

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

MUNICIPALITY OF ANCHORAGE,

Plaintiff,

v.

DEWEY WELLS, and SAMANTHA
WELLS,

Defendants.

FILED in the Trial Courts
State of Alaska Third District

OCT 08 2020

By Clerk of the Trial Courts
Deputy

Case No. 3AN-20-07424CI

**REPLY TO OPPOSITION TO MOTION TO STAY PROCEEDINGS PENDING
OUTCOME OF APPELLATE REVIEW**

DEFENDANTS DEWEY WELLS, and SAMANTHA WELLS, by and through
the LAW OFFICES OF BLAKE FULTON QUACKENBUSH, reply to Plaintiff's
opposition to Defendants' motion to stay proceedings.

Defendants move to stay proceedings in the above-captioned case because
Defendants filed a petition for review is before the Supreme Court of the State of Alaska
on September 28, 2020.¹ The issues sought to be reviewed by the Supreme Court include
the constitutionality of Emergency Order 15 ("EO-15") and whether the court erred in
rendering its August 10, 2020 decision.²

Plaintiffs erroneously assert that this court should use an incorrect legal standard
when determining whether to grant a stay of proceedings pending appellate review.

¹ *Wells v. MOA*, S17899 (Sept. 28, 2020).

² *Id.*

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Plaintiffs request that this court use the legal standard for a temporary restraining order instead of the standard articulated by the court in *Armstrong v. Tanaka*.³

The correct standard, which Plaintiff did not cite, is found in *Armstrong*.⁴ In that case, the Supreme Court of Alaska held that

[...] where an individual threatened by criminal charges brings a civil action, and either party to the civil action requests a stay of civil proceedings pending resolution of the related criminal proceedings, a trial court must balance the parties' interests to determine whether a stay is appropriate.⁵

Here, Plaintiff has made clear by pleadings and oral argument that AMC 03.80.090 makes willful failure and refusal to comply with any emergency order issued by the Mayor a criminal offense, concurrent with, and in addition to, any civil penalties provided for in the Code, including but not limited to AMC 05.20.020.⁶ Accordingly, this court should not apply the legal standard for a temporary restraining order as Plaintiff requests, but the court must instead balance the parties' interests to determine whether a stay is appropriate.

Upon consideration of the parties' interests, given the potential criminal consequences at stake, a stay of proceedings is necessary in this case. The

³228 P.3d 79, 85 (Alaska 2010). *See also*, Plaintiff's *Opposition to Motion to Stay* 1-2 (Oct. 7, 2020).

⁴228 P.3d 79, 85 (Alaska 2010).

⁵*Id.*

⁶ *See* Plaintiff's *Complaint* 6:16 (Aug. 6, 2020).

constitutionality of EO-15 is dispositive of all issues before this court, and Defendants have asked the Supreme Court of Alaska to make such a determination. This court should also consider Defendants' right to assert their Fifth Amendment privilege without penalty and their right of access to the courts. On balance, this court should also consider both Plaintiff's and Defendants' interest in timely resolution of the proceedings against them, given that the Supreme Court's determination as to the constitutionality of EO-15 is dispositive of all issues before this court and therefore the fastest way to reach resolution. Importantly, Plaintiff's opposition to Defendants' first motion to stay does not articulate how a stay might prejudice Plaintiff. Finally, this court cannot deny Defendants' motion to stay because Plaintiffs did not have any explanation upon which it could have relied regarding how a stay in proceedings would prejudice their case.

When the superior court considers and balances the foregoing interests, it must do so "in light of the length of the proposed stay."⁷ There are no pending motions before this court, and the constitutionality of EO-15 is the central issue to this case. This court has recognized that fact on multiple occasions. The constitutionality of EO-15 is squarely before the Supreme Court, and a stay of proceedings is appropriate pending appellate review.

While it is true that even after applying the aforementioned balancing test the superior court finds that a stay of civil proceedings is inappropriate, this court is "free to

⁷ *Id* at 86.


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fashion another remedy to achieve the proper balance.”⁸ However, Plaintiff has offered no alternative remedy, and apart from the present motion to stay proceedings, no other motions are ripe for decision by this court. Plaintiff’s are therefore not prejudiced by a stay.

Considering the correct legal standard, and the facts before this court, a stay of proceedings is the most appropriate decision for this motion.

DATED this 3rd day of October 2020 at Anchorage, Alaska.

LAW OFFICES OF
BLAKE FULTON QUACKENBUSH
Attorney for Defendants


BLAKE F. QUACKENBUSH, ESQ.
ALASKA BAR NO. 1405040

CERTIFICATE OF SERVICE

Undersigned hereby certifies that on 10/8, 2020
a true and correct copy of this document was served by:
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⁸ *Id.*

Page 4 of 4

Municipality of Anchorage v. Wells, et al., Case No. 3AN-20-07424CI

REPLY TO OPPOSITION TO MOTION TO STAY PROCEEDINGS PENDING OUTCOME OF
APPELLATE REVIEW