims (COFC) No. 20-737C, and filing the nearly identical complaint in this case. Mr. Angel does not attempt to distinguish his two complaints—indeed, he admits that they are nearly identical. Pl. Response, ECF No. 7, at 12 (“The bodies of the Angel II and Angel III Complaints, and the Complaints’ Counts I and II, slightly edited for age, are exactly in mirror of each other . . . [t]he sole substantive difference between the actions is Count III in Angel III Complaint.”). Count III of Mr. Angel’s complaint in this case, titled “quarterly wrongful acts in conducting conservatorship,” appears to at most plead a breach of

contract in different words. Compl., ECF No. 1, ¶ 56 (“Treasury engaged in wrongful acts in conducting the Conservatorship, by each quarter directing and otherwise *causing GSE directors to disregard Junior Preferred contractual payment rights* and effecting quarterly outsized sweeps of Companies’ profits, inclusive of approximately \$20 billion of Junior Preferred share contractual dividend rights to itself.”) (emphasis added). Instead of attempting to distinguish his two complaints, Mr. Angel attempts to respond to the motion to dismiss that we filed over two years ago in his now-dismissed prior case by, for example, attempting to defend the timeliness of at least some of his claims. *See Angel v. United States*, COFC No. 20-737C, ECF No. 7.

Mr. Angel’s response also attempts to distinguish his claims from those raised by the plaintiffs in *Fairholme*. Pl. Response, ECF No. 7, at 2-3, 8-11. Mr. Angel focuses entirely on his claim that, whereas the *Fairholme* plaintiffs directly challenged the Third Amendment to the Preferred Stock Purchase Agreements between the Department of the Treasury and the Federal Housing Finance Agency, Mr. Angel allegedly only challenges Treasury’s quarterly actions in accordance with the terms of the Third Amendment. Pl. Response, ECF No. 7, at 2-3. Even assuming that there were a legally significant difference in that distinction, Mr. Angel ignores that the *Fairholme* plaintiffs also brought claims for breach of contract. *Fairholme*, 26 F.4th at 1293. The Federal Circuit held that these claims were not tenable for several reasons that also implicate Mr. Angel’s claims. *Id.* at 1293-96. Moreover, this Court, in staying Mr. Angel’s previous action, already recognized the connection between the issues before the Federal Circuit (and now the Supreme Court) in *Fairholme* and those before the Court in this case.

Moreover, although Mr. Angel references the Supreme Court’s decision in *West Virginia v. Environmental Protection Agency*, 142 S. Ct. 2587 (2022), Mr. Angel fails to demonstrate the relevance of the case—to either the motion to stay specifically or to this case more generally—

and none is apparent. Likewise, the various legal memoranda and proposed stipulation and settlement papers that Mr. Angel attaches to his motion appear to be irrelevant.

Additionally, Mr. Angel's response, like filings in his previous case before this Court, continues to allude to a settlement proposal that Mr. Angel presented to the United States. Pl. Response, ECF No. 7, at 5-7. Moreover, Mr. Angel appears to again propose settlement via his response to our motion to stay. Pl. Response, ECF No. 7, at 13-14. As we have repeatedly and unequivocally stated, the United States has not agreed to any settlement or any stipulation with Mr. Angel. Moreover, we do not anticipate that any settlement will be forthcoming and are not currently exploring or considering settlement of Mr. Angel's claims.

Finally, an update on the proceedings in the Supreme Court of the United States is appropriate. In our motion, we explained that the United States' response to the *Fairholme* plaintiffs' petition for certiorari was due on October 3, 2022. Def. Mot., ECF No. 6, at 2. Since we filed our motion, the Supreme Court has granted a further extension, and the response is currently due by November 9, 2022.

Accordingly, to conserve judicial and party resources, the United States respectfully requests that the Court stay this case until the Federal Circuit's decision in *Fairholme* becomes final and unappealable. If the Court grants this motion, the United States respectfully proposes that, within 30 days of the date the Federal Circuit's decision in *Fairholme* becomes final and unappealable, the parties submit a joint status report proposing a schedule for further proceedings in this case. If the Court denies this motion, the United States respectfully requests, in the alternative, that the Court grant a 60-day enlargement of time, to and including December 6, 2022, for the United States to respond to the complaint

Respectfully submitted,

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