

Case No. 3D2023-2280

**IN THE DISTRICT COURT OF APPEAL, THIRD DISTRICT
STATE OF FLORIDA**

PHILIP MORRIS USA INC., et al.,

Defendants/Appellants,

v.

THE ESTATE OF ROBERTA EISEN, Deceased, by and through her
Personal Representative, NEIL SCHERTZER,

Plaintiff/Appellee.

Appeal from the Circuit Court of the Eleventh Judicial Circuit in and
for Miami-Dade County, Florida
Case No. 08-1460-CA-30

**APPELLANTS' STATUS REPORT AND RESPONSE TO THE
COURT'S JUNE 5, 2024 ORDER**

On March 4, 2024, Defendants/Appellants Philip Morris USA Inc. and R.J. Reynolds Tobacco Company (“Defendants”) moved unopposed to stay this appeal of an attorneys’ fees and costs judgment pending completion of appellate proceedings regarding the underlying Merits Judgment. A copy of the Unopposed Motion to Stay Appeal is attached hereto as “**Exhibit A.**” On March 5, 2024, this Court entered an order staying all proceedings in this appeal

until the resolution of the Merits Judgment. A conformed copy of that Order is attached hereto as “**Exhibit B.**”

On June 5, 2024, this Court entered an order that stated the time for filing an initial brief in this matter has expired, and further ordered that this case will be dismissed unless an initial brief was filed within ten (10) days, or that the Court was “otherwise notified that this matter is being diligently prosecuted.”

Defendants hereby submit that the appellate proceedings related to the Merits Judgment remain pending and briefing is ongoing before the Florida Supreme Court.¹ As such, the stay of these proceedings under the Court’s March 5, 2024 Order should remain in effect. Defendants will file a supplemental Status Report with this Court within 10 days after the Florida Supreme Court has issued a decision on the pending Merits Judgment Appeal, and stand ready to provide any additional information the Court should require.

Dated: June 7, 2024

¹ On May 6, 2024, Defendants filed a notice to invoke the discretionary jurisdiction of the Florida Supreme Court to review the decision of this Court rendered in the Merits Appeal on January 31, 2024. Defendants filed their brief on jurisdiction on June 5, 2024.

Respectfully submitted,

s/ David M. Menichetti

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by electronic mail and through the Florida Court's E-Filing Portal on all counsel on the attached Service List this 7th day of June, 2024.

/s/ David M. Menichetti
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Exhibit A

Case No. 3D23-2280

**IN THE THIRD DISTRICT COURT OF APPEAL
STATE OF FLORIDA**

PHILIP MORRIS USA INC., et al.,

Defendants/Appellants,

v.

THE ESTATE OF ROBERTA EISEN, Deceased, by and through her
Personal Representative, NEIL SCHERTZER,

Plaintiff/Appellee.

Appeal from the Circuit Court of the Eleventh Judicial Circuit
in and for Miami-Dade County, Florida
Case No. 08-1460-CA-30

UNOPPOSED MOTION TO STAY APPEAL

Defendants/Appellants Philip Morris USA Inc. and R.J. Reynolds Tobacco Company (“Defendants”) move to stay this appeal of an attorneys’ fees and costs judgment pending completion of appellate proceedings regarding the underlying merits judgment. Defendants’ sole reason for appealing the fees and costs judgment is that should the merits judgment be reversed, the fees and costs judgment would necessarily be reversed as well. Staying this appeal

until the completion of appellate proceedings regarding the underlying merits judgment would therefore be in the interests of judicial economy. Plaintiff/Appellee (“Plaintiff”) does not oppose the relief sought by this Motion.

BACKGROUND

In 2022, the trial court in this *Engle* progeny wrongful death case entered a final judgment in Plaintiff’s favor for \$2.5 million in compensatory damages (the “Merits Judgment”). Defendants appealed the Merits Judgment to this Court, which was docketed as Case Number 3D22-1649 (the “Merits Appeal”).

In 2023, after an evidentiary hearing, the trial court entered a Final Judgment on Fees and Costs in Plaintiff’s favor based on proposals for settlement that Plaintiff had served before trial (the “Fees and Costs Judgment”). Defendants appealed the Fees and Costs Judgment to this Court, which was docketed as Case Number 3D23-2280 (the “Fees and Costs Appeal”).

On January 31, 2024, this Court affirmed the Merits Judgment. *See Philip Morris USA Inc. v. Estate of Eisen*, 3D22-1649, 2024 WL 358022 (Fla. 3d DCA Jan. 31, 2024) (per curiam). Relying on its prior precedent in *Chacon v. Philip Morris USA, Inc.*, 254 So. 3d 1172 (Fla.

3d DCA 2018), this Court rejected Defendants’ argument that the trial court had improperly instructed the jury on the residency requirement of *Engle* class membership (the “residency issue”). See *Estate of Eisen*, 3D22-1649, 2024 WL 358022, at *1.

On March 1, 2024, Defendants filed a Motion for Rehearing En Banc in the Merits Appeal, which remains pending. Should this Court deny relief, Defendants may invoke the jurisdiction of the Florida Supreme Court on the residency issue.

Defendants’ Initial Brief in the Fees and Costs Appeal is due on March 5, 2024. Defendants do not intend to challenge the Fees and Costs Judgment on any ground other than that they have appealed the Merits Judgment and, should the Merits Judgment be reversed, the Fees and Costs Judgment will necessarily be reversed as well.

ARGUMENT

This Court has inherent authority to manage its own docket to further the interests of efficiency and judicial economy. See *Rose v. Palm Beach Cnty.*, 361 So. 2d 135, 136 n.3 (Fla. 1978) (“Inherent powers’ of courts have been described as ‘all powers reasonably required to enable a court to perform efficiently its judicial functions.’”) (citation omitted); see also Fla. R. App. P. 9.040(a) (“In

all proceedings a court shall have such jurisdiction as may be necessary for a complete determination of the cause.”).

Appellate courts of this state have previously utilized this inherent authority to stay appeals pending subsequent developments. *See, e.g., Bismark v. State*, 796 So. 2d 584, 586 (Fla. 2d DCA 2001) (noting that the court had stayed all appeals before it that raised a common legal issue concerning the ability to withdraw criminal pleas under certain circumstances pending resolution of that issue in the Florida Supreme Court).

This Court’s interest in conserving judicial resources warrants a stay of this appeal pending the conclusion of appellate proceedings related to the Merits Judgment. Defendants’ sole ground for appealing the Fees and Costs Judgment is that if the Merits Judgment is reversed, the Fees and Costs Judgment will necessarily be reversed as well. *See, e.g., Travelers Com. Ins. Co. v. Harrington*, 187 So. 3d 879, 885 (Fla. 1st DCA 2016) (“Florida courts have recognized that when a merits judgment is reversed or vacated, a judgment for attorneys’ fees flowing from that judgment should be reversed, too.”); *see Wagner v. Uthoff*, 868 So. 2d 617, 618 (Fla. 2d DCA 2004) (“The portion of the judgment awarding attorneys’ fees

pursuant to the offer of judgment must be reversed because the underlying judgment has been reversed.”).

The outcome of appellate proceedings related to the Merits Judgment will (one way or the other) dispose of the need for the parties to brief, and the Court to resolve, this appeal. Staying this appeal pending resolution of appellate proceedings related to the Merits Judgment will thus conserve substantial and valuable judicial resources.

Finally, Plaintiff will not be prejudiced by this stay given that interest is accruing on the Fees and Costs Judgment and Defendants have posted supersedeas bonds.

CONCLUSION

The Court should stay this appeal pending resolution of the appellate proceedings related to the Merits Judgment.

Dated: March 4, 2024

Respectfully submitted,

/s/ Geoffrey J. Michael

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(and filing on behalf of R.J.
Reynolds Tobacco Company for
this filing only)***

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the following was filed using the Florida Courts E-Filing Portal and served by Electronic Mail to all counsel listed below this 4th day of March, 2024.

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Exhibit B

IN THE DISTRICT COURT OF
APPEAL
OF FLORIDA
THIRD DISTRICT

March 5, 2024

R.J. Reynolds Tobacco Company,
et al.,

Appellant(s),

3D2023-2280

Trial Court Case No. 08-1460

v

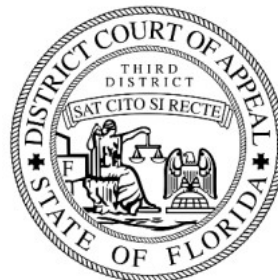
The Estate of Roberta Eisen, etc.,
et al.,

Appellee(s).

Appellants' Unopposed Motion to Stay Appeal is granted, and the
appellate proceedings are hereby temporarily stayed pending resolution of
the merits judgment.

A True Copy
ATTEST

Mercedes M. Prieto
3D2023-2280 3/5/24
Mercedes M. Prieto, Clerk
District Court of Appeal
Third District



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