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COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss.

SUPERIOR COURT
C.A. NO. 2483CV00692

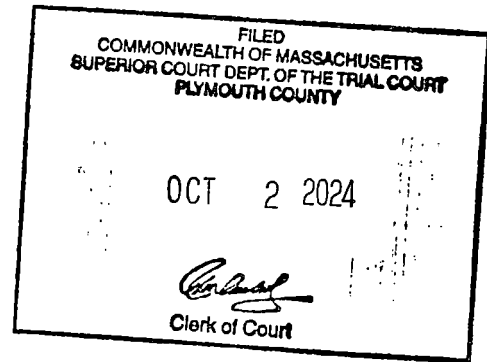
PAUL O'KEEFE, AS PERSONAL
REPRESENTATIVE OF THE ESTATE OF
JOHN JOSEPH O' KEEFE III; PAUL O'KEEFE,
INDIVIDUALLY; JOHN O'KEEFE II;
MARGARET O'KEEFE; and MARGARET
O' KEEFE AS GRANDPARENT /
GUARDIAN OF KAYLEY FURBUSH,

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.



MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION TO STAY

The Defendant, Karen Read, respectfully requests a stay of this civil action until conclusion of the pending criminal trial in Norfolk Superior Court, Docket No. 2282CR00117, which is scheduled to begin on January 27, 2025. On balance of the parties' competing interests, the relevant factors, and Ms. Read's Fifth Amendment privilege, a stay is both warranted and essential here.

I. LEGAL STANDARD

The decision to stay a civil action pending the outcome of criminal proceedings is in the discretion of the presiding judge. *See Soe v. Sex Offender Registry Bd.*, 466 Mass. 381, 388 (2013). In considering a request for a stay, "it would constitute a clear abuse of discretion for the judge to turn a deaf ear to a serious claim of privilege." *U. S. Tr. Co. v. Herriott*, 10 Mass. App.

Ct. 313, 316–17 (1980). The privileges afforded to Ms. Read under the Fifth Amendment would be substantially impacted should this action proceed while the criminal prosecution is ongoing.

Given the discretionary nature of the Court’s role in ruling on a motion to stay, the decision to grant a stay “ultimately requires and must rest upon ‘a particularized inquiry into the circumstances of, and the competing interests in, the case.’” *Soe*, 466 Mass. at 392. This inquiry involves a balance of the prejudice to the other parties against the harm to Ms. Read should she be “compelled to choose between defending the civil action and protecting [herself] from criminal prosecution.” *Herriott*, 10 Mass. App. Ct. at 317.

The inquiry on a motion to stay involves consideration of other competing factors as well, which Massachusetts courts have derived from federal courts. Such competing interests include, amongst others: (1) interests of non-parties; (2) public interest; (3) overlap of the issues; (4) procedural status of the criminal case; and (5) interests of judicial economy. See *Precision Testing Laboratories, Inc. v. Preventive Medicine Associates, Inc.*, 2012 WL 6123592 (Mass.Super. Jan. 20, 2012), citing *Trustees of Plumbers & Pipefitters Nat. Pension Fund v. Transworld Mech., Inc.*, 886 F. Supp. 1134, 1139 (S.D.N.Y. 1995); *Del Valle vs. Bechtel Corp.*, Mass. Super., No. 06-3654 (July 30, 2008)) quoting *Nowaczyk v. Matingas*, 146 F.R.D. 169, 174 (N.D.Ill., E.Div., 1993). Relevant Superior Court decisions are attached as Exhibit A.

II. ARGUMENT

a. A balance of the potential burden and prejudicial effects weigh in favor of a stay.

There will be no prejudice to the plaintiffs, nor to the co-defendants, should this brief stay be granted. To the contrary, Ms. Read’s ability to vigorously defend herself from criminal prosecution will be substantially prejudiced should this civil litigation proceed while her criminal trial takes place. The only potential prejudice to the plaintiffs is the inconvenience of a brief time delay. That inconvenience does not outweigh the importance and interest in protecting of a

defendant's constitutional rights. See *Green v. Cosby*, 177 F. Supp. 3d 673, 681 (D. Mass. 2016). Moreover, the Court's tracking order allows for discovery up to and including August 17, 2026, and sets forth a final disposition date of August 26, 2027. See Exhibit B. The parties will have ample time to fully discover the facts concerning the allegations and defenses raised in this civil matter upon conclusion of the criminal trial presently scheduled for January 27, 2025.

On the other hand, without a stay, Ms. Read will be forced to decide between exposing herself to a procedural default or waiving her Fifth Amendment rights. Ms. Read is not merely under criminal investigation; she has been indicted, mis-tried, and now awaits a second trial. The basic filing of a responsive pleading to the Complaint alone could compromise Ms. Read's defense against criminal prosecution. See, e.g., *J & G Foods, Inc. v. Eaton*, 2012 WL 4049225, (Mass. Super. July 12, 2012)("The defendant has now been indicted, so exposure to criminal liability cannot be considered a possibility, it is a reality.")(attached as Exhibit A). The potential burden and harm to Ms. Read significantly outweighs the inconvenience to the other parties of a time delay. Thus, on balance, these factors favor a stay of the civil case.

b. Public interest and the interests of non-party witnesses favor a stay.

The public and non-party interest surrounding this case weigh in favor of a stay. There is a significant public interest in providing criminal defendants with a fair trial and protecting their constitutional rights. While the public interest is also served by providing plaintiffs and defendants an efficient forum to resolve civil matters, this civil action can still be fairly litigated within the timeframe set forth in the attached tracking order despite a stay. See Exhibit B. The public interest therefore favors a stay of the civil case.

Non-party witnesses will similarly benefit from a stay. It is anticipated that many witnesses will testify at the upcoming criminal trial. The same witnesses' testimony may also be relevant to the parties' arguments and defenses in the civil litigation. If the civil litigation

proceeds and overlaps with the criminal trial, these witnesses could conceivably be subjected to testifying on the witness stand while simultaneously being called for deposition in civil discovery. This would place an unfair burden on both the witnesses and the parties in both the civil and criminal litigation. Thus, this factor also favors a stay of the civil case.

c. The overlap with the criminal case and procedural status of both cases further warrants a stay of the civil proceedings.

The allegations and issues in the criminal case directly overlap with the issues in the civil case. The decedent, witnesses, and evidence are the same in both cases. Ms. Read's second criminal trial is scheduled to begin on January 27, 2025. A trial date has been assigned and the Norfolk Superior Court will reach the criminal trial years in advance of the trial of this civil action. The tracking order for this civil action provides the parties with two years' time for discovery and three years' time for final disposition. See Exhibit B. Even with a stay, the parties will still be on track to complete discovery within the current deadlines. Thus, the overlapping issues and procedural status of the two cases also favors a stay. See Precision Testing Laboratories, Inc., 2012 WL 6123592.

d. This civil action should be stayed in the interests of judicial economy.

Ms. Read's proposed stay serves the interest of judicial economy. The stay will alleviate the Court's burden of ruling on potential discovery motions and requests for protective orders should Ms. Read decide to invoke her Fifth Amendment privilege. It is in the best interests of this Court, the parties, non-party witnesses, and the public to allow this brief stay until Ms. Read's criminal trial concludes. Thus, judicial economy also favors a stay of the civil case.

III. CONCLUSION

The competing interests and relevant factors all weigh strongly in support of a stay of this civil action pending completion of Ms. Read's criminal trial. In light of the foregoing, the Defendant, Karen Read, respectfully requests a stay of all proceedings in the above-captioned

matter until conclusion of her upcoming criminal trial in Norfolk Superior Court, which is presently scheduled to begin on January 27, 2025.

Respectfully submitted,

The Defendant,
Karen Read,
By her attorneys,

/s/ William L. Keville, Jr.

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Dated: September 19, 2024

CERTIFICATE OF SERVICE

I, William L. Keville, Jr., hereby certify that on this day, I forwarded notice of the foregoing document(s) by electronically mailing a copy thereof, to the following:

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Dated: September 19, 2024