

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

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ETHEL HURST, *et al.*,

Plaintiffs,

02 Civ. 2147 (HHK)

-against-

THE SOCIALIST PEOPLE'S LIBYAN ARAB
JAMAHIRIYA, *et al.*,

Defendants.
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**PLAINTIFFS' OPPOSITION TO DEFENDANT AL-MEGRAHI'S
MOTION FOR RELIEF FROM JUDGMENT AND STAY OF PROCEEDINGS**

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Plaintiffs respectfully submit this memorandum of law in opposition to the motion of Defendant Abdel-Basset Ali Al-Megrahi (“Al-Megrahi”) to vacate the partial summary judgment that this Court entered against him on February 1, 2007 and for an indefinite stay of all further proceedings in this case.

Al-Megrahi argues that this Court should take no further action in this case, and should vacate the partial summary judgment it already entered against him, because the Scottish Criminal Cases Review Commission (the “Commission”) recently referred his criminal conviction to the Scottish High Court of Justiciary for further review. Al-Megrahi’s motion lacks merit and should be rejected for two reasons: (1) his conviction indisputably has not been vacated and remains in full force and effect; and (2) the law is clear that collateral estoppel continues to apply where a criminal conviction remains subject to an ongoing appeal.

There is no doubt that the Commission did not vacate Al-Megrahi’s conviction for the murders of Plaintiffs’ family members. Rather, the Commission merely referred the conviction – which remains in full force and effect – to the Scottish High Court of Justiciary for further review. *See* Scottish Criminal Cases Review Commission News Release (June 28, 2007) (appended to Al-Megrahi’s motion as Exhibit A), at 11 (“The consequence of a reference is that the High Court hears an appeal in the case.”); *see also* Commission Website, Frequently Asked Questions, available at <<<http://www.sccrc.org.uk/frequentlyaskedquestions.aspx>>> (“Q. Once a case is referred does it mean that the conviction is quashed? A. No. Once the Commission refers a case it still has to go through the appeal process at the High Court. The High Court will determine whether or not the conviction should be quashed or the sentence reduced.”).

It is firmly established that the existence of an ongoing appeal of a criminal conviction does nothing to alter the collateral estoppel effect of that conviction unless and until it is vacated. *See, e.g., Smith v. SEC*, 129 F.3d 356, 362 n.7 (6th Cir. 1997); *U.S. v. Intl. Brotherhood of Teamsters*, 905 F.2d 610, 621 (2d Cir. 1990); *Webb v. Voirol*, 773 F.2d 208, 211 (8th Cir. 1985); *SEC v. Blackwell*, 477 F. Supp. 2d 891, 901 (S.D. Ohio 2007); *Chicago Ins. Co. v. Fasciana*, 2006 WL 3714310, at *4 (S.D.N.Y. 2006); *SEC v. Namer*, 2004 WL 2199471, at *8 (S.D.N.Y. 2004); *SEC v. Pace*, 173 F. Supp. 2d 30, 33 (D.D.C. 2001); *see also* RESTATEMENT (SECOND) OF JUDGMENTS § 13, cmt. f (1982); Wright, Miller & Cooper, FEDERAL PRACTICE & PROCEDURE, Jurisdiction 2d § 4433 (Supp. 2007).

Because the Commission's referral did not vacate Al-Megrahi's conviction but rather merely entitles him to further appeal, Al-Megrahi plainly is not entitled to relief from the partial summary judgment that the Court previously entered against him.

Al-Megrahi also asks the Court to stay this litigation in its entirety pending a decision by the High Court of Justiciary. Tellingly, he cites no authority in support of his stay application, nor are we aware of any. To the contrary, courts regularly use mechanisms far less disruptive to civil litigation than an indefinite stay when a defendant who has been collaterally estopped based on a criminal conviction is pursuing an ongoing appeal of that conviction. *See, e.g., Chicago Ins. Co.*, 2006 WL at *4 ("I will retain jurisdiction to revisit the [collateral estoppel] issue if, in fact, the conviction is reversed on appeal."); *SEC v. Blackwell*, 477 F. Supp. at 901 ("In the event that their criminal conviction is overturned, Defendants may invoke Rule 60(b) of the Federal Rules of Civil Procedure and obtain relief from the civil judgment."). In the meantime, the law is clear that Plaintiffs are entitled to proceed to trial.

CONCLUSION

For the foregoing reasons, Plaintiffs' respectfully submit that Al-Megrahi's motion to vacate the entry of summary judgment and for a stay should be denied.

Dated: August 15, 2004

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