CORBACHO DAUDINOT v. PUIG VALDES et al Doc. 85

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MIGUEL ANGEL CORBACHO DAUDINOT.

Plaintiff, CASE NO. 1:13-cv-22589-KMV

v.

YASIEL PUIG VALDES a/k/a YASIEL PUIG
and MARITZA VALDES GONZALEZ.

Defendants.
_____/

MOTION FOR STAY OF PROCEEDINGS DUE TO NEWLY DISCOVERED EVIDENCE THAT DEFENDANT'S WRONGDOING HAS PREVENTED PLAINTIFF FROM PERSONALLY LITIGATING THIS CASE IN THE UNITED STATES

COME NOW the Plaintiff, by and through the undersigned counsel, and respectfully file this Motion requesting that this court stay the instant proceeding pending Plaintiff's Resolution of a Travel Ban from Cuba that was caused by Defendant Puig's wrongful actions in Cuba, which were recently discovered by Plaintiff, that have prevented him from timely traveling to the United States, and in support thereof states:

1. The Plaintiffs filed the instant case on July 18, 2013, when Plaintiff, was serving time in Cuban prison as a result of the Defendant's actions, which were alleged in the Complaint.

2. Plaintiff had been convicted to a seven year prison sentence on October 8, 2010, which recognized the time already served by him in prison, which began on January 20, 2010.

3. Despite Plaintiff's unavailability at the time of filing, Plaintiff filed the instant case against the Defendants in the realistic expectation that Plaintiff would be granted provisional release from prison and that his relatives living in Miami, Florida could claim him for the purposes of family reunification.

4. As was expected, on October 6, 2014 the Department of Homeland Security approved an I-130 visa application that was filed on his behalf, which was approved and sent out. In December U.S. Citizenship and Immigration Services indicated that Corbacho Daudinot could participate in the Cuban Family Reunification Parole Program based on the approval of his Form I-130.

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5. Before he could further his efforts to come to the United States, Corbacho Daudinot was once again detained in September 2014 by Cuban police and held without charges until the end of the year.

6. It was not until January 2014, after he was re-released, that Corbacho Daudinot could once again resume his efforts to come legally to the United States.

7. Plaintiff was able to obtain early release of his prison sentence in Cuba, which means that he is deemed as an individual who has fully completed the sentence for which he was convicted.

8. After obtaining his early release, he concluded all of the necessary procedures to bring his citizenship status in Cuba back to that of citizen in good standing. He managed to obtain his identity card and his passport back from the government, which had taken them when he was arrested. He also obtained from the Cuban Tribunal a removal of his name from the No-Fly list based on his conviction in the Cuban Criminal case.

9. Despite all of his diligent effort and success in securing his travel to the United States, Plaintiff was pulled from a line that was boarding a plane to leave the country during March of 2015, because he was on the no-fly list.

10. Plaintiff believed at that time that there may have been some miscommunication between the Tribunal and the National Directorate of Identification, *Direction National de Identification* ("DNI"), which maintains the no-fly list.

11. After much investigation in Cuba regarding Plaintiff's continued inclusion in the no-fly list despite the Cuban Tribunal's consent to his name being excluded from that list, the Plaintiff learned two (2) days ago, on May 18, 2015, that Corbacho Daudinot was on that list as a result of a second case in 2011 involving the Human Trafficking of Yasiel Puig, in which Puig was also the accuser. *See* "**Exhibit A**", a copy of the sentence No. 229 of May 23, 2011 case, along with its translation.

12. Plaintiff was not a party to that 2011 Cuban case and has no other criminal proceedings in Cuba, however, Yasiel Puig was involved in so many cases in Cuba in which he was accusing individuals of Human Trafficking, that the Cuban court had a template for cases involving his accusations.

13. The Cuban court utilized that template in one such case, identified by Sentence number 229 that took place on May 23, 2011, in which Yasiel Puig was the accuser; the template

the court used to write the order for the 2011 case still contained portions of Corbacho Daudinot's criminal case and the court failed to remove Corbacho Daudinot from the sentencing portion of that order, making it appear as if Corbacho Daudinot received a second 7-year prison sentence in that 2011 case.

14. The 2011 case was one where Puig was accusing two men—Alberto Yosbel Bermudez Ferrer and Juan Carlos Lao Gonzalez—who had previously been unknown to Plaintiff, of Human Trafficking. That raises the number of known persons that Puig has maliciously and flagrantly accused of Human Trafficking to eleven (11), including Corbacho Daudinot, Alexander Orozco Noa, Carlos Ivan Hernandez Concepcion, Pablo Camejo Reyes, Odalys Diaz Gonzalez, Armando Muñiz, Eyder Diaz Calderin, Honorio Diaz and Captain Eugenio Cañada Perez, the last of whose family is in the United States and seeking legal grievance against Puig for Cañada's imprisonment and torture in Cuba.

15. Even though he was not part and party to the controversy in the 2011 case, Corbacho Daudinot nonetheless appears in the sentencing order, making appears as though he has a second seven-year sentence for Human Trafficking.

16. It was once again Yasiel Puig's wrongful practice of accusing persons of Human Trafficking that caused Plaintiff to be unable to come to the United States, making his already laborious quest for justice almost impossible.

17. Plaintiff's inability to come to the United States—due to Puig's wrongful actions—caused him to miss a deposition that was scheduled for April 21, 2015. Even though Plaintiff's counsel had been in communication with Defendants' counsel, informing them that Corbacho Daudinot was detained in Cuba as a result of the DNI no-flight list, Puig immediately filed for a Motion seeking Rule 37 sanctions on April 21, 2015, after Plaintiff missed his deposition, requesting that the court dismiss Plaintiff's case as a form of sanctions. That motion is set for hearing on May 27, 2015.

18. Defendant cannot be permitted to gain advantage in the instant case by the commission of his wrongful acts in Cuba. He has engaged in a malicious pattern of criminal accusations in Cuba without regard to the lives he destroys, and he has once again embroiled the Plaintiff in criminal proceedings to which Corbacho Daudinot was not even a party, conveniently preventing Corbacho Daudinot from traveling to the United States in time to meet with the

deadlines established by the Scheduling Order and meaningfully participating in the litigation of the instant case.

19. Plaintiff is now again in the process of attempting to remove himself from the no-fly list due to the 2011 criminal case in which he is not even a party.

20. As of the filing of this motion, the parties have conducted minimal discovery on this case. The trial is set for November 16, 2015.

21. The Plaintiff's testimony is needed to establish the underlying facts of the case, and he should be permitted to present his testimony—not only in a deposition—but also during the trial in the instant case.

LEGAL ARGUMENT

Every district court has the power to stay proceedings as "incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of the time and effort for itself, for counsel, and for litigants." Landis v. North American Co., 299 U.S. 248, 254 (1936). Trial courts are afforded "broad discretion" in determining whether to stay a proceeding. I.A. Durbin, Inc. v. Jefferson Nat'l Bank, 793 F 2d 1541, 1551-52 (11th Cir. 1986). Where one or more parties proposes that a pending proceeding be stayed, "the competing interest which will be affected by the granting or refusal to grant a stay must be weighed. CMAX, Inc. v. Hall, 300 F.2d 265, 268 (9th Cir. 1962). When deciding the question of whether to grant a stay, "courts generally consider the following factors: (1) whether a stay would unduly prejudice or present a tactical disadvantage to the nonmovant, (2) whether a stay will simplify the issues in the case; and (3) whether discovery is complete, and a trial date has been set." Tomco Equipment Company v. Southeastern Agri-Systems, Inc., 542 F.Supp. 2d 1303.(N.D.Ga. 2008). The Supreme Court stated, however, that among the competing interests to be considered in a motion to stay is "the hardship or inequity which a party may suffer in being required to go forward". *Landis*, 299 U.S. at 254.

In the case at bar, the Plaintiff has overcome almost insurmountable obstacles—including being suddenly and unexpectedly detained by Cuban police for several months without charges—to come to the United States; he not only obtained permission to travel, but he secured an early release of his criminal sentence, regaining possession of his identification card, and his passport, and managed to obtain from a Cuban Tribunal an order to remove his name removed

from the DNI no-fly list. It was only his unaccountable, forcible, and unknown inclusion in another one of Puig's malicious criminal accusations in Cuba that kept the Defendant from attending his deposition, thereby complying with his discovery obligations and participating actively in the current litigation.

One point that carries great weight in deciding whether or not to grant a stay of proceeding is the stage of litigation. In *Semiconductor Energy Laboratory Co., LTD. V. Chimei Innolux Corp.*, 2012 WL 7170593 (C.D. Cal 2012), the court held that even though the litigation had been underway for a year, little discovery had been conducted (neither party had served any document requests or written discovery and no parties had taken depositions or undertaken expert discovery), which was a point in favor of a stay. The court held that, since discovery was in its infancy, there was more work ahead of the parties and the court than behind them, and a stay would not unduly prejudice either party.

In the case at bar, the Defendants shall not be prejudiced by a stay in the proceedings. Other than a Request for Production, the Defendants have not undertaken any discovery and the Plaintiff has not demanded any discovery of the Defendants. While it is never pleasant to be under the shadow of litigation, a delay in the instant case, which has not involved discovery or intense motion practice, shall not unduly burden the Defendants in any way, as the underlying facts and the underlying witnesses shall remain the same, and the work to be undertaken to see this case to trial shall remain unaltered by the lapse.

Plaintiff should be permitted the opportunity to remove his name from the no-fly list that would not have been included on the list but for Defendant's pernicious actions. His visa application was approved and the USCIS approved him for the family reunification program, he was released from his sentence, received his passports and legal documentation, and given permission by Cuba to travel, and it was only his wrongful inclusion in Puig's 2011 new Cuban criminal case that have kept him from being here.

Having come this far, it would be unjust and inequitable to deny the Plaintiff his right to pursue this case and to appear at trail to face the Defendants before a trier of fact.

"There is a constitutional right to a fair trial in a civil case." Latolias v. Whitley, 93 F.3d 205, 207 (5th Cir.1996) (quoting *Lemons v. Skidmore,* 985 F.2d 354, 357 (7th Cir.1993)); see also *Sheppard v. Maxwell,* 384 U.S. 333, 86 S.Ct. 1507, 16 L.Ed.2d 600 (1966) (finding that a fair

trial is guaranteed to every person by the Due Process Clause of the Fourteenth Amendment to the Constitution); *Bailey v. Systems Innovation, Inc.*, 852 F.2d 93, 98 (3d Cir.1988) (holding that "fairness in a jury trial, whether criminal or civil in nature, is a vital constitutional right"); *Chicago Council of Lawyers v. Bauer*, 522 F.2d 242, 248 (7th Cir.1975)(recognizing that "the right to a fair trial, guaranteed by the Sixth Amendment to criminal defendants and to all persons by the Due Process Clause of the Fourteenth Amendment").

The court in *Latolias*, further stated that "it is difficult, but essential to maintain [the right to a fair trial in a civil case] for prisoner-plaintiffs." *Id*. at 207 (quoting *Lemons*, 985 F.2d at 357). Since "the very nature of a trial as a search for truth" (*Nix v. Whiteside*, 475 U.S. 157, 158, 106 S.Ct. 988, 989-90, 89 L.Ed.2d 123 (1986)), "at a minimum, fundamental fairness requires that plaintiffs have the opportunity to present their cases" in order for the trier of fact can make a meaningful search for that truth. 93 F. 3d at 207.

The Eleventh Circuit has held that in order to determine whether the prisoner should appear at trial, the district court must consider factors such as "whether the prisoner's presence will substantially further the resolution of the case, the security risks presented by the prisoner's presence, the expense of the prisoner's transportation and safekeeping, and whether the suit can be stayed until the prisoner is released without prejudice to the cause asserted." Ballard v. Spradley, 557 F. 2d 476, 480 (5th Cir. 1977).[1] The court should not base the exercise of its discretion on the probability that a prisoner will succeed on the merits of the claim. *Id*. at 481.

While the cases above, dealt with the issue of Motions for Habeas Corpus Ad Testificandum, which is not an option in the instant case because the Plaintiff is not being held within the United States, they are indicative of the analysis that the court enters in cases like these, when a Plaintiff is unable to testify in court due to a criminal proceeding that bars him from attending the trial. Importantly, the court in *Ballard* stated that "should other considerations be present… a stay of the action may be appropriate." *Id*. at 481 (quoted in *ITEL Capital Corp. v. Dennis Min. Supply and Equipment, Inc.*, 651 F.2d 405 (5th Cir. 1981).

[1] Prior to October 1, 1981, the 11th Circuit was actually part of the 5th Circuit. After the 11th Circuit was created, it adopted all of the 5th Circuit's holdings prior to October 1, 1981.

In the case at bar, the Plaintiff has no other alternative, but to respectfully request that the court stay the proceedings for a period of three (3) months so that he may finalize his visa process and is allowed to attend the deposition—and later, trial—personally.

There will be no prejudice to the cause asserted in the instant case, as all elements are already in place, the witnesses lined up, and the discovery yet conducted. Moreover, Congress anticipated that cases raised under the TVPA, based on the inherent nature of the acts prohibited by the law, which involve extreme suffering conducted under "actual or apparent authority, or color of law, of a foreign nation" for which the Plaintiff must have first "exhausted adequate and available remedies in the place in which the conduct giving rise to the claim occurred" prior to filing a claim, would require an adequate period of time to be brought before the court, and therefore provided for a ten year statute of limitation for such cases to be raised.

WHEREFORE, Plaintiffs respectfully request, that, in the interest of conducting discovery and having a fair trial and permitting the Plaintiff to present his best case to the trier of fact, that the Court enter an order staying the instant proceedings so that the Plaintiff can clear his name from the DNI no-fly list, in which Puig's wrongful actions have once again placed him.

Local Rule 7.1(a)(3) Certification

On May 22, 2015, the undersigned counsel conferred with counsel for Defendants, Sean Santini, regarding this motion, in a good faith effort to resolve the issues raised in the motion and was unable to resolve those issues.

By: *s/Kenia Bravo*
Kenia Bravo, Esq., FBN 68296
Avelino J. Gonzalez, Esq., FBN 75530

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this document was filed in federal court using CM/ECF on May 22, 2015.

s/Kenia Bravo
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