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September 13, 2007

BY ECF

Honorable Ramon E. Reyes, Jr.
United States Magistrate Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11215

Re: Nicholas R. Kamparosyan and Telemak E. Kamparosyan v. City of New York et al, 07 CV 2691 (CBA) (RER)

Your Honor:

As the Assistant Corporation Counsel assigned to the defense of the above-referenced civil rights action, I write to respectfully request a stay of the above-referenced civil rights action pending the resolution of plaintiffs' state court criminal prosecution. I have conferred with plaintiffs' counsel, Katherine Rosenfeld, Esq., of the law offices of Emery, Celli, Brinckerhoff & Abady LLP, and she consents to this request.

As background, the complaint alleges, *inter alia*, that on July 4, 2006, plaintiffs Nicholas and Telemak Kamparosyan were assaulted by Kevin Anderson, a security guard employed by Shea Stadium, and other Shea Stadium security guards. Further, the complaint alleges that New York City Police Officers Milton Russi, Terrence Rooney, Lieutenant Thomas Loeffel and other unidentified police officers conspired with the Shea Stadium security guards to conceal the alleged assault by falsely arresting plaintiffs in violation of their federal and state civil rights.

A stay of this action is necessary because there is a state court criminal prosecution pending against plaintiffs for charges including *inter alia* Assault, Harassment, Disorderly Conduct and Criminal Trespass arising from their arrests on July 4, 2006. The above-referenced civil rights action arose out of the same circumstances underlying plaintiffs' pending state court criminal prosecution. Further, there is an identity of witnesses, facts and issues given that plaintiffs are suing the police officer defendants here for false arrest and excessive force

while they are simultaneously being prosecuted for Assault, Harassment, Disorderly Conduct and Criminal Trespass arising from the same incident in state court.

It is well established in this Circuit that a Court is empowered with “discretionary authority to stay a civil action pending the resolution of a parallel criminal proceeding when the interests of justice so require.” United States v. Kordel, 397 U.S. 1, 12 n.27, (1970); Estes-El v. Long Island Jewish Medical Center, 916 F. Supp. 268, 269 (S.D.N.Y. 1995) (“It is well settled that the Court may (and indeed, should) stay a federal Section 1983 action until resolution of parallel state court criminal proceedings.”).

As one court in this Circuit has opined, “[a] stay of civil proceedings is most likely to be granted where the civil and criminal actions involve the same subject matter.” Johnson v. N.Y. City Police Dep’t, 01 Civ. 6570 (RCC) (JCF), 2003 U.S. Dist. LEXIS 12111, *4 (S.D.N.Y. July 16, 2003) (quoting Brock v. Tolkow, 109 F.R.D. 116, 119 (E.D.N.Y. 1985)). “This is because the civil action, if not stayed, might undermine the criminal defendant's Fifth Amendment privilege against self-incrimination, expand the rights of discovery beyond the limits of the state's criminal procedure law, expose the basis of the defense to the prosecution, or otherwise prejudice the criminal case. Johnson, 2003 U.S. Dist. LEXIS 12111, at *5.

Further, a conviction in plaintiffs’ criminal case would have a substantial impact on the progress of the issues in their Section 1983 action. Given that plaintiffs’ primary claims in this action are for false and excessive force, the pendency of their criminal case favors a stay because a conviction against plaintiffs for assault, harassment, criminal trespass and/or disorderly conduct could potentially entitle the individual defendant police officers in this matter to qualified immunity. Mack v. Varelas, 835 F.2d 995, 999 (2d Cir. 1987) (stay warranted where one possible outcome of the criminal proceedings could negate an essential element of plaintiff’s § 1983 claim). Hence, the resolution of plaintiffs’ criminal case could likely be determinative of plaintiffs’ claims in this action.

While the entry of a stay is, of course, a matter for the Court’s discretion, this Office respectfully submits that balance of the interests outlined above warrants such action in the case at bar. Should the Court grant this request, we would further respectfully request that defendants be permitted thirty (30) days from the time such stay is lifted to answer or otherwise respond to the complaint.

I thank Your Honor for considering this request.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Sabrina Tann', written in a cursive style.

Sabrina Tann (ST 2552)
Assistant Corporation Counsel
Special Federal Litigation Division

cc: Emery, Celli, Brinckerhoff & Abady LLP
Katherine Rosenfeld, Esq.
Attorneys for Plaintiff
(By ECF)