

**Tutrani v County of Suffolk**

2006 NY Slip Op 30545(U)

July 18, 2006

Supreme Court, Suffolk County

Docket Number: 15484-2003

Judge: Denise F. Molia

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SUPREME COURT - STATE OF NEW YORK  
CALENDAR CONTROL PART - SUFFOLK COUNTY

**PRESENT:**

Hon. DENISE F. MOLIA  
Justice of the Supreme Court

MOTION DATE May 15, 2006  
ADJ. DATE May 22, 2006  
Oral MD

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Pamela Tutrani and Mark Tutrani,  
  
Plaintiffs,  
  
- against -

: Attorneys for Plaintiff  
: Waxman & Wincott, P.C.  
: 7600 Jericho Turnpike, Suite 306  
: Woodbury, New York 11797

County of Suffolk, Suffolk County Police  
Department, Police Officer Lee Weidl and  
Police Officer "John Doe" a fictitious name,  
Melvin Maldonado, and Darlene Maldonado,  
  
Defendants.

: Attorneys for Defendants  
: Christine Malafi  
: Suffolk County Attorney  
: 100 Veterans Memorial Highway  
: P.O. Box 6100  
: Hauppauge, New York 11788

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Montfort, Healy & McGuire, Esqs.  
1140 Franklin Avenue, P.O. Box 7677  
Garden City, New York 11530

Upon the following papers numbered 1 to 2 read on this motion for a stay; Notice of Motion/Order to Show Cause and supporting papers\_\_; Notice of Cross Motion and supporting papers \_\_\_\_; Answering Affidavits and supporting papers \_\_\_\_\_, Replying Affidavits and supporting papers \_\_\_\_\_; Other 1&2; and after hearing counsel in support and opposed to the motion) it is,

Ordered that this oral motion by defendant, County of Suffolk, for an automatic stay of the trial of this action is considered under CPLR §5519(a) and is denied.

A liability verdict was rendered in this action for personal injuries arising from a motor vehicle accident. The jury returned a liability verdict assessing fifty (50%) against the County of Suffolk and fifty percent (50%) against the Maldonado defendants. The Honorable Justice John J. Jones signed an interlocutory judgment memorializing the liability verdict and directing that, "the parties in this case shall proceed to the Calendar Control Part of the Supreme Court, Suffolk County, on May 15, 2006, in order to schedule the trial of damages." The County filed a notice of appeal on May 15, 2006 and argues that it is entitled to an automatic stay of the trial under CPLR §5519 (a) which provides:

Stay without court order. Service upon the adverse party of a notice of appeal or an affidavit of intention to move for permission to appeal stays all proceedings to enforce the judgment or order appealed from pending the appeal or determination on the motion for permission to appeal.

The statutory language " stays all proceedings to enforce the judgment" does not include a trial. In applying this statute, the courts have held that a trial is not a proceeding to enforce a judgment (Baker v. Board of Educ. of West Irondequoit School Dist., 152 A.D.2d 1014, 544 N.Y.S.2d 258 (1989); Shorten v. City of White Plains, 216 A.D.2d 344, 631 N.Y.S.2d 519 (1995)). The Appellate Division, Second Department, one year later,

qualified its holding in *Shorten v. City of White Plains supra.*, holding that where the order contains an executory directive to proceed to trial, it is subject to the automatic stay (*Pickerell v. Town of Huntington*, 219 A.D.2d 24, 641 N.Y.S.2d 887). In *Pickerell supra*, the claimants had cross moved for partial summary judgment and to set the matter down for an immediate hearing on the issue of damages pursuant to CPLR 3212(c). In its order, the Supreme Court granted the cross motion for partial summary judgment and set the matter down on a date certain for a hearing on damages. The Appellate Division held that the order for an immediate trial, which resulted from the granting of a motion for summary judgment, was subject to the automatic stay. The distinction is limited to an order or judgment containing an executory direction to commence a trial or hearing on a date certain. This stay does not apply to matters which are the sequella of granting or denying the relief (*Ocasio ex rel. Perez v. City of New York*, --- N.Y.S.2d ----, 2006 WL 1562078 (N.Y.Sup.), 2006 ). It is important to note that in *Pickerell*, a party had moved for an immediate trial. The circumstances there differ from the matter at bar, where the damages phase of the bifurcated trial was ordered to commence upon the completion of the liability phase of the trial. Although a trial may be the ultimate result of the granting or denying of a motion for summary judgment, it is not the immediate natural sequella of such relief.

The instant matter was ordered to proceed as a bifurcated trial, in compliance with the expressed preference of the Chief Judge as set forth in the Uniform Civil Rules for the Supreme Court and the County Court, §202.42(a), wherein judges are encouraged to order bifurcated trials where same “may assist in a clarification or simplification of issues and a fair and more expeditious resolution of the action.” Said rules go on to provide that

“In the event of a plaintiff’s verdict on the issue of liability or a defendant’s verdict on the issue of liability on a counterclaim, the damage phase of the trial shall be conducted immediately thereafter before the same judge and jury, unless the judge presiding over the trial, for reasons stated in the record, finds such procedures to be impracticable.” Uniform Civil Rules for the Supreme Court and the County Court, §202.42(e).

Here the judgment appealed from merely set forth the liability verdict as determined by the jury. It was noted that the actual amount of damages would be determined at a damages trial. The court simply directed the parties to proceed to the Calendar Control Part for scheduling of the trial. This would have happened without a directive as it is the natural sequella of a liability verdict (*White v. City of Jamestown*, 242 A.D.2d 979, 664 N.Y.S.2d 697; *Cruz v. Amsterdam Housing Authority*, 174 Misc.2d 189, 662 N.Y.S.2d 1024). It was not a situation where the Court had rendered a determination on a motion, the end result which would have been a trial on damages. The purpose of the automatic stay is to maintain the status quo. Here, the continuation to a damages trial brings the action to its proper completion. It is not a proceeding to enforce a judgment against the municipality. Accordingly, the court finds that the automatic stay is not applicable to the instant matter.

Dated: July 18, 2006

  
J.S.C.

\_\_\_\_\_ FINAL DISPOSITION      X   NON-FINAL DISPOSITION