

**C.O. Falter Constr. Corp. v New York State Thruway
Auth.**

2008 NY Slip Op 33742(U)

July 21, 2008

Court of Claims

Docket Number: 112934

Judge: Francis T. Collins

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FILED
JUL 31 2008
STATE COURT OF CLAIMS
ALBANY, NY

STATE OF NEW YORK COURT OF CLAIMS
C.O. FALTER CONSTRUCTION CORP.,

Claimant,

**DECISION AND
ORDER**

-v-

**NEW YORK STATE THRUWAY
AUTHORITY,**

**Claim No. 112934
Motion No. M-74905**

Defendant.

**BEFORE: HON. FRANCIS T. COLLINS
 Judge of the Court of Claims**

**APPEARANCES: For Claimant:
 Alario & Associates, P.C.
 By: Linda E. Alario, Esquire**

**For Defendant:
Honorable Andrew M. Cuomo, Attorney General
By: Christopher Wiles, Esquire
Assistant Attorney General**

Defendant moves by order to show cause for an order pursuant to CPLR 2201 staying the "collection" of a Judgment entered April 21, 2008 pending the resolution of its Supreme Court action against the claimant. In an affirmation in support of the order to show cause, defendant also requests dismissal of the action from which the judgment arose pursuant to CPLR 3211 (a) (4) on the basis of the pending Supreme Court action or, in the alternative, an order "discontinuing this Claim conditioned upon the final disposition of the aforesaid Supreme Court action..."

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The parties entered into a contract in 2001 for the construction of a two-story office and maintenance facility known as the Syracuse Canal Maintenance Facility (Facility). The work was completed by August 29, 2003 with the exception of that portion of the work which was the subject of an Uncompleted Work Agreement executed by the parties in September of 2003. This agreement permitted the retention of \$95,250.00 "until such time as the outstanding work has been satisfactorily completed." In support of its motion for summary judgment the claimant established that the work which was the subject of the Uncompleted Work Agreement was satisfactorily completed and that the amount due under the agreement (\$95,250.00) had not been paid to the claimant. Defendant did not dispute the above facts but requested leave to amend its answer to assert a counterclaim for defects in a portion of the work performed pursuant to the prior contract for construction of the Facility. The Court granted the claimant's motion for summary judgment and denied the defendant's motion to amend its answer to assert a counterclaim. No appeal was filed.

Defendant's reliance upon CPLR 2201 to support its application for a stay of enforcement of the judgment is misplaced. That section states the following:

"Except where otherwise prescribed by law, *the court in which an action is pending* may grant a stay of proceedings in a proper case, upon such terms as may be just" [emphasis added]).

The entry of a final judgment terminates an action and, absent an appeal, the action is no longer pending (*see generally* Teitelbaum Holdings v Gold, 48 NY2d 51 [1979]; Zeer v Azulay, 50 AD3d 781 [2008]; Matter of Crecca v Narofsky, 41 AD3d 216 [2007]; Republic Leasing Co., Inc. v 112 Seventh Ave., Inc., 22 AD3d 231 [2005], *compare* Matter of Solkav Solartechnik, G.m.b.H. (Besicorp Group), 91 NY2d 482 [1998]. As the plain language of CPLR 2201 applies to "pending" actions, it provides no basis for the relief requested here.

The law is clear that "[a]s a court of limited jurisdiction, the Court of Claims has no jurisdiction to grant strictly equitable relief" (Madura v State of New York, 12 AD3d 759, 760 [2004], *lv denied* 4 NY3d 704 [2005], *citing* Ozanam Hall of Queens Nursing Home v State of New York, 241 AD2d 670, 671 [1997] and Psaty v Duryea, 306 NY 413 [1954]). While equitable relief is available where it is incidental to a claim seeking a money judgment (Psaty v Duryea, *supra*), no action is currently pending in the Court of Claims. As a result, it cannot be concluded that the equitable relief requested here - a stay of the enforcement of the judgment - is incidental to the primary claim.

This conclusion is supported by those cases in which it was held that while the Court of Claims has no jurisdiction to enforce a judgment, a mandamus proceeding in the Supreme Court is available to secure collection of a judgment (*see* Matter of Northville Indus. Corp. v State of New York, 14 AD3d 817 [2005]; Matter of Mordecai v State of New York, 140 AD2d 782 [1988]; State Div. of Human Rights v New York State Dept. of Correctional Servs., 90 AD2d 51, 71 [1982]; Matter of Silverman v Comptroller of State of N.Y., 40 AD2d 225 [1972]; Safeco Ins. Co. of Am. v State of New York, 89 Misc 2d 864 [1977]; *contra* Wilson v State of New York, 73 Misc 2d 931 [1973]). As this Court lacks jurisdiction to enforce its own judgments, it necessarily follows that it lacks jurisdiction to stay the enforcement of a judgment as well.¹ Even if this were not the case, however, a stay of the enforcement of the judgment pursuant to CPLR 2201 would be inappropriate. "A stay of one action pending the outcome of another is appropriate only where the decision in one will determine all the questions in the other, and where the judgment in one trial will dispose of the

¹ Notably, the automatic stay provisions contained in CPLR 5519 are inapplicable as a notice of appeal from the final judgment was not served.

controversy in both actions; this requires a complete identity of parties, cause of action and the judgment sought" (Somoza v Pechnik, 3 AD3d 394, 394 [2004] [citation omitted]; *see also* Mt. McKinley Ins. Co. v Corning Inc., 33 AD3d 51, 58 [2006]; Kubricky Constr. Corp. v Bucon, Inc., 282 AD2d 796, 797 [2001]; Eisner v Goldberger, 28 AD3d 354 [2006]; Pierre Assoc. v Citizens Cas. Co. of N.Y., 32 AD2d 495 [1969]). The purpose of such a stay is to avoid "the risk of inconsistent adjudications, duplication of proof, and the potential waste of judicial resources" (El Greco Inc. v Cohn, 139 AD2d 615, 616 [1988]).

The issue in the Court of Claims action was whether the defendant owed the claimant the amount due under the Uncompleted Work Agreement. The issue in the Supreme Court action is whether or not the claimant (a defendant in that case) and other contractors performed the work in accordance with the prior contract for construction of the Facility. The contract at issue is not the same, the parties are not the same and a decision in neither case is determinative of the outcome of the other. As a result, even if a stay of this action had been requested prior to the entry of judgment, it would not serve the purposes for which it was intended - the avoidance of inconsistent adjudications, duplication of proof, and the potential waste of judicial resources. However, like the facts in Eisner v Goldberger (28 AD3d 354 [2006], *supra*), the fact that the request for a stay was made only after entry of judgment makes clear that defendant's request is nothing more than an attempt to avoid enforcement of the judgment against it. Thus, application for a stay of the enforcement of the judgment at this juncture pursuant to CPLR 2201 is clearly inappropriate.

Likewise, in opposition to the claimant's motion for summary judgment the defendant could have requested a stay of the entry or execution of the judgment pending the outcome of the Supreme Court action but failed to do so (*see* Robert Stigwood Org. v Devon Co., 44 NY2d 922, 923 [1978];

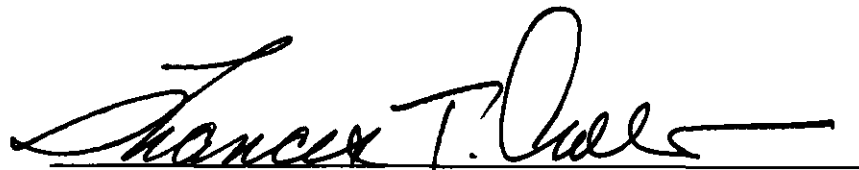
Matter of William J. Murphy, P.C. v State of New York, 157 AD2d 155, 158 [1990], *lv denied* 76 NY2d 715 [1990]; Siegel, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C3212:31). It is well settled that a court has "wide discretion in imposing conditions upon the grant of . . . summary judgment so as to avoid possible prejudice to the party against whom that judgment is granted" (Robert Stigwood Org. v Devon Co., 44 NY2d at 923, citing CPLR 3212 [e]). Such discretion is not unlimited, however, and the party against whom the judgment is sought must demonstrate prejudice (financial or otherwise) to warrant a stay of the entry or enforcement of the judgment (*Id.* at 923; Hussey v Leggio Agency, 299 AD2d 690 [2002]; Young & Young v Saland, 236 AD2d 468 [1997]; Moody v Monacelli, 225 AD2d 926 [1996]). Such prejudice may include the financial instability of the party in whose favor the judgment was granted or other evidence that the party seeking the stay may be prejudiced in the event the stay is not granted (Rona-Tech Corp. v LeaRonal, Inc., 254 AD2d 473 [1998]; P. S. Griswold Co. v Cortland Glass Co., 138 AD2d 869 [1988]; Elda Dev. Corp. v Wall, 101 AD2d 1000 [1984], *appeal dismissed* 63 NY2d 952 [1984]). Thus, in Ell-Dorer Contr. Co. v P. T. & L. Constr. Co. (85 AD2d 866 [1981]) the Appellate Division, Third Department, held that where the plaintiff established its entitlement to summary judgment and there remained questions of fact requiring denial of summary judgment on a counterclaim, the defendant's failure to offer any proof to "substantiate [the defendant's] conclusion that plaintiff is financially unsound and that any recovery [the defendant] may obtain on its counterclaims is in peril, plaintiff is entitled to immediate entry of and execution on its judgment" (*Id.* at 866, citing Robert Stigwood Org. v Devon Co., *supra*). Likewise, the defendant in this case never argued either in opposition to the claimant's motion for summary judgment nor in support of the instant motion to stay "collection" of the judgment that the claimant was financially unsound or that its ability to

enforce a judgment entered on its claim in the Supreme Court action was in peril. A stay of enforcement of the judgment would therefore be inappropriate.

Lastly, defendant's argument that another action pending in the Supreme Court supports dismissal of this action pursuant to CPLR 3211 (a) (4) is meritless, if not frivolous. While the counterclaim the defendant attempted to assert in this Court involved the same subject matter as the earlier commenced Supreme Court action, the claimant's breach of contract claim on which summary judgment was entered involved a different contract. Thus, while the defendant's proposed counterclaim in this Court was duplicative of the earlier commenced Supreme Court action, the claimant's breach of contract action was not. Dismissal of the claim pursuant to CPLR 3211 (a) (4) is therefore denied. For the same reasons, defendant's request for an order "discontinuing this Claim conditioned upon the final disposition of the aforesaid Supreme Court action" is denied. The defendant would be well advised in the future to move for dismissal of a claim within the time parameters set forth by the Court and prior to the entry of judgment against it.

For the foregoing reasons, defendant's motion is denied.

Saratoga Springs, New York
July 21, 2008



FRANCIS T. COLLINS
Judge of the Court of Claims