

COMMONWEALTH OF MASSACHUSETTS
APPEALS COURT

WORCESTER, ss.

NO. 2022-J-_____

JOAO DEPINA)
)
)
 v.)
)
 WORCESTER COUNTY)
 DISTRICT ATTORNEY'S)
 OFFICE, et al.)

**COMMONWEALTH DEFENDANTS' PETITION FOR
INTERLOCUTORY RELIEF PURSUANT TO
G. L. c. 231, § 118, FIRST PAR.**

MAURA HEALEY
ATTORNEY GENERAL

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I. Request for Review.

Petitioners-Defendants Worcester County District Attorney’s Office, Joseph D. Early, Jr., Anthony Melia, and Rachael Rollins (collectively, the “Commonwealth Defendants”) hereby request that the Single Justice vacate the Superior Court judge’s denial of their motion to stay discovery and for a protective order (“motion to stay”). The Commonwealth Defendants sought a brief stay in discovery until the Superior Court could rule on the absolute immunity, qualified immunity, and sovereign immunity defenses in their motion to dismiss, which has been served on Plaintiff and will be filed under Superior Court Rule 9A as soon as briefing is complete. RA 42-46 (motion for stay); RA 98-119 (motion to dismiss). As a matter of settled law, these defenses confer immunity from suit that bars discovery until the trial court has ruled on the asserted defenses. The Superior Court’s order permitting such discovery without explanation constitutes an abuse of discretion.

Plaintiff Joao DePina has sued the Commonwealth Defendants—current and former prosecutors, and a district attorney’s office—in connection with their preparation, initiation, and prosecution of a criminal charge against him pursuant to G. L. c. 268, § 13B. RA 9-10, 12-15. The charge against Plaintiff was later dismissed by order of the Boston Municipal Court. RA 15-16.

In August 2022, Plaintiff filed a five-count complaint against the Commonwealth Defendants, a police officer, and the Boston Police Department in

connection with the dismissed criminal charge. RA 9-10, 17-22. The complaint was accompanied by a “Notice of Plaintiff’s Certification Pursuant to Rule 11(a)(1),” acknowledging that “some of the claims, at least,” may be barred by absolute prosecutorial immunity, but asserting that the lawsuit has been brought in “good faith” for Rule 11 purposes because Plaintiff intends to challenge the “currently controlling law” of absolute immunity on appeal. RA 24.

Following receipt of discovery requests from Plaintiff on October 6, 2022, the Commonwealth Defendants filed their motion to stay on October 26, 2022. RA 43, 7. The motion to stay argued that discovery was premature and could not proceed where the Commonwealth Defendants were asserting absolute, qualified, and sovereign immunity defenses against Plaintiff’s claims. RA 42-46, 93-96. The Commonwealth Defendants attached a copy of their forthcoming, already-served motion to dismiss in their reply in support of their motion for a short stay of discovery. RA 98-119. On October 27, 2022, the Superior Court issued a margin order that denied the Commonwealth Defendants motion to stay without explanation. RA 124.

The Superior Court’s ruling was an abuse of discretion. Well settled case law establishes that immunity defenses must be resolved prior to permitting discovery. As set forth in the memorandum filed herewith, the Superior Court’s ruling impermissibly strips the Commonwealth Defendants of their immunity from suit.

The Commonwealth Defendants respectfully request in this Petition that the Single Justice vacate the Superior Court’s order and with instructions to stay discovery until after a ruling on the motion to dismiss.

II. Issues of Law Raised by the Petition.

The issues of law raised by the Petition are:

1. Did the Superior Court err and abuse its discretion by denying the Commonwealth Defendants’ motion to stay discovery without explanation, where the Commonwealth Defendants’ forthcoming motion to dismiss asserts absolute, qualified, and sovereign immunity defenses?

III. Motions for Reconsideration.

The Commonwealth Defendants do not intend to seek reconsideration in the Superior Court.

IV. Relief Requested.

The Commonwealth Defendants request that the Single Justice vacate the Superior Court’s order, with instructions that discovery shall be stayed pending resolution of the Commonwealth Defendants’ forthcoming motion to dismiss.

V. Addendum.

The Superior Court’s October 27, 2022 Order on the Commonwealth Defendants’ Motion to Stay is included in the addendum.

Respectfully submitted,

WORCESTER COUNTY DISTRICT
ATTORNEY'S OFFICE, JOSEPH D. EARLY,
JR., ANTHONY MELIA, and RACHAEL
ROLLINS

By their Attorneys

MAURA HEALEY
ATTORNEY GENERAL

/s/ Hannah C. Vail

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Date: November 1, 2022

CERTIFICATE OF SERVICE

I, Hannah C. Vail, Assistant Attorney General, hereby certify that I have this day, November 1, 2022, served the foregoing document, upon all parties appearing in this action by emailing a copy to:

Marc J. Randazza, Esq.
Jay Wolman
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/s/ Hannah C. Vail
Hannah C. Vail
Assistant Attorney General

CERTIFICATION PURSUANT TO APPEALS COURT RULE 20.0

I, Hannah C. Vail, hereby certify that the foregoing Petition complies with all of the rules of court that pertain to the filing. The Petition complies with the applicable length limit in Rule 20.0 because it contains 608 non-excluded words in 14-point Times New Roman font, as counted in Microsoft Word (version: Word 2016).

/s/ Hannah C. Vail
Hannah C. Vail
Assistant Attorney General

ADDENDUM

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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COURT NAME & ADDRESS
Worcester County Superior Court
225 Main Street
Worcester, MA 01608

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

ASSOCIATE JUSTICE/ ASSISTANT CLERK

SESSION PHONE#

10/27/2022

Hon. Renee P Dupuis

(508)831-2358