ENTRY ORDER

SUPREME COURT DOCKET NO. 2001-431

MAY TERM, 2002

APPEALED FROM:

Windham Superior Court

V.

DOCKET NO. 165-4-01 Wmcv

Microsoft Corporation

Trial Judge:

In the above-entitled cause, the Clerk will enter:

Ronald Rodjenski and Sara Cheeseman have petitioned this Court under V.R.A.P. 21 for a stay of this proceeding. Petitioners are not parties to this appeal, but are plaintiffs in a separate class

action lawsuit against the Microsoft Corporation. Their suit against Microsoft, which was originally

filed in Chittenden Superior Court, is currently pending in the so-called multidistrict litigation in the

U.S. District Court for the District of Maryland. Like Elkins, petitioners have alleged that

Microsoft violated the Vermont Consumer Fraud Act ("VCFA") by engaging in anticompetitive behavior. Petitioners allege that further proceedings in this matter, particularly a decision by this Court

Petitioners allege that further proceedings in this matter, particularly a decision by this Court on Elkins's argument that indirect purchasers may proceed under the VCFA, will thwart their efforts

for relief in the federal litigation, and may adversely affect their ability to settle with Microsoft.

Although petitioners were aware of the Elkins lawsuit shortly after it was filed in Chittenden Superior Court, they did not seek to intervene in or stay that proceeding before the superior court dismissed it and Elkins appealed.

Both appellant Elkins and appellee Microsoft oppose petitioners' request and have moved to dismiss. Subsequent to the motions to dismiss, petitioners filed a motion for summary judgment alleging that they are entitled to a stay of this appeal as a matter of law. Petitioners assert we must

stay this appeal because they filed their lawsuit before Elkins filed his complaint against Microsoft.

We grant the motions to dismiss petitioners' V.R.A.P. 21 complaint. The federal litigation is ongoing and we are not familiar with its factual and procedural history. Petitioners have not shown they cannot obtain the relief they seek by invoking the federal court's authority to stay a parallel state proceeding under In re Baldwin-United Corp., 770 F.2d 328 (2d Cir. 1985), a case on which they rely heavily in support of their position. The federal district court in which their suit is

pending is in a better position than this Court to assess the harm to petitioners' suit from further

proceedings in the Elkins appeal here. Whether settlement in petitioners' federal action is

imminent, a crucial factor under Baldwin-United to stay a parallel state proceeding, see 770 F.2d at 338, is a

question best left to the court managing the multidistrict litigation. Moreover, a decision from this

Court on the scope of the VCFA, which is a matter of state not federal law, will provide guidance to the federal court, and petitioners have not presented a clear reason why such guidance may be

harmful to their federal litigation. Accordingly, petitioners' complaint under $V.R.A.P.\ 21$ is dismissed and their motion for summary judgment is denied.

Jeffrey L. Amestoy, Chief Justice

John A. Dooley, Associate Justice

James L. Morse, Associate Justice

Denise R. Johnson, Associate Justice