UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MELODY CUNNINGHAM, FRUNWI MANCHO, MARTIN EL KOUSSA, and VLADIMIR LEONIDAS, individually and on behalf of all others similarly situated,	*	
Plaintiffs,	*	
	*	Civil Action No. 1:19-cv-11974-IT
v.	*	
LYFT, INC., LOGAN GREEN, and JOHN ZIMMER,	*	
Defendants.	*	

MEMORANDUM AND ORDER

May 22, 2020

TALWANI, D.J.

This putative class action, brought by Plaintiffs Melody Cunningham, Frunwi Mancho, Martin El Koussa, and Vladimir Leonidas, on their own behalf and on behalf of similarly situated individuals in Massachusetts who drive for Defendant Lyft, Inc. ("Lyft"), seeks a declaratory judgment under the Uniform Declaratory Judgment Act, 28 U.S.C. §§ 2201, et seq., and asserts claims of misclassification as independent contractors under M.G.L. c. 149, § 148B, and for expense reimbursement, minimum wages, overtime and earned sick time under M.G.L. c. 149, §§ 148, 148B, 148C, and M.G.L. c. 151, §§ 1, 1A. Defendants moved to compel individual arbitration of Plaintiffs' claims, and when the court denied that motion, Defendants filed an interlocutory appeal. Now before the court is Plaintiffs' Emergency Motion for a Preliminary Injunction [#90] and Defendants' Emergency Motion to Confirm Stay Pending Appeal [#107].

Defendants assert that, upon Defendants' filing of their Notice of Appeal [#102], the court was divested of jurisdiction to act on any aspect of the case. Because the court is divested of jurisdiction to act on those aspects of the case involved in the appeal but is not precluded from issuing preliminary injunctive relief to preserve the status quo, Defendants' motion to stay is GRANTED as to their obligation to file an Answer and as to discovery, but is DENIED as to consideration of Plaintiffs' motion for injunctive relief.

Plaintiffs' motion seeks, in light of the extraordinary circumstances caused by the COVID-19 pandemic, an emergency preliminary injunction enjoining Lyft from misclassifying its drivers as independent contractors. Although Plaintiffs have a substantial likelihood of success on the merits of the underlying misclassification claim, the balance of equities weigh in Plaintiffs' favor, and the requested injunction would support rather than harm the public interest, the motion for preliminary injunction is DENIED as Plaintiffs have not shown irreparable harm.

I. Procedural History

Plaintiff Melody Cunningham filed this action, on her own behalf and on behalf of similarly situated Lyft drivers in Massachusetts, alleging misclassification and non-payment of minimum wages and overtime by Lyft and its Chief Executive Officer Logan Green and President John Zimmer. Compl. [#1].[1] The complaint has been amended twice, adding Plaintiffs Frunwi Mancho, Martin El Koussa and Vladimir Leonidas, and a claim for paid sick time. Am. Compl. [#61]; Third Am. Compl. [#147].

[1] Cunningham also filed a Motion for Injunctive Relief [#4] (the "Motion for Public Injunction") to enjoin Defendants' alleged misclassification of drivers, which the court has denied. Memorandum and Order [#88]. Plaintiffs have appealed the denial of the motion for public injunction. Notice of Appeal [#119].

Defendants responded with a Motion to Compel Arbitration and Stay Proceedings Pending Arbitration ("Motion to Compel Arbitration") [#16], asserting that Plaintiffs were bound to individually arbitrate their claims.[2] While Defendants' motion was pending, the global COVID-19 pandemic arose. In light of the pandemic, Plaintiffs filed the pending Emergency Motion for a Preliminary Injunction [#90], asserting that Lyft's failure to provide drivers with paid sick time required emergency redress.

The court denied Defendants' Motion to Compel Arbitration before addressing Plaintiffs' Emergency Motion [#90]. Mem. & Order [#98]. Defendants immediately appealed, see Notice of Appeal [#102], and filed the pending Emergency Motion to Stay [#107].[3]

II. Defendants' Emergency Motion to Stay [#107]

Under Section 16(a) of the Federal Arbitration Act ("FAA"), a party may pursue an immediate interlocutory appeal of a district court's denial of a motion to compel arbitration. 9 U.S.C. § 16(a). Defendants have filed such an appeal. They argue that as a result, the court lacks jurisdiction "over the entire case," and must automatically stay all proceedings pending appeal. Defs' Mot. to Stay 1, 3 [#107].

[2] Defendants' motion to compel arbitration was filed prior to Plaintiffs' filing the Amended Complaint [#61]. The parties agreed to the court applying Defendants' motion to compel arbitration and the parties' briefing to the Amended Complaint. Stipulation [#64]. The Third Amended Complaint [#147] was filed after the court ruled on Defendants' motion to compel. In accordance with the parties' Joint Motion Related to Plaintiffs' Third Amended Complaint [#142], made without prejudice to either sides' arguments regarding a stay pending appeal or Defendants' ability to challenge the court's denial of their motion to compel arbitration, the court has extended the ruling on the motion to dismiss to the Third Amended Complaint [#147]. See Order [#173].

[3] Defendants' motion also requested a brief extension of time to respond to Plaintiffs' Emergency Motion for a Preliminary Injunction [#90] and a telephonic status conference. The court granted these requests. Elec. Order [#111].

"The filing of a notice of appeal is an event of jurisdictional significance," which "confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." Griggs v. Provident Consumer Disc. Co., 459 U.S. 56, 58 (1982) (emphasis added). Thus, "[a]n interlocutory appeal ordinarily suspends the power of the district court to modify the order subject to appeal, but does not oust district-court jurisdiction to continue with proceedings that do not threaten either the appeal's orderly disposition or its raison d'etre." 16A Charles A. Wright et al., Federal Practice & Procedure § 3949.1 (5th ed. 2016); see, e.g., Marrese v. Am. Acad. of Orthopaedic Surgeons, 470 U.S. 373, 378-9 (1985) (finding that during appeal of criminal contempt judgment based on noncompliance with a discovery order, district court retained power to modify earlier denial of motion to dismiss so as to certify the denial for interlocutory appeal where motion to dismiss was not involved in appeal and amendment did not "interfere with but instead facilitated review of the pending appeal . . . ."); United States v. Brooks, 145 F.3d 446, 455 (1st Cir. 1998) ("as a general rule, the filing of a notice of appeal 'divests a district court of authority to proceed with respect to any matter touching upon, or involved in, the appeal.'") (quoting United States v. Mala, 7 F.3d 1058, 1061 (1st Cir. 1993)).

Defendants argue that the court should follow the "majority rule" from other circuits staying cases during appeals in FAA cases. Defs' Mot. to Stay 4-5 [#107] (citing Levin v. Alms & Assocs., Inc., 634 F.3d 260, 264-66 (4th Cir. 2011); McCauley v. Halliburton Energy Servs., Inc., 413 F.3d 1158, 1160-62 (10th Cir. 2005); Blinco v. Green Tree Servicing, LLC, 366 F.3d 1249, 1251-52 (11th Cir. 2004); Bombardier Corp. v. Nat'l R.R. Passenger Corp., 333 F.3d 250, 252 (D.C. Cir. 2003); Bradford-Scott Data Corp., Inc. v. Physician Comput. Network, Inc., 128 F.3d 504, 506 (7th Cir. 1997)). None of these cases, however, addresses a motion for preliminary

injunction. And several reiterate the Supreme Court's guidance that district courts retain jurisdiction over matters not involved in the appeal. See e.g., McCauley, 413 F.3d at 1161 ("[w]hen an interlocutory appeal is taken, the district court only retains jurisdiction to proceed with matters not involved in that appeal.") (quoting Stewart v. Donges, 915 F.2d 572, 575-76 (10th Cir. 1990), which in turn quoted Garcia v. Burlington N. R.R. Co., 818 F.2d 713, 721 (10th Cir. 1987)); Bradford-Scott, 128 F.3d at 505 (stating "[t]he qualification 'involved in the appeal' is essential" and listing various collateral issues district courts retain control over after appeal has been filed) (quoting Griggs, 459 U.S. at 58).

The court therefore considers the various matters presently before the court to determine whether the matter raised is "involved in the appeal."

A. Defendants' Emergency Motion to Stay

As a threshold matter, neither side disputes this court's jurisdiction to consider Defendants' Emergency Motion to Stay [#107]. Under Rule 8 of the Federal Rules of Appellate Procedure, "[a] party must ordinarily move first in the district court" for certain relief, including "a stay of the . . . order of a district court pending appeal." Fed. R. App. P. 8(a)(1)(A). Defendants' Motion to Stay, properly filed first in this court, implicitly recognizes the court's jurisdiction to act on that motion, and the court proceeds to do so.

B. Plaintiffs' Emergency Motion for a Preliminary Injunction

Rule 8 similarly requires that a party "must ordinarily move first in the district court for . . . an order . . . granting an injunction while an appeal is pending." Fed. R. App. P. 8(a)(1)(C). Defendants' contention that the court may not consider Plaintiffs' Emergency Motion for a Preliminary Injunction [#90] ignores this requirement.

In Teradyne, Inc. v. Mostek Corp., 797 F.2d 43 (1st Cir. 1986), the First Circuit carefully considered the effect of the FAA on a district court's power to grant preliminary injunctive relief.

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