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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 28 2024


Clerk of Court

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

Defendants C&C Hospitality, LLC d/b/a C.F. McCarthy's and G&S Hospitality, LLC d/b/a C.F. McCarthy's (together "C.F. McCarthy's") joins Defendant Waterfall Bar & Grill, Ltd.'s (hereinafter "Waterfall") Motion to Stay Civil Proceedings pending the outcome of Commonwealth v. Karen Read (Norfolk No. 2282CR0117) (hereinafter "the criminal case") primarily because "cursory review" of the Plaintiffs' allegations reveal overlapping issues between the cases; because the criminal case is "far more developed" than this civil action; and "public and private interests [...] weigh in favor of a stay."

Plaintiffs oppose C.F. McCarthy's Motion to Stay because the potential for overlapping issues is overstated and does not outweigh the prejudice posed to Plaintiff by a delay in these civil proceedings. As it pertains to C.F. McCarthy's, discovery in this civil case extends far beyond the subject matter of the criminal case. Second, a stay here poses serious risk of prejudice

to the Plaintiffs because (1) Defendant Read is actively poisoning the jury pool with her public statements and media galivanting, and (2) any delay risks the degradation of evidence, including witnesses' memories. Therefore, purported concerns about overlapping issues and public and private interests are outweighed by the hardship and substantial risk of prejudice the 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).

II. ARGUMENT

Defendant C.F. McCarthy's concerns about overlapping issues in the civil and criminal cases are overstated because the subject matter of the civil case extends far beyond that of the criminal case. For example, most witnesses in the civil case, including C.F. McCarthy's ownership and staff, are not expected to testify in the criminal case, and most witnesses in the criminal case will not be asked to testify in the civil case. Anecdotal testimony of Read's visible intoxication at C.F. McCarthy's from other patrons, who were likewise inebriated, will not carry the same weight as bar staff who are supposed to be trained professionally to identify visible signs of intoxication. While both cases have a few witnesses in common, those witnesses can participate in both matters without undue burden. Additionally, the operative time relevant to C.F. McCarthy's liability (times of service) does not align with the relevant times in the criminal case (time of Read's drunk driving). Essentially, discovery in the civil case will be substantially different from that of the criminal case.

The O'Keefe family also has compelling reasons to lock in testimony from Defendant Karen Read, who not only seeks to poison the jury pool by speaking regularly to the media, but also has one foot out of the Commonwealth now that her Massachusetts house has sold. As recently as last week, on October 18, Read's second television interview with NBC's Dateline aired, dubbing Read "the woman at the center of it all."

Moreover, the risk of witnesses' memories fading and/or relevant witnesses from C.F. McCarthy's moving on with their lives and becoming uncooperative is not significant. 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 Plaintiffs’ discovery requests.

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

III. CONCLUSION

Plaintiffs respectfully request this Honorable Court DENY Defendant C.F. McCarthy’s request to stay these civil proceedings because overlap between the civil and criminal cases is minimal, and many of the facts and issues relevant to C.F. McCarthy’s liability here 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, faded memories and 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,

/s/ Marc Diller
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Dated 10/24/2024

CERTIFICATE OF SERVICE

I, Marc Diller, do certify that on this 24th day of October, 2024, I caused the foregoing document to be served via electronic mail upon the following counsels of record:

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