

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

WORCESTER, ss.

NO. _____

JOAO DEPINA,

v.

WORCESTER COUNTY
DISTRICT ATTORNEY'S
OFFICE, et al.

**JOAO DEPINA'S PETITION FOR INTERLOCUTORY RELIEF
PURSUANT TO G.L. c. 231, § 118, SECOND PAR. and G.L. c. 211, § 3.**

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I. Request for Review

Petitioner-Plaintiff Joao Depina hereby requests that the Supreme Judicial Court Single Justice vacate the Appellate Court Single Justice's decision and uphold the Superior Court's order denying Respondent-Defendants' motion to stay discovery and for a protective order.

Pursuant to Mass. R. Civ. P. 26(c), the Worcester County District Attorney's Office, Joseph D. Early, Jr., Anthony Melia, and Rachael Rollins (collectively, the "Commonwealth Defendants") sought a stay in discovery until the Superior Court could rule on a motion to dismiss that would raise the defenses of absolute immunity, qualified immunity, and sovereign immunity.

The Superior Court denied the Commonwealth Defendants' motion to stay discovery by docket order. On appeal, the Appellate Court Single Justice reversed the Superior Court, concluding that the Commonwealth Defendants provided reasonable grounds to stay discovery pending a motion to dismiss and that DePina failed to demonstrate that a delay would be prejudicial. *Joao DePina v. Worcester County District Attorney's Office, et al.*, 22-J-613, at 3 (Nov. 16, 2022).

The Appellate Court Single Justice erroneously applied the standard on appeal. The standard on appeal is abuse of discretion that resulted in prejudicial error. The Supreme Judicial Court has stated "[w]hile discovery orders are reviewable on appeal . . . we do not interfere with the judge's exercise of discretion

in the absence of showing of prejudicial error resulting from an abuse of discretion.”
Solimene v. B. Grauel & Co., KG, 399 Mass. 790, 799 (1987) (citation omitted).

The Appellate Court Single Justice substituted her own decision for the Superior Court. The court made no finding that the Commonwealth Defendants were prejudiced by the trial court’s decision and erroneously determined that it was DePina’s burden to show that he would be prejudiced by a delay in discovery.

The Appellate Court Single Justice inverted Mass. R. Civ. P. 26(c). The Single Justice presumed that the Commonwealth Defendants are entitled to immunity based on their position as government officials and, by extension, the Commonwealth Defendants are entitled to a stay in discovery unless DePina can show he is prejudiced by a delay. The Commonwealth Defendants do not enjoy a presumption of immunity, and DePina is not required to make any showing.

The Commonwealth Defendants are three prosecutors and a district attorney’s office. The prosecutors played various roles as laid out in Plaintiff’s Complaint. The Commonwealth Defendants conflated the three prosecutors in their motion to stay discovery and for a protective order. The Commonwealth Defendants cobbled together case law on absolute immunity, and then they argued that they are entitled to absolute immunity, despite only one prosecutor performing the traditional *quasi-judicial* functions of filing a motion and arguing in court.

The Appellate Court Single Justice acknowledged that DePina's opposition briefs at the trial court and on appeal argued the merits of the motion to dismiss. The Single Justice seemed to give no attention to DePina's arguments for why some of the immunity defenses are weak and do not support good cause to stay discovery pursuant to Mass. R. Civ. P. 26(c). The Single Justice also appeared to give no consideration to the issue of obtaining discovery from the Commonwealth Defendants as third-parties to DePina's claim against the remaining Defendants, Dante Williams and the Boston Police Department ("the City Defendants").

The Appellate Court Single Justice erred in deciding that the appellate court's decision could supplant the trial court's broad discretion and improperly shifted the burden to the Plaintiff to show why he would be prejudiced by a delay in discovery. *Beaupre v. Smith Associates*, 50 Mass. App. Ct. 480, 485 (Mass. App. Ct. 2000) ("The defendants have not demonstrated that the judge's decision . . . constituted an abuse of that broad discretion; or that, even if the judge erred in his exercise of discretion in these matters, prejudicial error ensued.") (collecting cases).

II. Issue of Law Raised by the Petition

Whether the Appellate Court Single Justice erroneously applied the abuse of discretion standard by reversing the Superior Court's order denying the Commonwealth Defendants' motion to stay discovery and for a protective order.

III. Motions for Reconsideration

Plaintiff does not intend to seek reconsideration in the Appellate Court.

IV. Relief Requested

Plaintiff requests that the Supreme Judicial Court Single Justice vacate the Appellate Court Single Justice's order and uphold the Superior Court's order denying the Commonwealth Defendants' motion to stay discovery and for a protective order.

V. Addendum

The Appellate Court's November 16, 2022, Order and the Superior Court's October 27, 2022, Order on the Commonwealth Defendants' Motion to Stay is included in the addendum.

Respectfully Submitted,

JOAO DEPINA

By his Attorneys

/s/ Marc J. Randazza

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Dated: December 6, 2022.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served upon all parties through the email on this 6th day of December, 2022, or otherwise caused for service via U.S. Mail, as follows:

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Marc J. Randazza

CERTIFICATION PURSUANT TO APPEALS COURT RULE 20.0

I hereby certify that the foregoing document complies with all of the rules of this Court that pertain to this filing. This document complies with the applicable length limit in Rule 20.0 because it contains 755 non-excluded words in 14-point Times New Roman font, as counted in Microsoft Word.

/s/ Marc J. Randazza

Marc J. Randazza

Addendum

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

22-J-613

JOAO DePINA

vs.

WORCESTER COUNTY DISTRICT ATTORNEY'S OFFICE & others.¹

MEMORANDUM AND ORDER

This matter is before me by way of a petition, pursuant to G. L. c. 231, § 118, first para., filed by defendants Worcester County District Attorney's Office, Joseph D. Early, Anthony Mella, and Rachael Rollins (petitioners). Joao DePina brought suit in the Superior Court alleging, in essence, the violation of his constitutional rights relating to a criminal prosecution. The petitioners served the plaintiff with a motion to dismiss the complaint arguing that they are immune to being sued, individually or in their official capacity based on absolute prosecutorial immunity, qualified immunity and/or sovereign immunity. The motion has not yet been filed with the Superior Court. See Superior Court Rule 9A.

Pending their receipt of the plaintiff's opposition to the motion to dismiss, the petitioners filed, in the Superior Court, a motion to stay discovery pending the resolution of their

¹ Joseph D. Early, Anthony Mella, Rachael Rollins, Boston Police Department, and Dante Williams.

motion to dismiss. The Superior Court judge endorsed the motion as denied without giving any reasons. The petitioners seek review of that summary denial.

To succeed, the petition and supporting materials must demonstrate that the judge's order is the product of a clear error of law or an abuse of discretion. See Jet-Line Services, Inc. v. Board of Selectmen of Stoughton, 25 Mass. App. Ct. 645, 646 (1988). The single justice's authority to vacate an interlocutory order of a trial court judge should "be exercised in a stinting manner with suitable respect for the principle that the exercise of judicial discretion circumscribes the scope of available relief." Edwin Sage Co. v. Foley, 12 Mass. App. Ct. 20, 25 (1981). After careful review of the petition, the plaintiff's opposition, and the record before me, I conclude that the petitioners have met their burden.

I am cognizant that my standard of review of discovery orders is, and should be, highly deferential. See Salten v. Ackerman, 64 Mass. App. Ct. 868, 875 (2005) ("Trial judges have extensive discretion . . . with respect to [] the process of discovery" [quotation omitted]). However, in this case, the petitioners are entitled to relief because they have demonstrated that the judge's unadorned conclusion is not supported by a reasonable weighing of the factors relevant to her decision.

The petitioners set forth reasonable grounds to stay discovery pending an initial determination of their motion to dismiss. See Chicopee Lions Club v. District Atty. for Hampden Dist., 396 Mass. 244, 253 (1985) ("One of the primary purposes of absolute immunity is to spare public officials the burden of having to defend their official actions in a civil lawsuit.") Some of the protection conferred by immunity from suit would be lost if the petitioners were required to engage in discovery prior to the determination of their motion. Cf. Lynch v. Crawford, 483 Mass. 631, 634-35 (2019) (defendant granted right to ordinarily disfavored interlocutory appeal of denial of motion to dismiss based on immunity from suit).

However, merely filing a motion to dismiss with a claim for immunity from suit does not automatically entitle the defendant to a stay of the plaintiff's discovery. If there were countervailing considerations requiring discovery to progress notwithstanding the pending motion to dismiss, the trial court judge could determine that a stay is not appropriate. In the case before me, there are no such offsetting factors apparent in the record or cited by the judge. In both the plaintiff's response to the petitioners' motion in the trial court and his opposition to their petition, the plaintiff fails to demonstrate that a delay in discovery would be prejudicial.

As the plaintiff correctly notes, if the petitioners' motion to dismiss is unsuccessful, even partially, he would be entitled to discovery. Yet, in defending the petitioners' motion to dismiss, he is limited to the facts pleaded in his complaint. See Hornibrook v. Richards, 488 Mass. 74, 83-84 (2021).

Much of the plaintiff's oppositions, both in this court and the Superior Court, argue the merits of the motion to dismiss. Those arguments are best addressed in the context of the motion to dismiss.

The plaintiff's motion for attorney's fees and costs is denied. The petition is allowed. The Superior Court shall enter an order staying discovery pending the disposition of the petitioners' motion to dismiss.

So ordered.

By the Court (Blake, J.),

A handwritten signature in blue ink that reads "Paul Little". The signature is written in a cursive, flowing style.

Assistant Clerk

Entered: November 16, 2022.

CLERK'S NOTICE

DOCKET NUMBER

2285CV00971

**Trial Court of Massachusetts
The Superior Court**



CASE NAME:

Joao Depina vs. Worcester County District Attorney's Office et al

Dennis P. McManus, Clerk of Courts

TO:

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You are hereby notified that on 10/26/2022 the following entry was made on the above referenced docket:

Endorsement on Motion to stay discovery and for a protective order (#10.0): DENIED
Notices mailed 10/27/22

Judge: Dupuis, Hon. Renee P

DATE ISSUED

10/27/2022

ASSOCIATE JUSTICE/ ASSISTANT CLERK

Hon. Renee P Dupuis

SESSION PHONE#

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