

[Cite as *State ex rel. Cleveland v. Corrigan*, 2009-Ohio-6655.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93940

**STATE OF OHIO EX REL.,
CITY OF CLEVELAND**

RELATOR

VS.

HONORABLE BRIAN J. CORRIGAN

RESPONDENT

**JUDGMENT:
WRIT GRANTED**

Writ of Procedendo
Motion Nos. 426258, 426915, and 427348
Order No. 428626

RELEASE DATE: December 14, 2009

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MARY J. BOYLE, J.:

{¶ 1} Relator, City of Cleveland, is the plaintiff in *Cleveland v. JP Morgan Chase Bank NA*, Cuyahoga County Court of Common Pleas Case No. CV-668608, which has been assigned to respondent judge. The defendants in Case No. CV-668608 include: JP Morgan Chase Bank, N.A.; and Bank One, N.A. By entry received for filing on August 31, 2009, respondent stayed proceedings in Case No. CV-668608 pending resolution of an appeal pending in the United States Court of Appeals for the Sixth Circuit in *Cleveland v. Ameriquest Mtge. Securities, Inc.*, No. 09-3608, which arises from the dismissal of the city's complaint in United States District Court, Northern District of Ohio, Eastern Division, No. 01-CV-139 ("the federal case").

{¶ 2} The federal case originated in the court of common pleas sub nom. *Cleveland v. Deutsche Bank Trust Co.*, Cuyahoga County Court of Common Pleas Case No. CV-646970. In Case No. CV-646970, the city asserted a claim of public nuisance against various defendants because of their role in financing subprime mortgages in Cleveland. Case No. CV-646970 was removed to federal court on the basis of diversity jurisdiction.

{¶ 3} "Cleveland originally named the holding company that owns JP Morgan Chase Bank as a defendant in the federal action. The City dropped that party from the case in a Second Amended Complaint that also added certain of the bank's sister companies as new defendants." Complaint, at ¶13. In the federal case, the city also moved to add JP Morgan Chase Bank as a party, but the city's motion was denied because it would have destroyed diversity.

{¶ 4} The city then commenced Case No. CV-668608. The city does not dispute that it asserted the same public nuisance claim in Case No. CV-668608 as in the federal case. There is also no dispute that the city asserts two statutory claims in Case No. CV-668608 which were not asserted in the federal case: under R.C. 715.261, to recover the cost of demolishing property; and under the Ohio Corrupt Activities Act (see R.C. 2923.31, et seq.) by initiating foreclosure proceedings and falsely claiming title (see R.C. 2921.12(A)).

{¶ 5} The city requests that this court issue a writ of procedendo compelling respondent to lift the stay in Case No. CV-668608 and to proceed with the claims alleged against JP Morgan Chase Bank and Bank One. For the reasons stated below, we grant the city's request for relief in procedendo.

{¶ 6} The criteria for relief in procedendo are well-established. The relator must demonstrate: (1) a clear legal right to proceed in the underlying matter; and (2) the lack an adequate remedy in the ordinary course of the law. See, e.g., *State ex rel. Charvat v. Frye*, 114 Ohio St.3d 76, 2007-Ohio-2882, 868 N.E.2d 270, at ¶13. "More pertinently, the requirements for a writ of procedendo are met if a judge erroneously stays a proceeding. *State ex rel. Watkins v. Eighth Dist. Court of Appeals* (1998), 82 Ohio St.3d 532, 535, 696 N.E.2d 1079 ('a writ of procedendo will issue to require a court to proceed to final judgment if the court has erroneously stayed the proceeding').

{¶ 7} "'The determination of whether to issue a stay of proceedings generally rests within the court's discretion and will not be disturbed absent a showing of an abuse of discretion.' *State ex rel. Verhovec v. Mascio* (1998), 81

Ohio St.3d 334, 336, 691 N.E.2d 282. A court abuses its discretion, however, when it acts in an unreasonable, arbitrary, or unconscionable manner. *State ex rel. Worrell v. Ohio Police & Fire Pension Fund*, 112 Ohio St.3d 116, 2006-Ohio-6513, 858 N.E.2d 380, ¶10.” *Id.* at ¶15-16.

{¶ 8} Respondent has filed a motion to dismiss in which he observes that “the underlying action here involves the same public-nuisance claim asserted by the same party-plaintiff against the same (or at the very least similarly-situated) party-defendants. Under these circumstances, respondent Judge Corrigan reasonably exercised his sound judicial discretion to stay these proceedings against JP Morgan Chase Bank pending resolution of the federal court proceedings.” Motion to Dismiss, at 6.

{¶ 9} Respondent acknowledges, however, that the pending federal case does not impair the jurisdiction of the court of common pleas to proceed. Likewise, respondent recognizes that the ultimate disposition of the appeal in the federal case may or may not provide persuasive authority regarding the public nuisance claim in Case No. CV-668608.

{¶ 10} “[A] writ of procedendo will issue requiring a judge to proceed to final judgment if the judge erroneously stayed the proceeding because of a pending case that does not affect the court's jurisdiction to proceed. *State ex. rel. Crandall, Pheils & Wisniewski v. DeCessna* (1995), 73 Ohio St.3d 180, 184, 652 N.E.2d 742.” *State ex rel. Kralik v. Zwelling*, 101 Ohio St.3d 134, 2004-Ohio-301, 802 N.E.2d 657. Clearly, respondent stayed Case No.

CV-668608 because of the pending federal case which does *not* affect respondent's jurisdiction to proceed.

{¶ 11} In a variety of circumstances, courts have granted relief in procedendo when a court stayed proceedings because a related matter was pending before another tribunal. For example, in *State ex rel. Carpenter v. Brown*, Stark App. No. 2008CA00099, 2008-Ohio-5687, the relator had commenced an action arising from the termination of his employment in the court of common pleas and had also filed a whistleblower complaint with the Administrative Review Board (“ARB”) [of the United States Department of Labor].

The court noted that the ARB proceeding had “already been stayed for over one year. Although the claims in both the Common Pleas case and the federal court case may be factually interrelated, state claims can exist independent of those in federal court.” *Id.* at ¶7.

{¶ 12} Courts have also granted relief in procedendo because awaiting the disposition of another proceeding would cause unnecessary delay. See, e.g., *State ex rel. Wallace v. Tyack* (1984), 13 Ohio St.3d 4, 469 N.E.2d 844 (writs of procedendo issued against the Court of Claims and common pleas court because each court stayed the identical wrongful death action; the Supreme Court did not agree that the courts' interest in “preserving their right to control their dockets [was] paramount to [the plaintiff's] interest in having his claims litigated without undue delay,” *Id.* at 6); *State ex rel. Weiss v. Hoover*, 84 Ohio St.3d 530, 1999-Ohio-422, 705 N.E.2d 1227 (writ of procedendo issued against the municipal court which erroneously stayed a forcible entry and detainer action

because the lessee had filed a declaratory judgment action in the court of common pleas); *Carpenter*, supra (“the delay which has been imposed in the case before Respondent, coupled with the potential length of time in reaching a resolution in the ARB case, unjustifiably interferes with Petitioner's right to have his claims litigated,” *Id.* at ¶7).

{¶ 13} In the underlying case, the city filed Case No. CV-668608 more than a year before respondent issued the stay of proceedings on August 31, 2009. The United States District Court dismissed the federal case on May 15, 2009 and the city’s appeal remains pending in the Sixth Circuit Court of Appeals. The indefinite delay in adjudicating the city’s claims denies the city its right to have its claims litigated.

{¶ 14} This circumstance is further exacerbated by the fact that there is neither an identity of parties nor a complete identity of issues in the federal case and Case No. CV-668608. “If a subsequently filed case does not involve the same cause of action, the first suit will not normally prevent the subsequent case.

State ex rel. Red Head Brass, Inc. v. Holmes Cty. Court of Common Pleas (1997), 80 Ohio St.3d 149, 151, 684 N.E.2d 1234, 1236.” *Weiss*, supra, at ¶533.

In Case No. CV-668608, the city invoked the jurisdiction of the court of common pleas seeking an adjudication of state law claims in state court. The disposition of the federal case will not result in any controlling authority dictating the outcome of any aspect of Case No. CV-668608. Furthermore, none of the defendants in Case No. CV-668608 is a defendant in the federal case.

{¶ 15} There is no legal obstacle preventing respondent from proceeding to the merits of Case No. CV-668608. Although respondent argues that his staying the underlying case might diminish the time and expense of litigation as well as provide him with the benefit of the federal court judgment, these arguments do not provide a sufficient basis for delaying the city's right to have its claims adjudicated. In these circumstances, we must conclude that respondent abused his discretion by staying the proceedings in Case No. CV-668608.

{¶ 16} Respondent also argues that the city has an adequate remedy in the ordinary course of the law by appealing his order staying proceedings in the underlying case after he has entered judgment. We recognize that, in many situations, courts have determined that a party may have to wait until the case-in-chief is concluded before appealing and that the delay in appealing does not make the remedy of appeal inadequate. In the circumstances present in this case, however, respondent has chosen to *prevent* the underlying case from proceeding to judgment.

{¶ 17} Additionally, the city may not now appeal respondent's order staying proceedings. Cf. *Community First Bank & Trust v. Dafoe*, 108 Ohio St.3d 472, 2006-Ohio-1503, 844 N.E.2d 825 ("a court's order staying an action, including the claims against nonbankrupt parties, pending determination of the bankruptcy of another party, is not a final order subject to appeal under former R.C. 2505.02," *Id.* at ¶32). The rationale for the stay is that respondent wishes to await the decision of a federal court on a question of state law in a federal case in which there is not a complete identity of claims or an identity of parties with those in

Case No. CV-668608. We must hold, therefore, that waiting to appeal the granting of the stay until respondent issues judgment in the underlying case does not provide an adequate remedy in the ordinary course of the law.

{¶ 18} Accordingly, respondent's motion to dismiss is denied. Relator has not filed a dispositive motion. All of the relevant evidence is before this court, however, and there is no genuine issue of material fact. As a consequence, we enter judgment for relator. See, *Tisdale v. A-Tech Automotives Mobile Serv. & Garage*, Cuyahoga App. No. 92825, 2009-Ohio-5382. Respondent is ordered to vacate the stay of proceedings issued on August 31, 2009, and proceed to adjudicate the claims asserted in Case No. CV-668608. Respondent to pay costs. The clerk is directed to serve upon the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

Writ granted.

MARY J. BOYLE, JUDGE

MARY EILEEN KILBANE, P.J., and
MELODY J. STEWART, J., CONCUR