

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

22-J-613

JOAO DePINA

vs.

WORCESTER COUNTY DISTRICT ATTORNEY'S OFFICE & others.<sup>1</sup>

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

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<sup>1</sup> 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.