

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: Hon. Nancy Bannon
Justice

PART 42

CATHERINE MORAETIS

INDEX NO. 152829/2015

- v -

MOTION DATE 10/5/2016

ROBERT S. EVANS, WILLIAM S. FARISH IV,
JEFFERSON TARR, MICHAEL LEWIS, and
BARBARA BIERER, M.D.

MOTION SEQ. NO. 003

The following papers were read on this motion to stay disclosure pending the appeal of an order denying, in part, the defendants' motion to dismiss the complaint

Table with 2 columns: Document type and No(s). Rows include Notice of Motion/ Order to Show Cause, Answering Affirmation(s), and Replying Affirmation(s).

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

In this action to recover damages, inter alia, for discrimination in employment on the basis of gender in violation of the New York City Human Rights Law (Admin. Code of City of N.Y. § 8-107) and Executive Law § 296, the defendants move to stay all discovery pending the determination of their appeal from this court's order dated January 6, 2016, which denied, in part, their motion to dismiss the complaint. The plaintiff opposes the motion, although the court notes that she did not appear for oral argument of the motion. The motion is denied.

The defendants are trustees of the Edward P. Evans Foundation (the Foundation), a charitable organization that funds medical research. The plaintiff served as the personal secretary to the settlor of the trust that funded the Foundation. She alleges in her complaint that the defendants created a hostile work environment based on her gender. In the order dated January 6, 2016, this court granted the defendants' motion to dismiss the complaint to the extent of dismissing the causes of action alleging intentional and negligent infliction of emotional distress. The court declined to dismiss causes of action asserted under the Human Rights Law and the Executive Law, since, although the plaintiff lived in North Carolina as of the date she commenced this action, she alleged in her complaint that all material conduct occurred in New York City. In addition, the court concluded that, at the pre-answer stage of the litigation, there were adequate allegations that the Foundation was sufficiently interrelated with another organization so as to constitute a single "employer" that employed at least four persons, so as to subject it to the prohibitions of the Human Rights Law and the Executive Law. See Executive Law § 292(5); Admin. Code of City of N.Y. § 8-102(5). The defendants filed a notice of appeal from that order on March 16, 2016.

CPLR 2201 provides that “[e]xcept where otherwise prescribed by law, the court in which an action is pending may grant a stay or proceedings in a proper case, upon such terms as may be just.” A stay pending appeal, however, is circumscribed by CPLR 5519. Where, as here, there is no automatic right to a stay pending appeal, CPLR 5519(c) governs the matter. That section provides that “[t]he court from or to which an appeal is taken or the court of original instance may stay all proceedings to enforce the judgment or order appealed from pending an appeal or determination on a motion for permission to appeal in a case not provided for in subdivision (a) or subdivision (b), or may grant a limited stay or may vacate, limit or modify any stay imposed by subdivision (a), subdivision (b) or this subdivision, except that only the court to which an appeal is taken may vacate, limit or modify a stay imposed by paragraph one of subdivision (a).”

This court, as the court from which the appeal has been taken, thus has the discretion to consider whether to grant a stay pending appeal. “[S]tays pending appeal will not be granted or, where the stay is automatic, continued, in cases where the appeal is meritless.” Herbert v City of New York, 126 AD2d 404, 407 (1<sup>st</sup> Dept. 1987). Thus, “[u]nder [CPLR 5519(c)], there is no entitlement to a stay and, indeed, the court considering the stay may consider the merits of the appeal.” Da Silva v Musso, 76 NY2d 436, 443 n 4 (1990). “In considering whether to grant a stay under subdivision (c), the court’s discretion is the guide. It will be influenced by any relevant factor, including the presumptive merits of the appeal and any exigency or hardship confronting any party.” Richard C. Reilly, Practice Commentaries, McKinney’s Cons Laws of NY, Book 7B, CPLR C:5519:4.

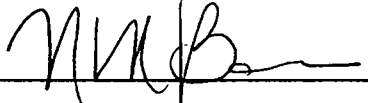
The defendants have not shown a likelihood of success on the merits of their appeal from the order dated January 6, 2016, which declined to dismiss the discrimination causes of action for failure to state a cause of action. To determine whether a complaint adequately states a cause of action, the court must “liberally construe the complaint,” accept the facts alleged in it as true, and accord the plaintiff “the benefit of every possible favorable inference.” 511 W. 232nd Owners Corp. v Jennifer Realty Co., 98 NY2d 144, 152 (2002); see Romanello v Intesa Sanpaolo, S.p.A., 22 NY3d 881, 887 (2013); Simkin v Blank, 19 NY3d 46, 52 (2012); CPLR 3026. “The motion must be denied if from the pleading’s four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law.” 511 W. 232nd Owners Corp. v Jennifer Realty Co., *supra*, at 152 (internal quotation marks omitted); see Guggenheimer v Ginzburg, 43 NY2d 268 275 (1977). Accepting the allegations in the complaint as true, which this court must in connection with a motion pursuant to CPLR 3211(a)(7), the plaintiff alleged that the discriminatory conduct occurred in New York City, and that the Foundation maintains a business relationship with another entity warranting the aggregation of their workforces for the purpose of determining whether they constitute a single entity employing four or more persons. See Matter of Argyle Realty Assocs. v New York State Div. of Human Rights, 65 A.D.3d 273 (2<sup>nd</sup> Dept. 2009). The complaint thus states causes of action that would subject the defendant to the Human Rights Law and the Executive Law. Nor has the defendant identified any hardship that it might suffer if compelled to proceed with unlimited discovery pending the determination of the appeal. See Da Silva v Musso, *supra*, at 443 n 4.

Accordingly, in light of the foregoing, it is

ORDERED that the defendants' motion to stay discovery pending their appeal of this court's order dated January 6, 2016, is denied.

This constitutes the Decision and Order of the court.

Dated: January 18, 2017

  
\_\_\_\_\_, JSC  
**HON. NANCY M. BANNON**

1. Check one: .....  CASE DISPOSED  NON-FINAL DISPOSITION  
2. Check as appropriate: MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER