STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

WASHINGTON, SC. **SUPERIOR COURT**

(FILED: October 1, 2013)

JAMES LAWRENCE	:	
	:	
v.	:	
	:	**C.A. No. WC-2003-0600**
WESTERN MASS BLASTING CORP.	:	
AND JOHN DOE	:	

DECISION

GIBNEY, P.J. After this Court granted Plaintiff James Lawrence's (Plaintiff) motion to reinstate his cause of action, Defendant Western Mass Blasting Corp. (Defendant) filed a motion to stay the proceedings pending Defendant's motion for a writ of certiorari. For the reasons stated herein, Defendant's motion to stay is denied.

I

Facts and Travel

This matter arises out of a negligence claim brought by Plaintiff after a vehicle allegedly owned by Defendant and operated by Defendant's agent struck Plaintiff and injured him. On January 3, 2012, the Superior Court Clerk dismissed Plaintiff's claim as a matter of course for lack of prosecution, pursuant to G.L. 1956 § 9-8-5(a). Section 9-8-5(a) permits such a dismissal where a case has been inactive for five years or more. Within the five years preceding dismissal of Plaintiff's case, however, defense counsel filed with the Court several Motions for Withdrawal and Entries of Appearances. Additionally, the parties deposed Plaintiff in 2010 and engaged in ongoing contact concerning the litigation during the years and months preceding the § 9-8-5(a) dismissal.

Plaintiff's counsel maintains that after receiving notice that the case was scheduled for § 9-8-5(a) dismissal, counsel contacted the Superior Court Clerk's Office and was told that the case would not be dismissed if counsel sent an e-mail to the Clerk's Office asking that Plaintiff's case be taken off the § 9-8-5(a) docket. Plaintiff's counsel did submit such an e-mail and, in reliance on the advice of the Clerk's Office, did not request a hearing on the dismissal pursuant to § 9-8-5(b).

In June 2013, after realizing that his case had, in fact, been dismissed, Plaintiff filed a motion pursuant to § 9-8-6 and Super. R. Civ. P. 60(b)(6) (Rule 60(b)(6)) to reinstate his claim against Defendant. Because the deadline for reinstatement had passed under § 9-8-6, this Court granted Plaintiff's motion pursuant to Rule 60(b)(6) on September 11, 2013. Thereafter, Defendant filed the instant motion to stay the proceedings pursuant to Super. R. Civ. P. 62(c) (Rule 62) and R.I. Sup. Ct. Art. I. R. 8(a) (Rule 8a).

II

Standards of Review

A

Rule 60(b)(6)

Rule 60(b)(6) provides: "On motion and upon such terms as are just, the court may relieve a party . . . from a final judgment, order, or proceeding for . . . any other reason [besides those listed in 60(b)(1)-(5)] justifying relief from the operation of the judgment." This rule grants "the Superior Court with broad power to vacate judgments whenever that action is appropriate to accomplish justice." Bendix Corp. v. Norberg, 122 R.I. 155, 158, 404 A.2d 505, 506 (1979). This power, however, is "not without limitations," as Rule 60(b)(6) is "not intended to constitute a catchall." Id.; Greco v. Safeco Ins. Co. of Am., 107 R.I. 195, 198, 266 A.2d 50,

51-52 (1970). Instead, the courts are to use the rule sparingly as an equitable remedy to prevent "manifest injustice" in only the most extraordinary of circumstances. Greco, 107 R.I. at 198. Accordingly, in order to grant relief under Rule 60(b)(6), the Court must find conditions establishing "a uniqueness that puts the case outside of the normal and usual circumstances accompanying failures to comply with the rules." Id.

B

Rule 62 and Rule 8(a)

In considering a motion to stay pending appeal under either Rule 62 or Rule 8(a), the court must consider whether the moving party has made a "strong showing" of the following four factors: "'(1) it will prevail on the merits of its appeal; (2) it will suffer irreparable harm if the stay is not granted; (3) no substantial harm will come to other interested parties; and (4) a stay will not harm the public interest.'" [1] Town of N. Kingstown v. Int'l Ass'n of Firefighters, Local 1651, 65 A.3d 480, 481 (R.I. 2013) (quoting Narragansett Elec. Co. v. Harsch, 117 R.I. 940, 942, 367 A.2d 195, 197 (1976)). These factors are not "prerequisites [all of which] must be met"; rather, the court must determine whether all of the factors, weighed together, favor granting a stay. Int'l Ass'n of Firefighters, 65 A.3d at 481; see also 11 Wright & Miller, Federal Practice and Procedure, Civil 3d § 2904 (2012) (noting "the balance of equities" is determinative in ruling on a motion to stay).

[1] In outlining these four factors, the Court in Int'l Ass'n of Firefighters was faced with a motion to stay pursuant only to Rule 8(a), not Rule 62. However, the U.S. Supreme Court has noted that "the factors regulating the issuance of a stay are generally the same" under Fed. R. Civ. P. 62 and Fed. R App. Proc. 8(a), which are the federal analogues to Rhode Island's Rule 62 and Rule 8(a). Hilton v. Braunskill, 481 U.S. 770, 776 (1987). Because Rhode Island courts may properly "look[] to federal cases for guidance with respect to the decision whether to grant a stay," this Court will apply the test established in Int'l Ass'n of Firefighters to Defendant's motions under Rule 8(a) as well as Rule 62. Int'l Ass'n of Firefighters, 65 A.3d at 481.

III

Analysis

A

Original Motion to Reinstate

In objecting to this Court's use of Rule 60(b)(6) to grant Plaintiff's motion to reinstate, Defendant focused solely on the fact that Plaintiff did not move for reinstatement within the one-year time frame required by § 9-8-6. Specifically, Defendant argued that this failure to timely request reinstatement is not a "reason . . . justifying relief" as contemplated under Rule 60(b)(6). Rather, Defendant asserted that this conduct amounted to inexcusable neglect and, therefore, fell outside the parameters of Rule 60(b)(6). Defendant's arguments, however, omitted a key fact, namely that Plaintiff's case had not met the criteria of § 9-8-5(a) when it was dismissed, and, therefore, it should never have been dismissed in the first instance. Section 9-8-5(a) allows dismissal for lack of prosecution only when a case has been "inactive . . . for five years or more." The parties do not dispute that this case was active within the five years preceding its dismissal. In addition to taking Plaintiff's deposition less than two years before the dismissal, the parties communicated regularly and engaged in discovery up to, and even after, the dismissal. Thus, the mere fact that Plaintiff missed the deadline as established in § 9-8-6 does not place relief under Rule 60(b)(6) out of reach.

On the contrary, all of the facts of this case, taken together, place Plaintiff's situation squarely in the camp of unique cases that are "outside of the normal and usual circumstances accompanying failures to comply with the rules." Greco, 107 R.I. at 198. Defendant makes much of the fact that instead of requesting a hearing as directed by § 9-8-5(b), Plaintiff's counsel contacted the Superior Court Clerk's Office in an attempt to prevent the case from being

dismissed. Such conduct was indeed a "failure[] to comply with the rules." Id. Courts, however, may properly grant relief under Rule 60(b) when a party engages in a "course of conduct which a reasonably prudent person would take under similar circumstances." Pari v. Pari, 558 A.2d 632, 635 (R.I. 1989). Because activity on both sides of the case had been ongoing, Plaintiff's counsel reasonably believed that the appearance of the case on the list of impending dismissals was a clerical error. Given the parameters of § 9-8-5, it reasonably follows that counsel would contact the Clerk's Office to resolve the matter, and that counsel would rely on assurances from the Clerk's Office that the issue would be resolved without recourse to the Court.

Moreover, counsel's failure to timely file for reinstatement—even if inexcusable—does not render Rule 60(b)(6) inapplicable. Defendant correctly points out that when negligent conduct is inexcusable, such that it cannot be remedied under Rule 60(b)(1), "the same inexcusable neglect cannot constitute the other grounds under Rule 60(b)(6) unless 'other extraordinary and unusual factors are also present.'" Labossiere v. Bernstein, 810 A.2d 210, 215 (R.I. 2002) (quoting Bailey v. Algonquin Gas Transmission Co., 788 A.2d 478, 483 (R.I. 2002)). Here, the fact that relief under § 9-8-6 was unavailable to Plaintiff by the time his counsel realized that his case had, in fact, been dismissed, combined with the fact that Plaintiff's case had initially been dismissed improperly, constitutes the requisite "extraordinary and unusual factors" to make relief under Rule 60(b)(6) available to Plaintiff. Id. Plaintiff would suffer "manifest injustice" had his case not been reinstated because the Court did not have authority under the clear parameters of § 9-8-5(a) to dismiss his claims in the first place. Greco, 107 R.I. at 198; see also Sykes v. United States, 290 F.2d 555, 556-57 (9th Cir. 1961) (finding that the trial court overstepped its authority in dismissing a case as a matter of course for lack of prosecution where

litigation activity had occurred within seven months of dismissal, and there was no evidence that the plaintiff had intended to abandon the case). As a result, reinstatement of Plaintiff's case was an appropriate exercise of this Court's "wide latitude" and discretion under Rule 60(b)(6) "'to accomplish justice.'" Greco, 107 R.I. at 197-98 (quoting Klapprott v. United States, 335 U.S. 601, 614 (1949)); see also Palazzolo v. Coastal Resources Management Council, 657 A.2d 1050, 1051 (R.I. 1995) (granting a plaintiff's motion to vacate dismissal of his case where he had "tried strenuously . . . to protect his interests," and where dismissal would not do justice).

B

Motion to Stay

In asking this Court to stay the subject proceedings,[2] Defendant argues that it will prevail on the merits, that it would suffer irreparable harm if the stay is not granted, that no substantial harm will come to other interested parties, and that a stay will not harm the public interest. See Int'l Ass'n of Firefighters, 65 A.3d at 481 (enumerating the four factors that courts must balance in determining whether to grant a stay). The foregoing discussion of the application of Rule 60(b)(6) to Plaintiff's motion to reinstate explains that Defendant is unlikely to prevail on appeal. Whether the movant is likely to succeed on appeal is the "sine qua non" of the standard governing rulings on motions to stay. Id. at 482; see also Providence Journal Co. v. FBI, 595

[2] In its motion, Defendant requests a stay pursuant to Rule 62(c). That provision, however, is inapplicable to the facts of this case because Defendant is not requesting relief from the grant, denial, or dissolution of an injunction. Rule 62(c) empowers trial courts to "suspend, modify, restore, or grant an injunction during the pendency of an appeal" "when an appeal is taken . . . with respect to an injunction." Super. R. Civ. P. 62(c). In other words, Rule 62(c) only applies to requests for relief "in injunction cases." 11 Wright & Miller, Federal Practice and Procedure, Civil 3d § 2904 (2004) (interpreting Fed. R. Civ. P. 62(c)). Thus, because Defendant seeks relief from this Court's grant of Plaintiff's motion to reinstate, Rule 62(c) is inapposite. Nonetheless, because our courts have consistently refused to elevate "form over substance," this Court will treat Defendant's motion as one for a stay made pursuant to Rule 8(a) and Rule 62(f), which empowers courts to issue a stay "upon motion and for cause shown." New Harbor Village, LLC v. Town of New Shoreham Zoning Bd. of Review, 894 A.2d 901, 905 (R.I. 2006).

F.2d 889, 890 (1st Cir. 1979) (noting that "[a]ppellants are not, of course, entitled to a stay pending appeal without showing that their appeals have potential merit"); Virginia Petroleum Jobbers Ass'n v. Federal Power Comm'n, 259 F.2d 921, 925 (D.C. Cir. 1958) (holding that "[w]ithout such a substantial indication of probable success, there would be no justification for the court's intrusion into the ordinary processes of administration and judicial review"). As a result, where the movant is unlikely to succeed on the merits, it must make a particularly strong showing on the other factors in order to tip the balance in favor of granting the stay. Id.

Defendant asserts that the second factor is satisfied because Defendant will be irreparably harmed by "costly litigation expenses and disruption of its business" if the stay is not granted. Defendant further argues that the third factor is met because Plaintiff will suffer no harm if the stay is granted. Yet, "[m]ere injuries, however substantial, in terms of money, time, and energy necessarily expended in the absence of a stay, are not enough" to meet the irreparable harm standard. Virginia Petroleum Jobbers Ass'n, 259 F.2d at 925. Rather, the movant must show that denial of the stay will upset the status quo, thereby causing it to take some irretrievable and inequitable action, whereas granting of a stay would cause "relatively slight harm" to the opposing party. Providence Journal Co., 595 F.2d at 890; but cf. Int'l Ass'n of Firefighters, 65 A.3d at 481 (finding irreparable harm where the movant would have been unjustly required to expend money that would have been difficult to recoup). In this case, denial of Defendant's motion would not force Defendant to take any steps other than those "necessarily expended" in the regular course of litigation. Virginia Petroleum Jobbers Ass'n, 259 F.2d at 925. Furthermore, granting the stay would cause a great deal more than "slight harm" to Plaintiff, as his case has been pending for a decade already, and a stay in the proceedings at this point would delay resolution of his claims even further. Providence Journal Co., 595 F.2d at 890; see also

Faerber v. Cavanagh, 568 A.2d 326, 330 (R.I. 1990) (approving of the trial court's denial of a motion that would have caused "excessive delay" and "substantial prejudice to the plaintiff"). For these reasons, Defendant does not make a strong showing of the second and third factors of the motion to stay standard.

Lastly, Defendant has made no showing that granting the stay "will not harm the public interest." Int'l Ass'n of Firefighters, 65 A.3d at 481; see also Harsch, 117 R.I. at 944-45 (denying a motion to stay where such a ruling would not have been in the public interest). As a result, Defendant has not shown to this Court's satisfaction that the balance of the factors weighs in favor of granting a stay.

IV

Conclusion

For the foregoing reasons, the Court finds that Defendant has failed to make the requisite strong showing that the four factors weigh in favor of granting a stay pending appeal. Accordingly, Defendant's motion to stay the litigation is denied. Counsel shall submit an appropriate order for entry.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**James Lawrence v. Western Mass Blasting Corp. and John Doe**
CASE NO:	**WC-2003-0600**
COURT:	**Washington County Superior Court**
DATE DECISION FILED:	**October 1, 2013**
JUSTICE/MAGISTRATE:	**Gibney, P.J.**
ATTORNEYS:	
For Plaintiff:	**Michael P. Lynch, Esq.** **Mary Welsh McBurney, Esq.**
For Defendant:	**Amit Singh, Esq.**