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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

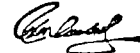
v.

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.

FILED
COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPT. OF THE TRIAL COURT
PLYMOUTH COUNTY

OCT 18 2024


Clerk of Court

**PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT
WATERFALL BAR & GRILL, LTD'S MOTION TO STAY CIVIL PROCEEDINGS**

Defendant Waterfall Bar & Grill, Ltd. (hereinafter "Waterfall") requests a stay here largely because "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."

Plaintiffs oppose Defendant Waterfalls' request because the potential for duplication of resources is overstated and does not outweigh the prejudice that will burden the Plaintiffs should this Court order a stay of the civil proceedings. First, the potential for duplication of resources fails to recognize that discovery in the civil case extends beyond the relevant inquiries of witnesses in the criminal case. Second, Waterfall's assertion that a "brief stay" poses little risk of prejudice to the Plaintiffs is inaccurate. Not only is Defendant Read using the media to poison the jury pool, but also any delay risks the degradation of evidence, including witnesses'

memories. Therefore, the purported concerns over duplication are outweighed by the hardship and substantial risk of prejudice Plaintiffs would face should a stay be granted.

I. LEGAL STANDARD

The movant carries the “heavy burden” of establishing that a stay is warranted. See *Microfinancial, Inc. v. Premier Holidays, Int’l, Inc.*, 385 F.3d 72, 77 (1st Cir. 2004) citing *Austin v. Unarco Indus. Inc.*, 705 F.2d 1, 5 (1st Cir. 1983).

“A motion to stay proceedings is ordinarily a matter addressed to the sound discretion of the trial judge.” *Travenol Laboratories, Inc. v. Zotal, Ltd.*, 394 Mass. 95, 97 (1985). Courts must weigh “the interest of the Plaintiffs in proceeding expeditiously” against “the burden on defendants.” *Del Valle v. Bechtel Corp.*, Mass. Super. No. 06-3654 (July 30, 2008) quoting *Nowaczyk v. Matignas*, 264 F.R.D. 169, 174 (N.D.Ill., E.Div., 1993).

“A general stay of all civil discovery is not by any means the best option available to the court or to the litigants. Stays can and should be tailored to avoid undue prejudice. [...] A Court can allow civil proceedings to progress as much as possible without prejudicing the relative interests of the litigants.” *Green v. Crosby*, 177 F. Supp. 3d 673, 678-670 (D. Mass. 2016) citing *Parallel Civil Criminal Proceedings*, 129 F.R.D. at 211; see also *United States Securities and Exchange Commission v. Kanodia*, 153 F. Supp. 3d 478 (D. Mass. 2015) (Burroughs, J.)(denying stay during criminal proceedings, with exception of two specified depositions).

When a stay of proceedings is requested, the rights to the parties to the civil action are to be considered as equal. See *U.S. Trust Co. of New York v. Herriot*, 10 Mass. App. Ct. 313, 317 (1980). “The overall interest of the courts that justice be done may very well require that the compensation and remedy due a civil plaintiff should not be delayed.” *Id.* quoting *Gordon v. Federal Deposit Ins. Corp.*, 427 F.2d 578, 580 (D.C. Cir. 1970).

II. ARGUMENT

Defendant Waterfall overstates its concern that allowing civil discovery to proceed will force witnesses to testify in overlapping proceedings because witnesses can participate in both the civil and criminal matters without undue burden.

Only a few of the witnesses relevant to Waterfall's liability here overlap. For example, many of the ownership and/or staff of Waterfall are not expected to testify in Read's criminal case even though they are expected to testify in the civil case. Moreover, facts relevant to the criminal matter for Waterfall employees/agents do not align with the civil matter, and the inquiry is expected to be wholly different in the civil case.

The operative time relevant to Waterfall's liability (times of service) does not align with the relevant times in the Read criminal matter (time of Read's drunk driving). Anecdotal testimony of Read's visible intoxication at Waterfall from other inebriated patrons of the Waterfall may not carry the same weight as bar staff who are supposed to be trained professionally to identify visible signs of intoxication.

The O'Keefe family also has compelling reasons to lock in testimony from Karen Read, who seeks not only to poison the jury pool with her regular communications with the media, reporters and/or bloggers, but also has one foot out of Massachusetts now that her house has sold.

Moreover, the risk of witness memories fading and/or relevant witnesses from Waterfall moving on with their lives and becoming uncooperative is not insignificant. Here, as in *Del Valle*, "a delay of discovery [...] poses a real risk of irremediable loss of witness memory and [...] a ...] risk of witness unavailability [...]. The resulting prejudice to [Plaintiffs'] ability to prove

their claims would be substantial,” outweighing the Defendant’s reluctance to respond to the Plaintiffs’ discovery requests.

The O’Keefe family has a right to a timely resolution. Based on Waterfall’s request, a stay here could be indefinite. Additional delays in the criminal trial’s resolution, including another mistrial, a lengthy appeal, or other legal complications are real possibilities here. If the Defendants received the requested stay, Plaintiffs likely would be prejudiced by fading witness memories and delays in justice.

III. CONCLUSION

This Court should DENY Defendant Waterfall’s request to stay these civil proceedings because overlap between the civil and criminal cases is minimal, and many of the issues relevant to the Waterfall’s liability are not significant in the criminal matter. It is feasible for both to proceed concurrently without imposing undue burden upon witnesses or parties. To avoid prejudice based on witness unavailability, failed memories and/or Karen Read’s attempts to poison the jury pool through her public statements, this Court should exercise its discretion to DENY a stay of the civil case pending the criminal matter’s resolution.

Respectfully submitted,
The Plaintiffs
By Their Attorney

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Dated: 10/17/2024

CERTIFICATE OF SERVICE

I, Marc Diller, do certify that on this 17th day of October 2024, I caused the foregoing document to be served via electronic mail upon the following counsel of record:

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