1999 WL 1225264
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United States District Court, S.D. New York.

James BENJAMIN, et al., Plaintiffs,
v.
Bernard KERIK, et al., Defendants.

No. 75 CIV. 3073 HB. | Dec. 21, 1999.

Opinion

MEMORANDUM & ORDER

BAER, District J.

***1** This memorandum and order decides an issue that has, by operation of the provisions of the Prison Litigation Reform Act ("PLRA"), 18 U.S.C. § 3626(e), arisen in this nearly quarter-century old litigation. In particular, the Court addresses the PLRA's so-called "automatic stay" provision, 18 U.S.C. § 3626(e), and must decide the narrow question of whether the Court retains discretion under the statute to suspend operation of the automatic stay—a question not yet resolved by this Circuit. Familiarity with the facts of this litigation, of limited necessity for purposes of this decision, is assumed.

I. BACKGROUND & DISCUSSION

The Prison Litigation Reform Act ("PLRA" or "Act") provides that a district court may not grant prospective relief in a prison litigation case "unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right." 18 U.S.C. § 3626(a)(1)(A). "Prospective Relief" is defined as "all relief other than compensatory money damages." 18 U.S.C. § 3626(g)(7), and in the case at bar, pertains to the consent decrees reached in the late 1970s between the City of New York and plaintiff class of pretrial detainees. Section 3626(b)(2) of the Act also provides that any prospective relief that was ordered before the enactment of the PLRA will be immediately terminated "if the relief was approved or granted in the absence of a finding by the court that the relief" satisfies the tripartite requirements of § 3626(a)(1)(A), unless the court makes new "written findings based on the record that prospective relief remains necessary" and meets the Act's requirements. 18 U.S.C. § 3626(b)(3).

Cutting to the chase, section 3626(e)(1) requires a district court to "rule promptly" on any motion to modify or terminate prospective relief in a prison litigation lawsuit. 18 U.S.C. § 3626(e). Along these lines is the Act's automatic stay provision which operates to automatically suspend any prospective relief—beginning, for our purposes, thirty days after the motion's filing date, 18 U.S.C. § 3626(e)(2)(A)(i)—until the date the court enters a final order ruling on the motion. 18 U.S.C. § 3626(e)(2)(B). To be sure, Section 3626(e)(3) allows a court to postpone for a maximum of sixty days the effective date of an automatic stay for good cause. 18 U.S.C. § 3626(e)(3). On November 2, 1999, the parties to this litigation stipulated to— and this Court so ordered—an agreement which recognizes that good cause exists to extend by sixty days the automatic stay provision. Accordingly, on or about January 8, 2000, this sixty day postponement will expire and the automatic stay will take effect, thereby suspending the consent decrees at issue in this case. The Court now decides whether this automatic stay provision can itself be "stayed" by court order, or whether the stay is automatic and cannot be altered by this Court.

***2** Three circuit courts have addressed this very issue, and provide ample guidance for my decision today. Both the Sixth and Fifth Circuits interpreted the provision to find that the district courts do retain power to suspend operation of the automatic stay provision. *See Ruiz v. Johnson,* 178 F.3d 385 (5th Cir.1999); *Hadix v. Johnson,* 144 F.3d 925, 930 (6th Cir.1998). The Seventh Circuit, while interpreting § 3626(e) as not permitting judicial discretion to suspend operation of the automatic stay, decided on that basis that the provision is unconstitutional. *French v. Duckworth,* 178 F.3d 437 (7th Cir.1999).

As a threshold issue, I note that "[w]here a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, [a court's] duty is to adopt the latter." *Lopez v. Monterey County,*—U.S. -, 119 S.Ct. 693, 708 (1999) (Thomas, J., dissenting). That being said, I am persuaded by the rationale put forth by the Sixth Circuit in support of the holding in *Hadix.* There the court found that neither the language of the automatic stay provision nor the statute's legislative history requires a departure from the district courts" ' inherent power to stay judicial orders in order to achieve equity." *Hadix,* 144 F.3d at 938. *See also Ruiz,* 178 F.3d at 394 ("[N]othing in either the language of § 3626(e) or its statutory history indicates that Congress intended to supersede the district court's equitable power to stay judicial orders."). Both courts found evidence for

their conclusions, as do I, in the presence of subsection (e)(4). That provision provides for an expedited review of "[a]ny order staying, suspending, delaying, or barring the operation of the automatic stay described in paragraph (2)" *other than* an order under (e)(3) to postpone for sixty days the automatic stay where good cause exists. One logical inference that may be drawn from Congress' decision to add subsection (e)(4)—an inference necessary so as to avoid any friction with the Constitution—is that Congress contemplated instances where the district courts might order that the automatic stay be blocked from taking effect. Indeed, it hardly makes sense for the statute to provide for interlocutory appeal from an order that Congress had concluded a district court could not make.

Finally, as the Seventh Circuit noted in *Duckworth:*

> It may be, however, that in some cases the courts will not be able to carry out their adjudicative function in a responsible way within the time limits imposed by (e)(2). Given the command of the PLRA to tailor relief to the least restrictive alternative, and to take every step to ensure that an injunction does not stray beyond the requirements of federal law, the district courts will have a complex task on their hands. Some decrees under review will have been the result of years of litigation, and in considering whether termination is proper under § 3626(b)(3), the court may need not only to review a massive record, but also take new evidence.

***3** 178 F.3d at 447. This observation aptly describes the instant litigation, and in this light, the Court hereby suspends the automatic stay provision of the PLRA until a meaningful review of the issues raised by the plaintiffs can occur. Parenthetically, it should be made clear that the parties have cooperated with each other and with the Court to accelerate the preparation time they believed was appropriate—in line with the spirit and language of the PLRA—to expedite hearings. Those hearings are now scheduled to take place next month.

III. CONCLUSION

For the foregoing reasons, the operation of § 3626(e)(2) is suspended until such time as this Court rules on the defendant's motion to terminate the consent decrees in this case.

SO ORDERED.