

RECEIVED

COMMONWEALTH OF MASSACHUSETTS

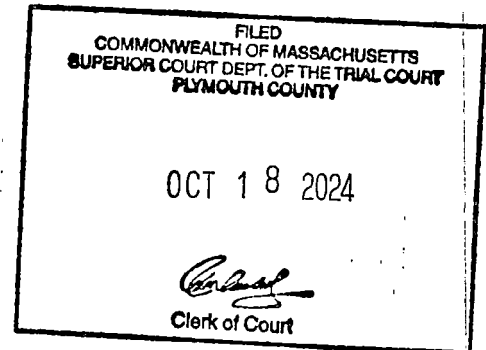
PLYMOUTH, ss.

SUPERIOR COURT DEPARTMENT
C.A. No.: 2483CV00692

PAUL O'KEEFE, AS PERSONAL REPRESENTATIVE
OF THE ESTATE OF JOHN JOSEPH O'KEEFE III;
PAUL O'KEEFE, INDIVIDUALLY; JOHN O'KEEFE II;
MARGARET O'KEEFE; and MARGARET O'KEEFE AS
GRANDPARENT/ GUARDIAN OF KAYLEY FURBUSH;
Plaintiffs,

v.

C&C HOSPITALITY, LLC d/b/a C.F. MCCARTHY'S;
G&S HOSPITALITY, LLC d/b/a C.F. MCCARTHY'S;
WATERFALL BAR & GRILL, LTD d/b/a
WATERFALL BAR & GRILL; and KAREN READ;
Defendants.



DEFENDANT, WATERFALL BAR & GRILL, LTD d/b/a
WATERFALL BAR & GRILL'S MEMORANDUM OF LAW
IN SUPPORT OF ITS MOTION TO STAY CASE
PENDING RESOLUTION OF RELATED CRIMINAL TRIAL

NOW COMES the defendant, Waterfall Bar & Grill, Ltd d/b/a Waterfall Bar & Grill ("Waterfall") and respectfully submits this memorandum of law in support of its motion to stay this case pending the trial in the related criminal matter captioned *Commonwealth v. Karen Read*, Case No. 2282CR00117 (the "criminal case"), which is currently scheduled for January 27, 2025. Waterfall submits that allowing discovery to proceed at this juncture and on the eve of the criminal trial will duplicate resources of both the Parties and third-party witnesses that would be required to testify in both matters. Conversely, a brief stay pending the outcome of the criminal trial will preserve resources, promote judicial economy, and carries little risk of prejudice to the Plaintiffs given that this case is in initial stages. This Court should therefore grant a temporary stay of this matter in its entirety pending the resolution of the criminal case.

I. FACTUAL BACKGROUND

This is a wrongful death case arising out of the death of Officer John O'Keefe on January 29, 2022. On June 9, 2022, the Commonwealth charged Karen Read, Officer O'Keefe's girlfriend, with second-degree murder, manslaughter while operating under the influence of alcohol, and leaving the scene of a collision resulting in death. *See* Case No. No. 2282CR00117, dkt. # 1. Ms. Read pled not guilty to the charges. A trial went forward in the criminal case between April 16, 2024 and June 25, 2024, drawing significant attention from the media. The Court ultimately declared a mistrial on July 1, 2024. A second trial is scheduled to begin on January 27, 2025.

On August 23, 2024, Plaintiffs commenced this case against Ms. Read, Waterfall, and C&C Hospitality, LLC d/b/a C.F. McCarthy's ("C.F. McCarthy's"). Plaintiffs' complaint enumerates claims for wrongful death and negligent infliction of emotional distress against Waterfall. *See generally*, dkt. #1. Plaintiffs specifically allege that Waterfall served Ms. Read alcoholic drinks while she was showing signs of intoxication. Dkt. #1, ¶¶ 22–26. Waterfall anticipates that discovery in this matter will focus primarily on the events leading up to Officer O'Keefe's death. To that end, discovery will necessarily require testimony from the parties and third-party witnesses who were present with and/or observed Ms. Read and Officer O'Keefe on January 28, 2022. These individuals, including employees of Waterfall, are also witnesses in the pending criminal case¹.

On October 2, 2024, Ms. Read filed a motion to stay this matter pending resolution of the criminal trial via Superior Court Rule 9A, which remains pending. *See* dkt. ## 17–18. In her motion, Ms. Read argues that her Fifth Amendment privileges require staying this matter pending the resolution of the criminal trial. *See id.* Ms. Read further raises the same concerns Waterfall has

¹ For example, Rebecca Trayer, an employee of the Waterfall who was working on January 28, 2022, was called to testify during the first criminal trial. Other employees of the Waterfall were also listed on the Commonwealth's witness list.

regarding witnesses being required to testify during overlapping proceedings in the criminal and civil cases. *See* dkt. #18, p. 3. Waterfall maintains that the interests of judicial economy favor staying this matter in its entirety pending the outcome of the criminal case in light of the significant overlap between the two cases.

II. ARGUMENT

A. This Court Has Discretion To Grant A Stay.

The authority to stay proceedings “is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. North American Co.*, 299 U.S. 248, 254–255 (1936); *see Travenol Laboratories, Inc. v. Zotal, Ltd.*, 394 Mass. 95, 97 (1985) (“We note, however, that a motion to stay proceedings is ordinarily a matter addressed to the sound discretion of the trial judge.”). Courts in Massachusetts often exercise their discretion to stay cases in light of parallel or related proceedings. *See, e.g., Precision Testing Laboratories, Inc. v. Preventive Medicine Assoc., Inc.*, Case No. 2011-SUCV-01197F, 2012 WL 6123592, at *2 (Mass. Super. Ct. Jan. 20, 2012) (staying civil case pending resolution of related criminal matter); *see also Flectat Ltd. v. KASL Seabreeze, LLC*, 257 F.Supp.3d 152, 158-59 (D. Mass. 2017) (staying federal declaratory judgment action pending resolution of underlying state court proceeding where cases involved same parties and overlap of issues); *cf. Microfinancial, Inc. v. Premier Holidays Intern, Inc.*, 385 F.3d 72, 77 (1st Cir. 2004) (observing that “[t]he pendency of a parallel or related criminal proceeding” is “prudential reason” to grant stay). When evaluating a request for a stay, courts will balance the parties’ competing interests. *See Havan-Oroomieh v. Mass. State Lottery Com’n*, Case No. 9800912G, 1998 WL 1285611, at *1 (Mass. Super. Ct. May 14, 1998) (“A motion to stay proceedings is a matter within the sound discretion of the Court. In making its discretionary

determination, the Court must balance the hardship of a stay to all the parties.”). This analysis considers factors including (1) the overlap of the issues in the two cases; (2) the status of two cases; and (3) private and public interests. *See Precision Testing Laboratories, Inc.*, 2012 WL 6123592, at *2 (Mass. Super. Ct. Jan. 20, 2012). As outlined below, these factors weigh in favor of staying this matter pending resolution of the criminal case.

B. The Issues In This Matter And The Criminal Case Directly Overlap And Thus A Stay Will Conserve The Parties’ Resources And Promote Judicial Economy.

As explained above, Ms. Read has been criminally charged with, *inter alia*, manslaughter while operating under the influence of alcohol. In this case, Plaintiffs allege that Waterfall served alcohol to Ms. Read while she was showing signs of intoxication. Dkt. #1, ¶¶ 22–26. Discovery in this matter will inevitably involve testimony from employees of Waterfall and third-party witnesses who were present with, and/or observed Ms. Read and Officer O’Keefe on the night prior to his death. Most, if not all, of these witnesses testified at the first criminal trial and will presumably be called to testify at the second trial. Allowing discovery and depositions to proceed in this case while the criminal case is pending will require these witnesses, including but not limited to Waterfall’s employees and representatives, to testify in overlapping proceedings. *Cf. S.E.C. v. TelexFree, Inc.*, 52 F.Supp.3d 349, 352 (D. Mass. 2014) (stay was appropriate where substance of two separate cases was “nearly identical” and cases relied on “identical witnesses, evidence, and financial data.”).

Staying this case will conserve the parties’ resources. *See New Balance Athletic Shoe, Inc. v. Converse, Inc.*, 86 F.Supp.3d 35, 37 (D. Mass. 2015) (Stay was warranted to “conserve party and judicial resources” in light of parallel International Trade Commission action). A stay will also promote judicial economy by obviating discovery disputes on issues that may impact the criminal case. These factors weigh in favor of granting a stay pending the outcome of the criminal trial.

C. The Requested Stay Will Not Prejudice Plaintiffs Where The Criminal Case Is Scheduled For Trial In Less Than Four Months And The Discovery Deadline In This Matter Does Not Expire Until August 2026.

Waterfall maintains that staying this matter pending the outcome of the scheduled criminal trial will not prejudice any party. Insofar as Plaintiffs disagree and/or argue that a brief stay is prejudicial to them, Waterfall submits any prejudice caused by the stay will be minimal given that the case is in its preliminary stages. Pursuant to the Court's tracking order, discovery does not expire until August 17, 2026. Neither a trial date nor a pre-trial conference has been scheduled. The criminal case, on the other hand, is scheduled for trial on January 27, 2025—less than four (4) months from now. In other words, the criminal case is “well underway,” with an estimated time of completion in early 2025, giving the parties more than ample time to complete discovery in this matter following its conclusion. *See TelexFree, Inc.*, 52 F.Supp.3d at 352; *see also Precision Testing Laboratories, Inc.*, 2012 WL 6123592, at *2 (“Since the criminal cases have been assigned a trial date, it therefore appears to this Court that the criminal cases will be reached for trial first. This factor favors the stay.”); *Blue Cross and Blue Shield of Mass, Inc. v. Regeneron Pharmaceuticals, Inc.*, 633 F.Supp.3d 385, 392 (D. Mass. 2022) (staying civil case “in its earliest stages” because “neither party has expended resources and attention on discovery” whereas parallel Department of Justice action was “well underway.”).

Moreover, the minimal prejudice to Plaintiffs is outweighed by the undue burden on the defendants and third-party witnesses that may be required to testify in overlapping proceedings. As such, this factor also weighs in favor of staying this matter pending the outcome of the criminal case. This Court should therefore grant a temporary stay of this matter in its entirety.

III. CONCLUSION

WHEREFORE, the Waterfall Bar & Grill, Ltd d/b/a Waterfall Bar & Grill respectfully requests that this Court grant this motion and stay this matter pending the resolution of the related criminal case.

Respectfully Submitted,

Defendant, Waterfall Bar & Grill, LTD d/b/a
Waterfall Bar & Grill
By its Attorneys,

/s/ David F. Hassett

David F. Hassett, Esq. (BBO #544443)
John M. Dealy, Esq. (BBO #647216)
Casey L. McCaffrey, Esq. (BBO #690407)
Hassett & Donnelly, P.C.
446 Main Street, 12th Floor
Worcester, MA 01608
Phone: (508) 791-6287
Fax: (508) 791-2652
dhassett@hassettdonnelly.com
jdealy@hassettdonnelly.com
cmccaffrey@hassettdonnelly.com

Dated: October 3, 2024

CERTIFICATE OF SERVICE

I, David F. Hassett, counsel of record for the Defendant, Waterfall Bar & Grill, LTD d/b/a Waterfall Bar & Grill, in this action, hereby certify that a true copy of the foregoing document was served via electronic and first-class mail, postage pre-paid, this 3rd day of October, 2024 to the following counsel of record:

Counsel for Plaintiffs

Marc Diller, Esq.
DILLER LAW, LLP
50 Congress Street, Suite 420
Boston, MA 02109
marc@dillerlaw.com

Counsel for Defendants

**C&C Hospitality, LLC d/b/a C.F. McCarthy's
and G&S Hospitality, LLC d/b/a C.F. McCarthy's**

Tamara Smith Holtslag, Esq.
Lincoln A. Rose, Esq.
Kevin M. Bergin, Esq.
PEABODY & ARNOLD LLP
Federal Reserve Plaza
600 Atlantic Avenue
Boston, MA 02210
tsmith@peabodyarnold.com
rose@peabodyarnold.com
kbergin@peabodyarnold.com

Counsel for Defendant

Karen Read

William L. Keville, Jr., Esq.
Christopher D. George, Esq.
Marissa K. Palladini, Esq.
Melick & Porter, LLP
One Liberty Square, 7th Floor
Boston, MA 02109
wkeville@melicklaw.com
cgeorge@melicklaw.com
mpalladini@melicklaw.com

/s/ David F. Hassett

David F. Hassett, Esquire