



proceeding expeditiously; (4) the private interests of, and the burden on, the defendants; (5) the interests of the courts and the public.

Church & Dwight Co. v. Kaloti Enterprises of Michigan LLC, No. 07 Civ. 612, 2008 WL 2497345 (E.D.N.Y. June 18, 2008).<sup>2</sup> Every factor, save for the third, favors the issuance of a stay.

First, it is undisputed that the issues in the criminal case overlap entirely with those presented in this case. Second, defendant has been indicted in the criminal case, which favors granting a stay. See In re Par Pharm., 133 F.R.D. 12, 13 (S.D.N.Y. 1990) (“The weight of authority in this Circuit indicates that courts will stay a civil proceeding when the criminal investigation has ripened into an indictment . . . but will deny a stay of the civil proceeding where no indictment has issued.”). As to the fourth factor, defendant may be forced to choose between exercising his Fifth Amendment right to remain silent and suffering a negative inference should he refuse to participate in discovery. At the very least, defendant will be forced to incur additional expenses in defending two actions simultaneously, a burden that will likely detract from his being able to expend all his time and resources on his criminal case. Thus, the fourth factor militates in favor of a stay. Fifth, while the public has an interest in the efficiency of this civil trial, it also has an interest in a fair and prompt resolution in defendant’s criminal prosecution. In fact, disposition of the criminal case may make disposing of this one more efficient. See Parker v. Dawson, No. 07 Civ. 1268, 2007 WL 2462677, at \*6 (“[I]t is likely that the resolution of the criminal action will, ultimately, further this Court’s interest in the efficient disposition of the civil actions.”).

---

<sup>2</sup> Some courts have expressed this as a six-factor test, separating out the interests of the courts and the public interest. See Louis Vuitton, 676 F.3d at 99 (citing Trustees of Plumbers & Pipefitters Nat. Pension Fund v. Transworld Mech., Inc., 886 F. Supp. 1134, 1139 (S.D.N.Y. 1995)).

As to the third factor, although plaintiffs will suffer some prejudice as a result of a delay in this action, their argument on this point is overstated. Even if I were to allow discovery to proceed, this case would be unlikely to proceed to trial before the criminal case is concluded. Therefore, plaintiffs' argument that defendant may flee if he is found to be innocent of the criminal charges against him, while true, does not factor in to whether discovery should be stayed. Instead, it is really an argument that this case should be tried and resolved before the criminal proceeding, something that will not likely happen. For the same reason, plaintiffs' concern about defendant's insurance coverage is misplaced.

Finally, I will not accept plaintiffs' suggestion that defendant "may well have waived" his Fifth Amendment right based on citation to two articles. While plaintiffs' counsel may be correct that discovery could reveal this to be the case, their argument for discovery is circular: without knowing whether defendant has waived his Fifth Amendment right, I cannot order discovery to confirm whether that is the case.

Accordingly, and on balance, I find that the factors weigh in favor of issuing a stay in this case pending defendant's criminal prosecution. Defendant's motion [6] is granted. The case is stayed pending a resolution of the criminal case on condition that defendant advise the Court every thirty days as to the status of the criminal case.

**SO ORDERED.**

---

U.S.D.J.

Dated: Brooklyn, New York  
September 10, 2015