

STAYS IN CIVIL APPEALS

by

HON. FRANCES E. CAFARELL

Clerk of the Court, New York State Supreme Court
Appellate Division Fourth Department
Rochester

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I. Stays of all proceedings in a case (CPLR 2201):

A. May be granted by “the court in which an action is pending”;

B. This means the court of original instance (*see Schwartz v New York City Hous. Auth.*, 219 AD2d 47, 48 [1996]; *Rhodes v Mosher*, 115 AD2d 351 [1985]).

II. Stays of all proceedings to enforce the order or judgment appealed from (CPLR 5519):

A. Stays only “proceedings to enforce”:

1. A trial is not a proceeding to enforce an order denying a summary judgment motion, even if the order also directs the parties to proceed to trial (*see Matter of White v City of Jamestown*, 242 AD2d 979, 980 [1997]; *Baker v Board of Educ. of W. Irondequoit School Dist.*, 152 AD2d 1014 [1989]), but an arbitration can be stayed on appeal from an order denying an application to stay the arbitration pursuant to CPLR 7503 (*see Matter of Albany Port Dist. Commn. v Edward B. Fitzpatrick Jr. Constr. Co.*, 115 AD2d 898 [1985]).

2. Obligation to file and serve an answer is not stayed on appeal from order denying a motion to dismiss (*see Rotondo v Reeves*, 192 AD2d 1086 [1993], *lv dismissed* 82 NY2d 706 [1993]; *Spillman v City of Rochester*, 132 AD2d 1008 [1987], *cf. Eastern Paralyzed Veterans Assn. v Metropolitan Transp. Auth.*, 79 AD2d 516 [1980] [First Department stayed obligation where order denying motion to dismiss also directed that answer be served within 15 days]).

3. Motion for class certification is not stayed on appeal from order denying motion to dismiss (*see Fassel v New York State Dept. of Taxation & Fin.*, 159 AD2d 1029 [1990]).

4. Obligation to serve and file notice of claim is not stayed when municipality appeals from order granting leave to file late notice (*see Dublanica v Rome Hosp./Murphy Mem. Hosp.*, 126 AD2d 977 [1987], *lv denied* 70 NY2d 605 [1987]), nor is obligation to serve summons and complaint (*see Ramunno v County of Westchester*, 224 AD2d 403, 403-404 [1996], *lv denied* 88 NY2d 803 [1996]).

5. Trial on damages is not stayed on appeal from judgment on liability (*see Young v State of New York*, 213 AD2d 1084 [1995]).

6. If order is “self-executing,” i.e. no proceedings are necessary to enforce it, no stay is available under 5519 (*see Crumb v Rodgers*, 234 AD2d 1015 [1996]; *see also Matter of Pickerell v Town of Huntington*, 219 AD2d 24, 25 [1996]).

Similarly, some forms of injunctive relief can be stayed under 5519 while others cannot (*see Matter of M.S.B.A. Corp. v Markowitz*, 23 AD3d 390, 391 [2005]; *Karasek v Hallenbeck*, 185 AD2d 719 [1992]).

B. Automatic Stays (CPLR 5519 [a] and [b]):

1. Available to State or political subdivision under 5519 (a) (1).
2. Available to any party under 5519 (a) (2) - (7) upon compliance with conditions, generally the giving of an undertaking. Other requirements for undertaking are set forth in CPLR article 25.
3. If party is insured, it can get automatic stay up to policy limits if insurer gives undertaking pursuant to 5519 (b).

C. Discretionary stays (CPLR 5519 [c]):

1. Can be granted by either court of original instance or appellate court.
2. Can be made conditional, e.g. upon filing of a bond (*see Lancaster v Kindor*, 64 NY2d 1013 [1985]).

D. Vacating automatic stay: per CPLR 5519 (c), only appellate court can do so (*see McLaughlin v Hernandez*, 4 Misc 3d 964, 969 [2004]).

E. Continuation of stay (CPLR 5519 [e]):

1. If order affirmed or modified an appeal, stay continues for five days after service of order of affirmance/modification with notice of entry. If party takes further appeal or moves for leave to appeal within those five days, stay continues until further appeal or motion is determined.
2. If party does neither within five days, can still obtain a new automatic stay (or move for a discretionary stay?) thereafter (*see Summerville v City of New York*, 97 NY2d 427 [2002]).

III. Inherent power to stay:

A. “Supreme Court has inherent power in a proper case to restrain the parties before it from taking action which threatens to defeat or impair its exercise of jurisdiction” (*Matter of Schneider v Aulisi*, 307 NY 376, 386 [1954]).

B. This power can be used if a stay is not otherwise available under the CPLR (*see Matter of Pokoik v Department of Health Servs. of County of Suffolk*, 220 AD2d 13, 15-16 [1996]; *Schwartz*, 219 AD2d at 48-49).

C. Examples:

1. Stay of criminal trial pending determination of motion to inspect grand jury minutes and dismiss indictment (*Schneider*, 307 NY at 384).
2. Stay of order declaring Civil Rights Law § 52 unconstitutional and allowing audiovisual coverage of criminal trial pending determination of original CPLR article 78 proceeding by the criminal defendant seeking writ of prohibition against enforcement of the order (*Matter of Santiago v Bristol*, 273 AD2d 813 [2000], *appeal dismissed* 95 NY2d 847 [2000], *lv denied* 95 NY2d 848 [2000]).
3. Stay of civil trial where insurer is receivership had been granted an injunction by court of coordinate jurisdiction against all proceedings involving its insureds (*Rapone v Waste Mgt. of N.Y.*, Docket No. CA 02-00755 [unpublished order entered Aug. 27, 2002]).

IV. Bankruptcy stay (11 USC § 362):

- A. Stays all proceedings against that party (*see Warfield v Terry*, 238 AD2d 765 [1997]; *Gianniny v Gianniny*, 207 AD2d 1037 [1994]).
- B. Only protects debtor and those other parties obligated to indemnify it, not necessarily other parties in multi-party appeal (*see Howell v New York Post Co.*, 81 NY2d 115, 118 n 1 [1993]; *Murnane Assoc. v Harrison Garage Parking Corp.*, 217 AD2d 1003 [1995]; *Central Buffalo Project Corp. v Edison Bros. Stores*, 205 AD2d 295, 297 [1994]).

