

DOCKET NO.: FBT-CV14-6042801-S : SUPERIOR COURT

BANK OF AMERICA, NA

OFFICE OF THE CLERK
SUPERIOR COURT JD OF FAIRFIELD

V.

2024 MAY 22 A 9:27 AT BRIDGEPORT

KATHRYN M. SORRENTINO

JUDICIAL DISTRICT OF BRIDGEPORT MAY 22 2024

MEMORANDUM OF DECISION
NOTICE OF STAY ENTRY NO.: 810.00
ORAL OBJECTION TO STAY

On May 20, 2024, the court heard argument on plaintiff's Motion to Reset Law Days After Filing of Bankruptcy Petition (CGS 49-15) . Present at the hearing were plaintiff's counsel and defendant, Ms. Kathryn M. Sorrentino. Prior to the argument, defendant drew the court's attention to Entry no.: 810.00 and claimed that the matter was stayed due to her filing of a Petition for Certification to the Supreme Court.

Defendant claims that Practice Book §84-3 stays proceedings while a petition to the Supreme Court is pending and as such, Plaintiff's motion for judgment should not be ruled upon. Plaintiff claims that no stay should be in effect and cited Practice Book §71-6, 61-12, and Judge Spader's order of August 2, 2022, terminating all future stays because the defendant's appeals were without merit, frivolous and solely filed for the purposes of delay. (See Entry no.: 636.70)

After reviewing the oral and written arguments of the parties, the relevant law and Practice Book Sections, the court finds that a stay is in effect because the defendant filed a petition with the Supreme Court. As such, plaintiff's motion for judgment of strict foreclosure cannot proceed and any findings made by the court at the hearing on May 20, 2024, are null and void.

The Practice Book section that controls a stay after the Appellate Court's renders a decision through filing a petition to the Supreme Court is § 84-3. It states:

RJD
5/22/24: JDNO Notice sent
Copies of memorandum sent: Kathryn M. Sorrentino 212 Curtis Terrace, Fairfield, CT 06425
Saverio A. Sorrentino 27 Plumtree Road, Newtown, VT 01470
[Signature] Ass't. Clerk

#812.00

In any action in which a stay of proceedings was in effect during the pendency of the appeal, or, if no stay of proceedings was in effect, in which the decision of the Appellate Court would change the position of any party from its position during the pendency of the appeal, proceedings to enforce or carry out the judgment shall be stayed until the time to file the petition has expired. If a petition by a party is filed, the proceedings shall be stayed until the Supreme Court acts on the petition and, if the petition is granted, until the final determination of the cause; but if the presiding judge of an appellate panel which heard the case is of the opinion that the certification proceedings have been filed only for delay or that the due administration of justice so requires, such presiding judge may, up to the time the Supreme Court acts upon the petition, upon motion order that the stay be terminated. If such presiding judge is unavailable, the most senior judge on such panel who is available may act upon such a motion for termination of the stay.

In this case, the defendant filed a petition to the Supreme Court on May 15, 2024. Once the defendant did that, a stay took effect on enforcement of the judgment. The Practice Book section is clear. "If a petition by a party is filed, the proceedings shall be stayed until the Supreme Court acts on the petition and, if the petition is granted, until the final determination of the cause."

Plaintiff argues that on August 2, 2022, the trial court entered an order stating, "The motion to terminate any future stays is GRANTED...." As such, the rule of the case is that a stay after filing the petition is terminated. The plaintiff also cites Practice Book §61-11 and §61-12 which allows the trial court to terminate discretionary stays.

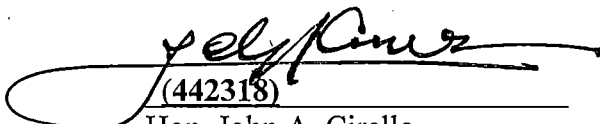
Practice Book §61-11 and §61-12 apply to stays when a trial court decision is being appealed to the Appellate Court. The court has reviewed the Practice Book and it appears that a trial court judge cannot terminate a stay which takes effect when a party files a petition to the Supreme Court regarding an Appellate Court decision. Practice Book § 84-3 seems to control in that situation. Specifically, it states: "[B]ut if the presiding judge of an appellate panel which heard the case is of the opinion that the certification proceedings have been filed only for delay or that

the due administration of justice so requires, such presiding judge may, up to the time the Supreme Court acts upon the petition, upon motion order that the stay be terminated.”

This makes sense. The trial court, who heard the evidence, could judge the character and testimony of the witnesses and who is most familiar with the trial can make a determination if an appeal is frivolous or for dilatory purposes when an appeal is filed with the Appellate Court. It follows, whether an appeal to the Supreme Court is frivolous, dilatory or without merit should be decided by the Appellate Court, who is familiar with the arguments, their reasoning and the arguments of law.

After reviewing the oral and written arguments of the parties, the relevant law and Practice Book Sections, the court file and the equitable positions of the parties, the court finds that a stay is in effect pursuant to Practice Book § 84-3. As such, the court cannot reset the Law Day pursuant to plaintiff's motion until the stay is lifted.

BY THE COURT


(442318)

Hon. John A. Cirello