SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX
--X

NEW YORK BOTANICAL GARDEN,

       Plaintiff,

   - against -

**ALLIED WORLD ASSURANCE COMPANY
(U.S.) INC.,**

       Defendant.
--X

Index No. **803872/2021E**

Hon. **FIDEL E. GOMEZ**
Justice

     The following papers numbered 1 to 3, read on this motion, noticed on 12/15/2021, and duly submitted as no. 3 on the Motion Calendar of 2/4/2022.

	PAPERS NUMBERED	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	1	
Answering Affidavit and Exhibits	2	
Replying Affidavit and Exhibits	3	
Notice of Cross-Motion - Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers-Order of Reference		
Memorandum of Law		

     Defendant's motion is decided in accordance with the Decision and Order annexed hereto.

Dated: 2/15/2022

Hon. _____
    FIDEL E. GOMEZ, A.J.S.C.

1. CHECK ONE..   ☐ CASE DISPOSED   X NON-FINAL DISPOSITION

2. MOTION IS..   ☐ GRANTED   X DENIED   ☐ GRANTED IN PART   ☐ OTHER

3. CHECK IF APPROPRIATE...........................   ☐ SETTLE ORDER   ☐ SUBMIT ORDER   ☐ DO NOT POST
                     ☐ FIDUCIARY APPOINTMENT   ☐ REFEREE APPOINTMENT
                     X NEXT APPEARANCE DATE: __June 7, 2022 at 10:30 a.m.__

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX
---X
NEW YORK BOTANICAL GARDEN,

                        Plaintiff,   **DECISION AND ORDER**

    - against -   Index No. **803872/2021E**

**ALLIED WORLD ASSURANCE COMPANY
(U.S.) INC.,**

                        Defendant.
---X

       Defendant Allied World Assurance Company (U.S.) Inc. ("Defendant") moves for an order staying this action pursuant to CPLR § 2201 and § 5519(c). Plaintiff New York Botanical Garden ("Plaintiff") opposes, arguing that a stay is not warranted under either section.

       For the reasons which follow, Defendant's motion is denied.

BACKGROUND:

       On March 19, 2021, Plaintiff commenced the instant action against Defendant, alleging causes of action for declaratory judgment, breach of contract and breach of the implied covenant of good faith and fair dealing. Plaintiff's causes of action arise out of Defendant's alleged improper disclaimer of coverage under the Blanket Pollution Legal Liability insurance policy.

       On May 11, 2021, Defendant moved to dismiss the complaint pursuant to CPLR 3211(a)(1) and CPLR 3211(a)(7). On October 15, 2021, the Court (McShan, J.) issued a decision and order denying the motion (the "Decision and Order").

       On December 7, 2021, Defendant filed the instant motion for a stay. On February 4, 2022, the motion was marked fully submitted.

DISCUSSION:

       Defendant moves for an order staying any further proceedings in this action pursuant to CPLR § 2201 and § 5519(c) pending an appeal of the Decision and Order. Defendants argue that a stay would avoid expensive and time-consuming discovery, motion practice, and unnecessary expenditure of this Court's time and resources. Defendants also argue that a reversal of the

Decision and Order would render any discovery and motion practice moot. Defendant further argues that it has a substantial likelihood of prevailing on the appeal. Defendant argues that Plaintiff will not be prejudiced, as it will also avoid expending unnecessary fees and expenses on discovery, motion practice and other pretrial proceedings. Finally, Defendant argues that since the appeal concerns a matter of first impression, the Court should grant a stay for the First Department to make a determination on the issue. Defendant asserts that it filed and served its Notice of Appeal in this action on November 9, 2021.

CPLR § 2201:

CPLR § 2201 states that: "Except where otherwise prescribed by law, the court in which an action is pending may grant a stay of proceedings in a proper case, upon such terms as may be just."

A court has broad discretion to grant a stay in order to avoid the "duplication of effort, waste of judicial resources, and possibility of inconsistent rulings in the absence of a stay" (*OneBeacon America Ins. Co. v Colgate-Palmolive Co.*, 96 AD3d 541, 541 [1st Dept 2012]; *Asher v Abbott Labs*, 307 AD2d 211, [1st Dept 2003]; *Morreale v Morreale*, 84 AD3d 1187, 1188 [2d Dept 2011]).

Generally, a stay may be granted "only where the decision in one action will determine all the questions in the other action, and the judgment on one trial will dispose of the controversy in both actions . . . What is required is complete identity of parties, causes of action and judgment sought" (*Hope's Windows v Albro Metal Products Corp.*, 93 AD2d 711, 712 [1st Dept 1983]; *Pierre Associates, Inc. v Citizens Cas. Co. of New York*, 32 AD2d 495, 497 [1st Dept 1969]). However, a stay may also be granted when there are overlapping issues and common questions of law and fact (*Uptown Healthcare Mgt., Inc. v Rivkin Radler, LLP*, 116 AD3d 631, 631 [1st Dept 2014]; *Belopolsky v Renew Data Corp.*, 41 AD3d 322, 322 [1st Dept 2007]), and "the determination of the prior action may dispose of or limit issues which are involved in the subsequent action" (*Belopolsky*, 41 AD3d 322 at 323).

Here, Defendant has not demonstrated that a stay is warranted pending appeal of the Decision and Order. Insofar as this is the only action between the parties, a stay pursuant to CPLR § 2201 is not applicable.

Accordingly, Defendant's motion for a stay pursuant to CPLR § 2201 is denied.

CPLR § 5519(c):

CPLR § 5519(c) states that:

> The court from or to which an appeal is taken or the court of original instance may stay all proceedings to enforce the judgment or order appealed from pending an appeal or determination on a motion for permission to appeal in a case not provided for in subdivision (a) or subdivision (b), or may grant a limited stay or may vacate, limit or modify any stay imposed by subdivision (a), subdivision (b) or this subdivision, except that only the court to which an appeal is taken may vacate, limit or modify a stay imposed by paragraph one of subdivision (a).

"CPLR 5519(c) permits this court, *inter alia*, to grant a discretionary stay of proceedings to enforce the order or judgment appealed from, or to vacate, limit or modify any automatic stay obtained pursuant to CPLR 5519(a) or (b). The scope of the stay authorized by subdivision (c) is thus coextensive with the stay authorized by subdivision (a), namely, a stay of enforcement proceedings only, not a stay of acts or proceedings other than those commanded by the order or judgment appealed from" (*Schwartz v New York City Housing Authority*, 219 AD2d 47, 48 [2d Dept 1996]).

"[T]he scope of the automatic stay of CPLR 5519(a) is restricted to the executory directions of the judgment or order appealed from which command a person to do an act, and [] the stay does not extend to matters which are not commanded but which are the sequelae of granting or denying relief." (*Pokoik v Department of Health Services of County of Suffolk*, 220 AD2d 13, 15 [2d Dept 1996]). Thus, "[t]he filing of a notice of appeal of an order denying a motion to dismiss does not trigger the automatic stay with respect to litigation obligations provided for in the CPLR, such as the obligation to answer and comply with discovery requests" (*Tax Equity Now NY LLC v City of New York*, 173 AD3d 464, 464-465 [1st Dept 2019]).

Likewise, since the scope of the discretionary stay under CPLR § 5519(c) is coextensive with the automatic stay under CPLR § 5519(a), no automatic stay of CPLR obligations to answer and to provide discovery pending appeal of the order denying the motion to dismiss is permitted under this section (*Tax Equity Now NY LLC*, 173 AD3d 464 at 465).

Whether to grant a stay under CPLR § 5519(c) is "for the most part, a matter of discretion" (*Matter of Grisi v Shainswit*, 119 AD2d 418, 421 [1st Dept 1986]). Usually, the proponent of a stay must demonstrate the merits of the appeal (*Petovsek v Snyder*, 251 AD2d 1088, 1088 [4th Dept 1998]; *Matter of Rosenbaum v Wolff*, 270 Ad843, 843 [2d Dept 1946]).

Here, Defendant has not demonstrated that a stay is warranted pending appeal of the Decision and Order. First, CPLR § 5519(c) is not applicable to the instant matter, because Defendant does not seek to stay enforcement proceedings. Second, a stay under CPLR § 5519(c) does not stay litigation obligations, such as discovery.

Accordingly, Defendant's motion for a stay pursuant to CPLR § 5519(c) is denied.

It is hereby

ORDERED that Plaintiff serve a copy of this Decision and Order upon Defendant, with Notice of Entry, within thirty (30) days of the date hereof.

This constitutes the Decision and Order of this Court.

Dated: 2/15/2022

Hon._____

FIDEL E. GOMEZ, A.J.S.C.