

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
No. SJ-2022-M002

JOHN DOE

v.

ROMAN CATHOLIC BISHOP OF SPRINGFIELD, A CORPORATION SOLE & others.

MEMORANDUM OF DECISION AND ORDER

I have before me a motion to stay the proceedings in a civil action in the Superior Court pending an interlocutory appeal by the defendants in that action, the Roman Catholic Bishop of Springfield, a corporation sole, and others. For the following reasons, I deny the motion.

Background. In the Superior Court action, John Doe (a pseudonym) brought several claims arising from his alleged childhood sexual abuse by Roman Catholic clergy in Springfield during the 1960s and from the defendants' investigation and review of those allegations after he reported them in 2014. The defendants moved to dismiss Doe's complaint, arguing that some of the counts therein are barred by common law charitable immunity¹ and that the court lacked subject matter jurisdiction over the remaining counts under the First Amendment doctrine of church autonomy. A Superior Court judge denied the motion to dismiss, and the defendants appealed, asserting that an interlocutory appeal is available to them under the doctrine of present

¹ The conduct alleged in those counts predated the enactment of the charitable immunity statute, G. L. c. 231, § 85K.

execution. The defendants also moved in the Superior Court for a stay pending appeal. The same judge denied that motion. The defendants then filed a like motion to stay in the Appeals Court. A single justice of the Appeals Court denied the motion, and the defendants appealed from that ruling to a panel. That appeal was consolidated with the interlocutory appeal from the denial of the motion to dismiss, and the full court transferred the consolidated appeal to its own docket sua sponte. The defendants then filed, in the full court, a new motion for a stay of the Superior Court proceedings pending appeal. That motion has been referred to me for disposition.

Discussion. The defendants assert that they are entitled to de novo review. On the contrary, “a motion to stay proceedings is ordinarily a matter addressed to the sound discretion of the trial judge.” Commerce Ins. Co. v. Szafarowicz, 483 Mass. 247, 256 (2019), quoting Travenol Lab., Inc. v. Zotal, Ltd., 394 Mass. 95, 97 (1985) (judge did not abuse discretion by denying motion to stay wrongful death action pending resolution of insurer’s separate action seeking declaratory judgment as to coverage). Even if I were to review the matter anew, however, I would conclude that a stay is not warranted.

“An appellant seeking a stay pending appeal must ordinarily meet four tests: (1) the likelihood of appellant’s success on the merits; (2) the likelihood of irreparable harm to appellant if the court denies the stay; (3) the absence of substantial harm to other parties if the stay issues; and (4) the absence of harm to the public interest from granting a stay.”² C.E. v. J.E., 471 Mass.

² Strictly speaking, these are the four factors to be considered when an appellant seeks a stay pending appeal pursuant to Mass. R. A. P. 6, as appearing in 481 Mass. 1608 (2019). That rule permits an appellant to apply “for a stay of the judgment or order of a lower court pending appeal, for approval of a bond under Rule 6 (a) (2), or for an order suspending, modifying, restoring or granting an injunction during the pendency of appeal.” Mass. R. A. P. 6 (a) (1). The rule says nothing about a stay of trial court proceedings pending an interlocutory appeal. Nevertheless, both the parties and the motion judge have analyzed the defendants’ motion using these four factors. I shall do likewise. The defendants’ success (or lack thereof) on their

1016, 1017 (2015), quoting J.W. Smith & H.B. Zobel, Rules Practice § 62.3, at 409 (2d ed. 2007). The defendants have not made the requisite showing.

As to the first factor, likelihood of success on the merits, the defendants can prevail on their interlocutory appeal only if they convince the full court not only that their motion to dismiss was wrongly denied, but also, as a threshold matter, that their interlocutory appeal is proper under the doctrine of present execution.³ The defendants have not shown a strong likelihood of getting over that threshold. As noted, the defendants moved to dismiss some counts of Doe’s complaint on the ground that the court lacked subject matter jurisdiction. The full court has ruled that a party is not entitled to take an interlocutory appeal from the denial of a motion to dismiss on that basis. See Matter of Hamm, 487 Mass. 394, 400-401 (2021), discussing Maxwell v. AIG Domestic Claims, Inc., 460 Mass. 91, 99-100 (2011). The defendants moved to dismiss the remaining counts on the ground of common law charitable immunity. Because “only immunity from suit entitles a party to an interlocutory appeal under the doctrine of present execution,” it will be necessary for the court to determine whether common law charitable immunity granted an immunity from suit or merely an immunity from liability. See Lynch v. Crawford, 483 Mass. 631, 634-635 (2019). The defendants have not identified any case suggesting that it was an immunity from suit. Moreover, the doctrine of present execution provides that an interlocutory order may be appealable when it is “collateral to rest of the controversy” and “interferes with rights that cannot be remedied on appeal from a final judgment.” CP 200 State, LLC v. CIEE,

interlocutory appeal from the denial of the motion to dismiss, along with the balance of harms, is plainly relevant to whether the case will proceed in the Superior Court.

³ Moreover, in order to avoid further proceedings in the Superior Court, the defendants must do so as to all of Doe’s claims. To the extent that any count of Doe’s complaint survives, either because the interlocutory appeal is improper or because the motion judge was correct on the merits, the case will proceed in the Superior Court.

Inc., 488 Mass. 847, 849 (2022), quoting Estate of Moulton v. Puopolo, 467 Mass. 478, 485 (2014). The defendants' claims of both charitable immunity and lack of subject matter jurisdiction appear to be factually bound up with the merits of Doe's claims, not collateral to them. While it is conceivable that the full court may hold otherwise, at this juncture, it appears that the weight of authority is against allowing the defendants' interlocutory appeal to proceed. In sum, they have not shown a sufficient likelihood of success on the merits to warrant staying proceedings in the Superior Court.

The remaining factors, concerning the harms to the parties and the public interest, do not tip the balance in favor of a stay. I am not persuaded that a stay is necessary to avoid irreparable harm to the defendants. If a stay is not granted, the defendants will have to continue to expend their resources on discovery and motion practice. These are merely the ordinary expenses of litigation. On the other side of the balance, granting a stay will delay resolution of Doe's claims until the full court disposes of the interlocutory appeal. While I do not expect that to be a delay of more than a few months, it is nonetheless time that Doe cannot get back.⁴ Finally, the defendants have not demonstrated that a stay is in the public interest.

The motion for a stay is denied.

/s/ David A. Lowy
Associate Justice

ENTERED: March 4, 2022

⁴ In this regard, I note that Doe has been granted a speedy trial in the Superior Court. While this does not guarantee him any particular trial date, he nonetheless has a right to expeditious resolution of his case.