

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU - PART CVA-R

X

ARK3 DOE,

Plaintiff,

Index No.: 900010/2019

Mot. Seq. No. 007

COUNTY OF NASSAU

Decision & Order

Present: Hon. Steven M. Jaeger

-against-

DIOCESE OF ROCKVILLE CENTRE, aka
THE ROMAN CATHOLIC DIOCESE OF ROCKVILLE
CENTRE, NEW YORK; ST. HUGH OF LINCOLN aka
ST. HUGH OF LINCOLN ROMAN CATHOLIC CHURCH
aka ST. HUGH'S and DOES 1-5 whose identities
are unknown to Plaintiff,

Defendants.

X

Defendant THE DIOCESE OF ROCKVILLE CENTRE (hereinafter DIOCESE) has moved in this and 85 other cases for a stay of all proceedings pending appeal from the Court's Decision and Order dated May 11, 2020 (the "May 11, 2020 Decision") insofar as the Court denied the DIOCESE's motion to dismiss in 37 of the pending cases. The DIOCESE seeks review in those cases of this Court's determination that the claims revival provision in the Child Victims Act (L. 2019 c. 11) ("CVA") is not violative of the Due Process clause of the New York State Constitution (Art. 1 § 6).

BACKGROUND

On February 14, 2019, New York State enacted the CVA which, *inter alia*, (1) extended the statute of limitations on criminal cases involving certain sex offenses against children under 18 (see CPL 30.10[f]); (2) extended the time in which civil actions

based upon such criminal conduct may be brought until the child victim reaches 55 years old (see CPLR 208 [b]); and (3) opened a one-year window reviving civil actions for which the statute of limitations has already run (even in cases that were litigated and dismissed on limitations grounds), commencing August 14, 2019 (see CPLR 214-g).

The legislation was primarily intended to revive civil claims by survivors of childhood sexual abuse that were time-barred under the existing statute of limitations, and to provide a more generous statute of limitations for such claims in the future. See, McKinney's CPLR 214-g, Practice Commentaries, by Vincent Alexander. These revived actions may be commenced during the twelve-month period that runs from August 14, 2019 through August 14, 2020. Governor Cuomo recently signed an Executive Order extending the revival period for an additional five months until January 14, 2021 (Executive Order 202.29).¹

Starting on August 14, 2019, civil actions were commenced against the DIOCESE and certain of its Parishes in the Supreme Court of the State of New York alleging sexual abuse that, but for the passage of the CVA, would have been time barred (the "Revival Cases"). This Court was assigned to handle all CVA pretrial proceedings in the Ninth and Tenth Judicial Districts by Administrative Order dated September 9, 2019.

As of the date the DIOCESE filed its stay motions, there were approximately 106 cases filed against the DIOCESE. Of those cases approximately 91 were filed in this CVA Region Court; approximately 15 filed in the New York City CVA Regional Court; and one case (originally filed in Kings County) was removed to federal district court.

¹ There is also legislation awaiting the Governor' signature extending the time period through August 14, 2021.

There was one case commenced before August 14, 2019 which, upon consent of the parties, was stayed until August 14, 2019.

In September 2019, given the number of cases (46) then pending against the DIOCESE (and which now total more than 100), the DIOCESE sought, pursuant to CPLR 602, an order providing for pre-trial proceedings in all of the CVA actions in which the DIOCESE was named as a defendant. This Court granted the DIOCESE's motion on November 19, 2019, to the extent that it issued a Case Management Order ("CMO") "applicable to all cases filed pursuant to CPLR 214-g where the DIOCESE is a named party-defendant in the Ninth and Tenth Judicial Districts."

In accord with the CMO, the DIOCESE filed two separate sets of motions to dismiss pursuant to CPLR 3211(a)(5) and (a)(7); the first on November 12, 2019, in 44 cases, and the second on January 10, 2020, in 22 cases. On or about May 11, 2020 this Court issued 35 Orders denying the first set of motions to dismiss as to the Due Process claim asserted by the DIOCESE. The second set of motions to dismiss is not yet fully briefed. There also remain more than 22 cases pending in this Court where the DIOCESE has not yet moved to dismiss because its responses to the complaints are not yet due.

In all the cases brought against it, the DIOCESE states it has or will raise the same issue on appeal: the claim revival provision of the CVA violates the DIOCESE's right to due process under the New York State Constitution. Accordingly, the DIOCESE now seeks a stay of all proceedings pending appeal of the Court's May 11, 2020 Decision as to all CVA "Revival Cases" in which the DIOCESE is a Defendant pending

before this Court.²

The DIOCESE's motion is supported by a Memorandum of Law and the Affidavit of Charles Moore ("Moore"), an advisor to the DIOCESE. Moore is a Managing Director in the Restructuring & Turnaround division of Alvarez & Marsal North America, LLC ("A&M"), a professional services firm specializing in turnaround management and performance improvement. He states that the purpose of his affidavit is to provide background information about the structure and finances of the DIOCESE, "including its charitable missions, its current resources, and its obligations, especially as a result of litigation filed pursuant to...the Child Victims Act (the "CVA"), and, most recently, the COVID-19 pandemic."

Moore summarized the contents of his affidavit as follows:

3. Part I of this Affidavit provides background regarding the Diocese; its mission; its charitable, educational, and religious-service affiliates; and its Parishes and their schools. Part I also summarizes the sources and the decline of the Diocese's revenues, even before the COVID-19 pandemic and the litigation against the Diocese pursuant to the CV A, and the Diocese's recent efforts to reduce its costs. Part II sets forth the Diocese's efforts, as part of its mission, relating to reconciliation and compensation of those alleging abuse, including its Independent Reconciliation and Compensation Program ("IRCP"). Through the IRCP, the Diocese has paid out through March 2020 over \$57 million to abuse survivors, satisfying every eligibility determination that the Program Administrators have made and that the claimants have accepted. The Diocese's IRCP has continued during this CVA litigation, and the Diocese currently plans to have it remain open while it remains financially feasible.

² The Court has been advised that there are also approximately 13 cases pending before Justice Silver as the CVA Regional Court for New York City. Justice Silver entered Case Management Order No. 1 on February 24, 2020. Pursuant to that CMO, on May 8, 2020 the DIOCESE moved to dismiss those 13 CVA cases on substantially the same constitutional and other grounds as in this Court (The CMO in the New York City CVA Regional Court provides for a stay of discovery while those motions to dismiss are pending).

4. Part III describes the CV A litigation against the Diocese, related expenses (especially in connection with the pre-trial proceedings), and potential liabilities. In contrast to the IRCP, where the Diocese has been paying in full all of the awards, the Diocese's potential exposure in the approximately 94 CVA cases pending against it - the vast majority of which seek both compensatory and punitive damages, many in the multiple millions of dollars - far exceeds the Diocese's assets, excluding insurance. Part III also explains that the Diocese's insurers have not, to date, provided coverage or reimbursement of significant expenses relating to the CVA litigation, nor, in any event, can insurers provide coverage for any punitive damages determinations. Part IV describes the further detrimental effect on the Diocese's revenues due to the COVID-19 pandemic, which has caused a precipitous drop in collections at the Diocese's parishes that, in turn, has adversely impacted the Diocese's financial condition.

5. Part V summarizes the Diocese's assets, revenues, potential liabilities, and the current financial situation, again excluding insurance coverage for the CVA lawsuits. This financial data shows that, absent insurance coverage (which, again, is unavailable for any punitive damages determination), the Diocese's potential exposure in the CVA litigation brought against it far outweighs the Diocese's assets, and that the Diocese will likely be unable to satisfy an appreciable number of adverse judgments against it if the lawsuits were to proceed through trial.

6. Absent a stay of these proceedings pending the Diocese's appeal from the Court's order on the motions to dismiss, the Diocese's practical reality will be that it will have to end the IRCP and file for protection under Chapter 11 of the U.S. Bankruptcy Code.

(emphasis added)

Plaintiff opposed the motion in a Memorandum of Law.

In reply, the DIOCESE provided an Affirmation of counsel and a Reply Memorandum. Counsel noted that the DIOCESE filed a motion in the Appellate Division, Second Department to consolidate or coordinate these appeals and to request

an expedited briefing schedule in accordance with the Appellate Division's rule (see 22 NYCRR §670.3[b][1][b] & [b][2]).

Counsel for co-Defendant submitted an Affirmation in support of the motion by the DIOCESE.

DISCUSSION AND RULING

A trial court has broad discretion to grant or deny a request to stay an action under CPLR § 2201. *Gallo v Mayer*, 50 Misc2d 385 (Sup. Ct. Nassau Co. 1966) (Meyer, J.), *aff'd* 26 AD2d 773 (2d Dept); 4 New York Civil Practice: CPLR P 2201.05 (2020).

However, granting a stay pending determination of an appeal should be carefully considered:

“The granting of a stay pending an appeal rests in the sound discretion of the court” (Application of Mott, 123 NYS2d 603, 608 [Sup Ct, Oswego County 1953], citing *Genet v Delaware & Hudson Canal Co.*, 113 NY 472 [1889]). Courts consider the following factors when determining whether a discretionary stay is appropriate, i.e., whether (1) the appeal has merit, (2) any prejudice will result from granting or denying a stay, and (3) the stay is designed to delay proceedings (*id.*, citing *Emigrant Mission Comm. of German Evangelical Lutheran Synod of Missouri, Ohio v Brooklyn Elevated R.R. Co.*, 40 AD 611 [2d Dept 1899]; see *Navy Yard Hous. Dev. Fund v Carr*, 2002 WL 1174711, *2, 2002 NY Misc LEXIS 581, [Civ Ct, Kings County 2002]).

Sojitz Corp. v. Prithvi Information Solutions Ltd., 2010 WL 9049252 (Sup. Ct. New York Co. 2010); *see also*, *Estate of Salerno v Estate of Salerno*, 154 AD2d 430 (2d Dept. 1989).

The primary factor considered under various statutes permitting discretionary stays is whether the party seeking the stay has demonstrated that the appeal has merit. *See e.g.*, *DaSilva v. Musso*, 76 NY2d 436, 443 fn.4 (1990) (“...the court considering the

application may consider the merits of the appeal[.]”); *Matter of Rosenbaum v. Wolff*, 270 AD 843 (2d Dept. 1946) (motion for a stay denied for lack of meritorious showing); *Herbert v. City of New York*, 126 AD2d 404, 407 (1st Dept. 1987) (holding that “stays pending appeal will not be granted ...in cases where the appeal is meritless”); *Moraetis v Evans*, 2017 WL 377348 (Sup. Ct. NY Co. 2017).

In addition to considering the merits of the appeal, a court may consider the prejudice that may result to the moving party if the stay is denied and the potential prejudice that may result to the opposing party if the stay is granted. See, *Sojitz Corp.*, *supra*. Further, a stay should not be granted in cases where the appeal is primarily taken for the purpose of delay. See, *e.g.*, *Herbert v. City of New York*, 126 AD2d at 407.

The Court’s due process determination denying the DIOCESE’s motions to dismiss in these CVA cases was neither novel nor one of first impression. In holding that the claims revival provision satisfies the Due Process clause of the State Constitution, the Court applied the clear standard recently stated by the Court of Appeals in *Matter of World Trade Ctr. Lower Manhattan Disaster Site Litig.* 30 NY3d 377 (2017) (hereinafter cited as *World Trade Ctr.*): “The cases we have just discussed all express one and the same rule: a claim-revival statute will satisfy the Due Process Clause of the State Constitution if it was enacted as a reasonable response in order to remedy an injustice.” 30 NY3d at 400.

Claim-revival provisions have been analyzed in caselaw in this State for many years. See, *e.g.*, *Robinson v. Dry Dock & Repair Co.*, 238 NY 271 (1924); *Gallewski v. H. Hentz & Co.*, 301 NY 164 (1950); *McCann v. Walsh Const. Co.*, 282 AD 444 (3d Dept. 1953), *aff’d without op.*, 306 NY 904 (1954); *Hymowitz v. Eli Lilly & Co.*, 73 NY2d

487 (1989); *Zumpano v. Quinn*, 6 NY3d 666 (2006).

In *Zumpano*, a case that predates the passage of the CVA, the Court of Appeals rejected plaintiffs' claim that equitable estoppel should preclude defendants from use of the statute of limitations defense as a shield. The Court of Appeals upheld the dismissal of claims of child sexual abuse by priests as time-barred but expressly invited the Legislature to take action on behalf of similarly situated plaintiffs in the future:

"Regrettably, many of these claims are time-barred, and absent relief from the Legislature will remain unredressed." 6 NY3d at 671. Judge Ciparick, writing for the Court, concluded:

...as we began: however reprehensible the conduct alleged, these actions are subject to the time limits created by the Legislature. Any exception to be made to allow these types of claims to proceed outside of the applicable statutes of limitations would be for the Legislature, as other states have done.

Zumpano v. Quinn, 6 NY3d at 677 (footnote omitted); *see also, Regina Metropolitan Co., LLC v. New York State Div. of Housing & Community Renewal*, 2020 NY Slip Op 02127, 2020 WL 1557900, at *14 fn. 21 (Court of Appeals, April 2, 2020), citing with approval to *World Trade Ctr.*, 30 NY3d at 400.

Since the passage of the CVA last year other courts have faced similar arguments from CVA defendants and rejected them by upholding the statute by applying the *World Trade Ctr.* test: that the CVA is a reasonable response to remedy an injustice. *See, e.g., Torrey v. Portville Cent. Sch.*, 2020 NY Slip Op 50244(U), 66 Misc3d 1225(A) (Sup. Ct. Cattaraugus Co. 2020) ("Based on [the Legislative Memorandum for the Bill], the Court finds the Child Victims Act a reasonable response to remedy an injustice."); *Giuffre v. Dershowitz*, 2020 US Dist. Lexis 78596 (S.D.N.Y.

April 8, 2020). In *Guiffre supra* at *5-6, Judge Preska held that:

Indeed, the New York Court of Appeals has recently enunciated the permissive stance that a given revival statute will not run afoul of New York's due process clause if it merely "was a reasonable measure to address an injustice." *Matter of World Trade Ctr. Lower Manhattan Disaster Site Litig.*, 30 N.Y.3d 377, 400, 67 N.Y.S.3d 547, 89 N.E.3d 1227 (2017). In doing so, the Court of Appeals specifically rejected the kind of heightened standard for claim-revival statutes that Dershowitz presses the Court to apply here....

Applying that reasoning, the CVA's claim-revival provision obviously reflects the New York State Legislature's desire to correct a perceived injustice, i.e., that the statute of limitations for certain claims expired before child victims of sexual abuse recovered from past traumas to a degree sufficient to assert their rights.

(emphasis added)

Thus, this Court finds that the DIOCESE has not shown a likelihood of success on the merits of its appeal from the May 11, 2020 Decision. The DIOCESE's argument ignores the Court of Appeals' holdings in *World Trade Ctr.* and *Zumpano*. None of the cases cited by the DIOCESE supports its contention that the claim revival provision of the CVA violates the Due Process clause of the NY Constitution. Accordingly, the Court finds the contemplated appeal of the May 11, 2020 Decision that the CVA was a reasonable response to remedy injustice to be without merit.

As well, the Court finds that if it granted a stay it would significantly delay and prejudice the plaintiffs in these actions. The CVA was enacted to "allow justice for past and future survivors of child sexual abuse, help the public identify hidden child predators through civil litigation discovery, and shift the significant and lasting costs of child sexual abuse to the responsible parties." 2019 Legis. Bill Hist. NY S.B. 2440.

The Court finds that the delay in seeking justice has already been significant and

further delay is not justified. Many CVA plaintiffs state they have been dealing with the effects of the abuse they were subjected to for decades and that this abuse was allegedly permitted to occur by the negligence, willful blindness and/or knowing cover-up by the DIOCESE and others.

The DIOCESE suggests that the legal fees associated with complying with the rules of discovery and normal litigation, including its decision to pursue appellate review of this Court's decisions, are, absent a stay, so onerous that it could or will lead to a voluntary bankruptcy filing. Plaintiff suggests that the DIOCESE is "parading the word 'bankruptcy' before this Court in order to manufacture some semblance of 'irreparable injury' out of whole cloth."

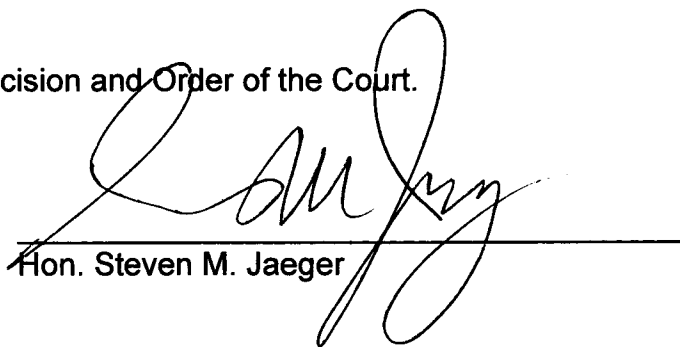
Plaintiff further alleges that the DIOCESE's arguments about the costs and time-consuming prospect of this litigation, including not only discovery, but summary judgment motion practice, and trial are disingenuous when contrasted with the DIOCESE's attempt to minimize the prejudice to the plaintiffs by suggesting that the appeal will be "expedited" and that the delay and resulting prejudice to the plaintiffs will be minimal.

Plaintiffs highlight the DIOCESE's (and co-defendants) efforts to avoid discovery in the 10-plus months many of these actions have been pending despite this Court's Part Rules and rulings that discovery would not be stayed pending any motion to dismiss. The DIOCESE itself acknowledges that it has only now begun to produce the documents and other discovery that it has been mandated to complete. And, notwithstanding the legitimate delays caused by the coronavirus pandemic, plaintiffs do not believe the defendants have operated in good faith as to the pace of discovery.

Given the stated purposes of the CVA statute, the Court finds that the resulting prejudice to Plaintiff due to imposition of a stay is unwarranted. And, based on the finding that the DIOCESE's appeal lacks merit, the Court concurs with the Plaintiff that the result of granting this motion would unnecessarily and prejudicially delay these proceedings.

Accordingly, the DIOCESE's motion for stay of proceedings in this action is DENIED.

The foregoing constitutes the Decision and Order of the Court.



Hon. Steven M. Jaeger

Dated: July 30, 2020
Mineola, N.Y.