

**Terence Cardinal Cooke Health Ctr. v Commissioner
of Health of the State of N.Y.**

2019 NY Slip Op 34137(U)

March 8, 2019

Supreme Court, Albany County

Docket Number: 906935-18

Judge: Richard M. Koweek

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STATE OF NEW YORK
SUPREME COURT : COUNTY OF ALBANY

TERENCE CARDINAL COOKE HEALTH CENTER,

Index No. 906935-18
RJI No. 01-18-ST9996

Petitioner,

-against-

DECISION AND ORDER

COMMISSIONER OF HEALTH of the State of
New York; COMMISSIONER OF THE OFFICE
OF PEOPLE WITH DEVELOPMENTAL
DISABILITIES of the State of New York; and
THE DIRECTOR OF THE BUDGET OF THE
STATE OF NEW YORK,

Respondents.

APPEARANCES:

BOND, SCHOENECK & KING, PLLC
Attorneys for Petitioner
350 Linden Oaks, Floor 3
Rochester, New York 14625

New York State Attorney General's Office
Attorney for Respondents
16 Eagle Street, Room 102
Albany, New York 12207

Before this Court is an application for a stay of proceedings that have been transferred to this Court from New York County by virtue of a decision and subsequent Order dated March 18, 2018 (Lebovits, J). Alternatively, Respondents ask for a 90-day delay to answer the Petition on the remaining cause of action, which was converted from a declaratory judgment to an Article 78 proceeding by virtue of the same Order.

The stay request is opposed by the Petitioner. For the reasons that follow, the stay request is denied.

BACKGROUND

Petitioner commenced this proceeding in New York County in 2017. Its Complaint consisted of two causes of action. The Respondents moved to dismiss the second cause of action and have the first one converted from a declaratory judgment to an Article 78 proceeding. It also sought to have venue changed from New York County to Albany County. Respondents obtained all the relief it sought on March 18, 2018. The one remaining cause of action was converted to an Article 78 proceeding and transferred to Albany County. The revised Petition was returnable February 15, 2019, and thereafter adjourned until March 15, 2019, on consent.

Attorneys for both parties entered into two successive Stipulations extending Respondents time to answer, the first until January 25, 2019, and the second until February 25, 2019. Respondents requested, on February 19, 2019, a phone conference with the Court. On February 22, 2019, during that conference, the request for a stay was first raised orally and later formalized in a letter motion with attachments. It has been opposed by the Petitioner, also in the form of a letter with attachments.

In the interim, Petitioner filed a Notice of Appeal with the Appellate Division, First Department, and, thereafter, submitted its brief on appeal. The Petitioner seeks to reverse most of the relief granted by the March 18, 2018, Order, including the venue change and the conversion of the declaratory judgment action. No stay from the original trial court or the First Department has been granted.

ARGUMENTS

Respondents argue that there is a danger of a duplication of effort between this Court and the First Department. Even though it received all the relief it sought, it argues that if the Appellate Court were to reverse the conversion of this matter from an Article 78 back to a declaratory judgment, new papers would be required to take into account a different standard of proof. Also, if the second cause of action were to be reinstated, Respondents would be required to respond to allegations regarding retroactive rate making. Finally, it contends that if venue were to be transferred back to New York County, decisions by this Court would be nullified.

In response, Petitioner argues that the relief now sought by Respondents is contrary to its arguments made in New York County. It wanted this Court to decide the substantive issue of whether the revised prices issued by the Department of Health should

have included an inflation factor. Because no stay was requested by them from the Appellate Division, this request is untimely. Nor has it filed a cross appeal from the earlier Order, and its time to do so has expired.

Further, the stay request contradicts both signed Stipulations. Also, there is no legal basis that this Court's ruling would be inconsistent with another court. The Attorney General can cite to no case where one court would overrule another on the issue of venue. All Supreme trial courts have coequal authority to handle matters before it and to dispose of them on a substantive basis. Any decisions made would be Stare decisis and law of the case, were it to be transferred back to New York County.

Finally, Petitioner does not seek to overturn that portion of the trial court's decision that dismissed the first cause of action, attaching its appellate brief as proof. Therefore, there is no danger of overlapping rulings on the same issues. The Petitioner continues to incur economic harm as a result of the actions of the Department of Health.

DISCUSSION

CPLR §7805 provides in relevant part:

On the motion of any party or on its own initiative, the court may stay further proceedings, or the enforcement of any determination under review, upon terms including notice, security and payment of costs except that the enforcement of an order or judgment granted by the Appellate Division in a proceeding under this article may be stayed only by order of the Appellate Division or the Court of Appeals.

CPLR §2201 provides:

Except where otherwise prescribed by law, the court in which action is pending may grant a stay of proceedings in a proper case, upon such terms as may be just.

It is clear from the foregoing, that the issuance of the stay rests in the sound discretion of the trial court. Here, the Respondents moved for the relief ultimately granted in July 2017. It was not until March 8, 2018, that an Order was signed granting Respondents all of the relief it sought. They now seek further delay upon two non-persuasive grounds. First, the possibility that the decision and Order of March 2018 might be reversed, thus converting the Article 78 proceeding back to a declaratory judgment. However, no attempt has been made in the year that transpired from the Order and the present Motion to seek a stay from the Appellate Division. In the interim, it is uncontradicted that the Petitioner continues to suffer economic harm in the form of removal of Medicaid payments from their current payments that it no longer receives by virtue of a change in rates.

Second, he suggests that this Court might rule differently on the substantive claim than another Court in New York. This, by itself, is no reason not to reach the merits of a case that has been pending for two years. The Respondents do not offer to reimburse the Petitioner for some or all of the more than 7 million dollars they have taken from it during the pendency of the lawsuit, by virtue of the change in rates.

In this Court's view, it is beyond time that Respondents deal directly with the issue at hand, in a substantive fashion.

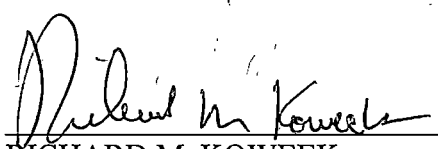
The Respondents are directed to serve an Answer to the Petition no later than 30 days from the date this Decision and Order are served upon it, with notice of entry.

The original Decision and Order is being mailed to Bond, Schoeneck & King, PLLC. All of the original papers will remain in Chambers until the conclusion of this matter. The signing of this Decision and Order shall not constitute entry or filing under CPLR 2220.

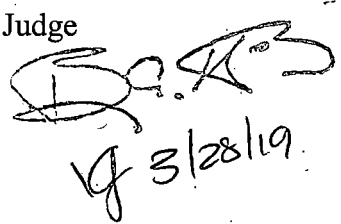
Counsel is not relieved from the provision of that rule regarding the filing, entry, or notice of entry.

This is the Decision and Order of this Court.

DATED: March 8, 2019
Hudson, New York



RICHARD M. KOWEEK
Acting Supreme Court Judge



Papers Considered:

1. Letter from Joshua E. McMahon, Esq., Assistant Attorney General, dated February 22, 2019, together with Exhibits
2. Letter from Raul A Tabora, Jr., Esq., of Bond, Schoeneck & King, PLLC, dated February 26, 2019, together Exhibits