

Cayemitte v Vincent

2024 NY Slip Op 32449(U)

July 17, 2024

Supreme Court, New York County

Docket Number: Index No. 154135/2023

Judge: Mary V. Rosado

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. MARY V. ROSADO PART **33M**

Justice

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REGINALD CAYEMITTE

Plaintiff,

- v -

SHAUN JUSTIN VINCENT,

Defendant.

-----X

INDEX NO. 154135/2023

MOTION DATE 07/13/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 14, 15, 16, 17, 18, 19, 21, 22, 23, 24

were read on this motion to/for STAY.

Upon the foregoing documents, Defendant Shaun Justin Vincent’s (“Defendant”) motion seeking a stay of this action pending the outcome of his criminal proceeding is granted.

I. Background

Plaintiff Reginald Cayemite (“Plaintiff”) sues defendant for an assault and battery which occurred on March 24, 2024 at 11:45 p.m. in the parking lot of Pergola, located at 36 West 28th Street, New York, New York (*see generally* NYSCEF Doc. 1). Specifically, Plaintiff alleges that Defendant attacked Plaintiff with a knife or other sharp instrument.

Plaintiff has moved for summary judgment (NYSCEF Doc. 5). Defendant has not yet been deposed and has a pending criminal proceeding related to the alleged stabbing giving rise to this case. Defendant now seeks a stay of the instant action as he would invoke his Fifth Amendment right to avoid self-incrimination in the instant action thereby materially prejudicing his right to oppose Plaintiff’s motion for summary judgment.

Plaintiff opposes and argues that a delay will prejudice Plaintiff and that Defendant’s Fifth Amendment rights do not excuse him from tendering evidence in defense of his case. In reply,

Defendant argues he cannot sufficiently defend against Plaintiff's pending summary judgment motion without submitting testimony which is why a stay is necessary.

II. Discussion

A motion to stay a civil action pending resolution of a related criminal action is within the discretion of the trial court (CPLR 2201; *Britt v International Bus Services, Inc.*, 255 AD2d 143 [1st Dept 1998]). A compelling factor the trial court must consider in favor of a stay is a situation where the defendant will be forced to invoke his or her constitutional right against self-incrimination (*id.*; see also *Mook v Homesafe America, Inc.*, 144 AD3d 1116 [2d Dept 2016]). The Court should also consider the risk of inconsistent adjudications, application of proof, and the potential waste of judicial resources (*id.* citing *Zonghetti v Jeromack*, 150 AD2d 561, 563 [2d Dept 1989]). Moreover, where there is substantial similarity in the allegations giving rise to the criminal action and civil action, a stay is appropriate (see *Burgdorf v Kasper*, 83 AD3d 1553 [4th Dept 2011]).

The Court finds the instant case to be in line with the First Department's decision in *Britt*, where a stay was necessary because the testimony of the witness invoking the privilege was "critical and necessary and without which defendants could not assert a competent defense. This is a fact intensive case involving an alleged assault and battery. Defendant is unable to submit an affidavit in opposition to Plaintiff's motion for summary judgment without potentially incriminating himself. The Court finds the minimum prejudice to Plaintiff in holding his motion for summary judgment in abeyance pending Defendant's criminal trial to be vastly outweighed by the prejudice Defendant faces in defending against Plaintiff's pre-note of issue motion for summary judgment. Multiple Appellate Departments have found that the constitutional right against self-incrimination was more important than the inconvenience and delay caused to a

plaintiff by waiting for a resolution of a criminal proceeding (*Britt, supra, see also De Siervi v Liverzani*, 136 AD2d 527 [2d Dept 1988]). Moreover, determination and testimony from the criminal trial may dispose of key issues in this case, and thus judicial resources may be preserved by staying this action.

Accordingly, it is hereby,

ORDERED that Defendant's motion to stay this action pending the outcome of his parallel criminal action is granted; and it is further

ORDERED that either party may make an application by order to show cause to vacate or modify this stay upon the final determination of the action/proceeding known as *People of the State of New York v. Vincent*, IND-71857-23/01, pending before the New York County Criminal Court; and it is further

ORDERED that the movant is directed to serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office within ten days from entry and the Clerk shall mark this matter stayed to the extent herein provided; and it is further

ORDERED that such service upon the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website); and it is further

[The remainder of this page is intentionally left blank.]

ORDERED that within ten days of entry, counsel for Defendant shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

7/17/2024
DATE

Mary V Rosado Jsc
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: