

SHORT FORM ORDER

Present: SUPREME COURT - STATE OF NEW YORK

HON. JOSEPH A. DE MARO

Justice

WILFRED MOSSEY,

TRIAL/IAS, PART 9
NASSAU COUNTY

Plaintiff,

MOTION DATE:
April 29, 2002
INDEX No. 7244/00

-against-

SEQUENCE No. 3, 4, 5

COUNTY OF NASSAU and
DONNA SCHNEIDER,

Defendants.

The following papers read on this motion:

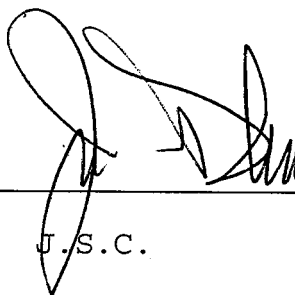
Notice of Motion and Supporting Papers (Seq. #3)
Notice of Motion and Supporting Papers (Seq. #4)
Notice of Cross-Motion and Supporting Papers (Seq. #5)
Affirmation in Opposition

Motion by defendant, County of Nassau, for orders: (1) pursuant to section 202.21(e) vacating plaintiff's note of issue because all discovery has not been completed; (2) pursuant to CPLR 5519(a)(1) confirming that the filing of the notice of appeal

constitutes an automatic stay herein; and (3) pursuant to CPLR 2221 granting leave to renew and/or reargue the plaintiff's motion to compel further discovery and amend his complaint and vacate this Court's order dated February 5, 2002 authorizing the plaintiff's service of an amended complaint and the taking of the deposition of two additional witnesses who have personal knowledge of the facts, is granted only to the extent to confirm (a) that because the defendant County's notice of appeal was served before the date the depositions were fixed by this Court's order dated February 5, 2002 with notice of entry being served on March 15, 2002, the taking of the depositions are automatically stayed; (Cherry v New York City Housing Authority, 217 AD2d 641; Hacker v City of New York, 25 AD2d 35, 37.) "Any case law to the contrary is not followed by the Appellate Division Second Department." (Mtr. Pickerell v Huntington, 219 AD2d 24); and (b) the defendant's notice to vacate the note of issue and (c) defendant's motion for renewal or reargument of the aforesaid order of this Court are also affected by the service of the notice of appeal (see: Picherell v Town of Huntington, supra; Pokoik v Health Servs., 220 AD2d 13), and therefore, such motions are automatically stayed pending the determination of the appeal, and in all other respects, is denied.

Cross-motion by plaintiff for an order vacating and to strike defendant's original answer for failing to serve an amended answer to the amended complaint and/or compelling defendant to immediately serve an amended answer to the amended complaint, is denied as moot in view of the determination herein on the main motion.

CPLR 5519(a)(1) expresses the public policy of New York State designed to protect the state or any potential subdivision of the state in its conduct during the pendency of an appeal, (People v Berry Estates, 87 AD2d 161, affd 58 NY2d 701) and is not lightly to be vacated. (Serth v New York State Department of Transportation, 77 AD2d 957; DeLury v City of N.Y., 48 AD2d 405.) A county is a political subdivision of the state and so recognized in the Constitution. Albrecht v Queens County, n.o.r. 32 N.Y.S. 473; see also, New York State Constitution, Article IX, section 1; cf. Turner v Reed, 52 AD2d 739.) Thus, the County of Nassau is a political subdivision or agency of the state for purposes of CPLR 5519(a)(1) affording an automatic stay, holding parties to status quo pending the appeal and it prohibits either side from enforcing the Court's order. However, this Court's order survives, until overturned, as the law of the case and remains binding until overturned. For all purposes, it continues to exist; is binding, but cannot be enforced. (See: Dept. of Housing v Vanway, 123 Misc2d 372, 373-374.)


J.S.C.

ENTERED

JUL 01 2002

Dated: June 13, 2002

NASSAU COUNTY
COUNTY CLERKS OFFICE