

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

AUTOCAM CORPORATION, *et al.*,

Plaintiffs,

CASE NO. 1:12-CV-1096

v.

HON. ROBERT J. JONKER

KATHLEEN SEBELIUS, Secretary of the
United States Department of Health and
Human Services, *et al.*,

Defendants.

_____ /

ORDER

This matter is before the Court on the Defendants' Motion to Dismiss (docket # 49). The motion has been fully briefed. In addition, on September 17, 2013, the United States Court of Appeals issued its Opinion in *Autocam Corporation v. Sebelius*, ___ F.3d ___, Case No. 12-2673 (6th Cir. Sept. 17, 2013). The Opinion affirmed this Court's denial of Plaintiffs' Motion for a Preliminary Injunction in that case on grounds that would seem to require immediate dismissal of the claims of the individual plaintiffs in this case for lack of standing, and to provide a basis for granting the Defendants' pending Motion to Dismiss all of the counts in this case asserted by the corporate Plaintiffs. The Court invited the parties to show cause (docket # 62) why the Court should not apply the reasoning of the Court in *Autocam* by dismissing the claims of the individual Plaintiffs in this case for lack of standing, and by granting the Defendants' Motion to Dismiss all claims

asserted by the corporate Plaintiffs.¹ Defendants have not responded. Plaintiffs have responded with a Motion to Stay the Case (docket # 63).

Plaintiffs assert that because the mandate in the *Autocam* decision has not yet issued, the Court lacks jurisdiction to consider the substantive merits of the case. Generally, “an effective notice of appeal divests the Court of jurisdiction over the matter forming the basis for the appeal.” *N.L.R.B. v. Cincinnati Bronze, Inc.*, 829 F.2d. 585, 588 (6th Cir. 1987). Here, the matter forming the basis for the appeal was the Court’s denial of Plaintiffs’ motion for preliminary injunction. Until the mandate issues, that divests the Court of jurisdiction over the preliminary injunction motion. “However, ‘an appeal from an order granting or denying a preliminary injunction does not divest the district court of jurisdiction to proceed with the action on the merits.’” *Zundel v. Holder*, 687 F.3d 271, 282 (6th Cir. 2012) (quoting *Moltan v. Eagle-Picher Indus., Inc.*, 55 F.3d 1171, 1174 (6th Cir. 1995)). Indeed, soon after Plaintiffs filed their interlocutory appeal in this case, the parties tendered a joint motion to stay proceedings in this Court (docket # 46), apparently in recognition that without a stay order, ordinary case management deadlines would remain in place during the pendency of the interlocutory appeal.

Plaintiffs also contend that the Court should stay the case on prudential grounds because the Supreme Court is likely to resolve a Circuit split on issues presented in this case. The Court agrees that the Supreme Court is likely to act, but that does not persuade the Court that it should stay these proceedings, in light of the clear guidance from our Circuit on the merits of the case. When the

¹Plaintiffs earlier sought dismissal without prejudice of their Counts VI (First Amendment – Expressive Association) and Counts IX-XII (Administrative Procedures Act) under FED. R. CIV. P. 41(a) (docket # 48).

Supreme Court rules – assuming it does, as seems likely – the ordinary judicial process will provide an appropriate pathway for any necessary relief.

For these reasons, the Court concludes that dismissal of the case is appropriate.

ACCORDINGLY, IT IS ORDERED:

1. Plaintiffs' Counts VI and IX-XII are **DISMISSED WITHOUT PREJUDICE** under FED. R. CIV. P. 41(a).
2. Plaintiffs' Motion to Stay (docket # 63) is **DENIED**.
3. The claims of the individual Plaintiffs in Counts I-V, VII, and VIII are **DISMISSED** for lack of standing under the reasoning of the Court of Appeals in *Autocam*.
4. Defendants' Motion to Dismiss (docket # 49) is **GRANTED** as to the corporate Plaintiffs' claims in Counts I-V, VII, and VIII based on the reasoning of the Court of Appeals in *Autocam*.

Judgment will enter accordingly.

Dated: September 30, 2013

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE