

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
Civil Division**

<b>TWO RIVERS PUBLIC CHARTER SCHOOL,</b>	)	
	)	
	)	<b>Civil Action No.: 2015 CA 009512 B</b>
<b>Plaintiff,</b>	)	<b>Calendar 7</b>
	)	<b>Judge Jeanette J. Clark</b>
<b>v.</b>	)	
	)	<b>Next Event:</b>
<b>ROBERT WEILER, JR., et al.,</b>	)	<b>Exchange Lists of Fact Witnesses</b>
	)	<b>June 28, 2016</b>
<b>Defendant.</b>	)	

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**OMNIBUS ORDER GRANTING DEFENDANTS' MOTIONS FOR STAY PENDING APPEAL**

Upon consideration of Defendant Ruby Nicdao's Motion for Stay Pending Appeal, or, In the Alternative, an Additional Extension of Time to Answer Plaintiff's Complaint ("Nicdao's Motion") that was filed on May 23, 2016, Defendant Larry Cirignano's Motion for Stay Pending Appeal and Alternative Motion for Additional Extension of Time to Answer Complaint ("Cirignano's Motion") that was filed on May 23, 2016, Defendant Robert Weiler Jr.'s Motion for Stay Pending Appeal or, In the Alternative, Motion for an Extension of Time to File an Answer ("Weiler's Motion") that was filed on May 24, 2016, Defendant Jonathan Darnel's Motion for Stay Pending Appeal or, In the Alternative, Motion for an Extension of Time to File an Answer ("Darnel's Motion") that was filed on May 24, 2016, Plaintiff's Consolidated Opposition to the Motion for a Stay, or in the Alternative to Extend the Time to Answer, of Defendants Larry Cirignano, Jonathan Darnel, Ruby Nicdao, and Robert Weiler ("Opposition") that was filed on June 7, 2016, and the record herein, the Motions are granted, for the reasons stated below.

## I. BACKGROUND

The Court denied Defendant Weiler, Defendant Darnel, Defendant Nicdao, and Defendant Cirignano's<sup>1</sup> Special Motions to Dismiss at the Initial Scheduling Conference and Motion Hearing on April 29, 2016. Following the filing of her Notice of Appeal, on May 23, 2016, Defendant Nicdao filed the instant Motion, arguing that:

This case satisfies the requirements of the collateral order doctrine. First, this Court's April 29 Order conclusively determined a disputed question of law, namely whether Nicdao is entitled to the protection of the Anti-SLAPP Act. . . . Second, this case also satisfied the second element of the collateral order doctrine because it resolves an important issue separate from the merits. . . . Finally, Nicdao's appeal also meets the requirements of the third element of the collateral order doctrine because the Court's April 29 Order is effectively unreviewable on appeal from a final judgment.

Nicdao's Mot. Mem. at 4-5. Defendants Cirignano, Darnel, and Weiler incorporated the arguments set forth in Defendant Nicdao's Motion and Memorandum of Points and Authorities.

## II. APPLICABLE STANDARD

It is well-established the Court of Appeals has jurisdiction over

"all final orders and judgments" of the Superior Court, as well as certain categories of interlocutory orders. D.C. Code § 11-721(a)(1), (a)(2). Superior Court orders that do not finally resolve pending cases are therefore not ordinarily appealable pursuant to our "general policy against piecemeal review." *Umana v. Swidler & Berlin, Chartered*, 669 A.2d 717, 722 (D.C. 1995).

*Doe No. 1 v. Burke*, 91 A.3d 1031, 1037 (D.C. 2016). Additionally, the Court of Appeals explained that

this court also has jurisdiction to hear certain non-final orders not specifically enumerated in our jurisdictional statute. This court has recognized that the collateral order doctrine, first articulated by the Supreme Court in *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546, 69 S. Ct. 1221, 93 L. Ed. 1528

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<sup>1</sup> This Court issued an Order of Default against Defendant Handy on March 9, 2016. The other Defendants' filed Special Motions to Dismiss.

(1949) and applied to the jurisdictional statute for the federal courts of appeals, 28 U.S.C. § 1291-92 (2012), likewise applies to D.C. Code § 11-721<sup>2</sup>.

*Id.* Describing the collateral order doctrine, the Court of Appeals went on to state that it

“is best understood not as an exception to the final decision rule” codified in this court’s jurisdictional statute “but as a practical construction of it,” [and it] permits appellate courts to assert jurisdiction over a “small class” of otherwise non-final orders (citations omitted), which “finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated.” *Cohen*, 337 U.S. at 546.

*Id.* Finally, the *Doe* Court set forth a stringent three criteria test that must be satisfied if the collateral order doctrine is applied to an order.

[T]he subject order: (1) “must conclusively determine a disputed question of law,” (2) “must resolve an important issue that is separate from the merits of the case,” and (3) must be effectively unreviewable on appeal from a final judgment.” *McNair Builders*, 3 A.3d at 1135 (quoting *Finkelstein, Thompson & Loughran v. Hemispherx Biopharma, Inc.*, 774 A.2d 332, 339-40 (D.C. 2001) (overruled on other grounds)).

*Id.*

### III. ANALYSIS

The Court applies the three criteria to determine if the collateral order doctrine applies to its April 29, 2016 Oral Order denying Defendants’ Special Motions to Dismiss.

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<sup>2</sup> D.C. Code §§ 11-721(d) states:

When a judge of the Superior Court of the District of Columbia in making in a civil case (other than a case in which a child, as defined in section 16-2301, is alleged to be delinquent, neglected, or in need of supervision) a ruling or order not otherwise appealable under this section, shall be of the opinion that the ruling or order involves a controlling question of law as to which there is substantial ground for a difference of opinion and that an immediate appeal from the ruling or order may materially advance the ultimate termination of the litigation or case, the judge shall so state in writing in the ruling or order. The District of Columbia Court of Appeals may thereupon, in its discretion, permit an appeal to be taken from that ruling or order, if application is made to it within ten days after the issuance or entry of the ruling or order. An application for an appeal under this subsection shall not stay proceedings in the Superior Court of the District of Columbia unless the judge of that court who made such ruling or order or the District of Columbia Court of Appeals or a judge thereof shall so order.

**A. The April 29, 2016 Oral Order Denying the Special Motions to Dismiss conclusively determined a disputed question of law**

The purpose of the D.C. Anti- SLAPP Act, D.C. Code § 16-5502,

[is] to protect the targets of SLAPPs and encourage “engage[ement] in political or public policy debates.” Comm. Report at 4, [and] the statute creates a “special motion to dismiss,” a procedural mechanism that allows a named defendant to quickly and equitably end a meritless suit. D.C. Code § 16-5502.

*Id.* at 1036. Here, this Court denied Defendants’ Special Motions to Dismiss and determined, as a matter of law, that Defendants’ conduct was not protected by the Anti-SLAPP Act. See Tr. 78:3-6 (April 29, 2016).

Therefore, this factor has been satisfied.

**B. The April 29, 2016 Oral Order Denying the Special Motions to Dismiss resolved an important issue that is separate from the merits of the case**

Plaintiff brought a cause of action for Count I: Intentional Infliction of Emotional Distress and Count II: Private Nuisance/Conspiracy to Create a Private Nuisance. Compl. at 24. The April 29, 2016 Oral Order addressed the issue of whether Defendants’ conduct was protected by the Anti-SLAPP Act. The issue of Anti-SLAPP protection is separate from the tort claims alleged in Plaintiff’s Complaint. The Court of Appeals remarked that “[d]enial of an anti-SLAPP motion resolves a question separate from the merits in that it merely finds that such merits may exist, without evaluating whether the plaintiff’s claim will succeed.” *Doe No. 1, supra*, at 1039.

Therefore, this factor has been satisfied.

**C. The April 29, 2016 Oral Order Denying the Special Motions to Dismiss is effectively unreviewable on appeal from a final judgment**

If Defendants are not permitted to appeal the April 29, 2016 Oral Order, the parties will engage in extensive discovery and incur significant costs litigating the

underlying claims raised in Plaintiff's Complaint. Indeed, the Court of Appeals informed that "the denial of a motion that asserts an immunity from being sued is the kind of ruling that is commonly found to meet the requirements of the collateral order doctrine and thus to be immediately appealable." *Id.*

Therefore, this factor has been satisfied

#### **IV. CONCLUSION**

Having found that the above-stated three criteria have been satisfied, this Court concludes that the April 29, 2016 Oral Order is an interlocutory appealable order under the category of the collateral order doctrine. Although an interlocutory appeal does not mandate an automatic stay, this Court finds that in the interest of justice, only discovery is stayed pending Defendants' appeals. See *Stebbins v. Stebbins*, 673 A.2d 184, 193 (1996) ("Where the petitioner can make an adequate showing, including a threat of irreparable harm, this court has ample authority to stay some or all further proceedings in the trial court."); *Aurell v. Furst*, 539 A.2d 1081, 1081 (D.C. 1988);<sup>3</sup> *Ford v. Chartone, Inc.*, 834 A.2d 875, 879 (D.C. 2003).

**WHEREFORE**, it is this 14th day of June 2016,

**ORDERED**, that the Motions are **GRANTED**; and it is

**FURTHER ORDERED**, that only **Discovery is Stayed in this case at this time**;

and it is

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<sup>3</sup> The Court of Appeals stated that

The filing of the appeal did not automatically deprive the trial court of all jurisdiction to act with respect to future pretrial proceedings. See *Carter v. Cathedral Ave. Co-op, Inc.*, 532 A.2d 681, 684, n.7 (1987) ("the line that marks the division between what the trial court may and may not do [while appeals are pending] . . . is subject to a common-sense flexibility in application"); 15, C. WRIGHT, A. MILLER & E. COOPER, FEDERAL PRACTICE AND PROCEDURE § 3911 at 497 (1976) ("there is no reason to treat [a collateral order appeal] as transferring the entire litigation to the court of appeals").

*Id.*

**FURTHER ORDERED**, that Defendants (1) Larry Cirignano, (2) Ruby Nicdao, and (3) Jonathan Darnel each shall file an Answer<sup>4</sup> to Plaintiff's Complaint, no later than **June 27, 2016**; and it is

**FURTHER ORDERED**, that for each Motion filed, the parties must e-mail a copy of the proposed order in Microsoft Word (.doc) format to the following e-mail addresses pursuant to this Court's General Order: clarkjj2@dcsc.gov and clarkjj3@dcsc.gov.

**SO ORDERED.**



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**Judge Jeanette J. Clark**  
**D.C. Superior Court**

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<sup>4</sup> Defendant Weiler filed an Answer to Plaintiff's Complaint on January 8, 2016.

**Copies e-filed, e-served, and docketed on this 14th day of June 2016:**

Michael L. Murphy, Esq.  
Ora N. Nwabueze, Esq.  
Cary Joshi, Esq.  
1054 31<sup>st</sup> Street, NW, Suite 230  
Washington, DC 20007  
*Counsel for Plaintiff*

Mathew D. Staver, Esq.  
P.O. Box 540774  
Orlando, FL 32854  
*Counsel for Defendant Cirigano*

Alexander C. Vincent, Esq.  
12505 Park Potomac Avenue, Sixth Floor  
Potomac, MD 20854  
*Counsel for Defendant Nicdao*

John R. Garza, Esq.  
17 West Jefferson Street, #100  
Rockville, MD 20850  
*Counsel for Defendant Darnel*

**Copy mailed:**

Robert Weiler, Jr.  
3203 Maygreen Avenue  
Forestville, MD 20747  
*Defendant*

Lauren Handy  
24701 Byrne Meadow Square, Apt. 110  
Aldie, VA 20105  
*Defendant*