

2023 WL 7198938

Supreme Court, Appellate Division,
First Department, New York.CAMELOT EVENT DRIVEN
FUND etc., Plaintiff–Respondent,

v.

MORGAN STANLEY & CO.
LLC, et al., Defendants–Appellants,
[Viacomcbs, Inc.](#), et al., Defendants.

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Index No. 654959/21

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Case No. 2023–03270

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Entered: November 2, 2023

Attorneys and Law Firms

Skadden, Arps, Slate, Meagher, & Flom LLP, New York ([Scott D. Musoff](#) of counsel), for Morgan Stanley & Co. LLC and Goldman Sachs & Co. LLC, appellants.

Simpson Thacher & Bartlett LLP, New York ([Jonathan K. Youngwood](#) of counsel), for J.P. Morgan Securities, LLC, Citigroup Global Markets Inc., Siebert Williams Shank & Co., LLC, RBC Capital Markets, LLC, U.S. Bancorp Investments, Inc., TD Securities (USA) LLC, SG Americas Securities, LLC, CastleOak Securities, L.P., Samuel A. Ramirez & Company, Inc., Academy Securities, Inc., R. Seelaus & Co., LLC, BNY Mellon Capital Markets, LLC, Intesa Sanpaolo S.P.A., and ICBC Standard Bank PLC, appellants.

Willkie Farr & Gallagher LLP, New York ([Brady M. Sullivan](#) of counsel), for SMBC Nikko Securities America, Inc., appellant.

Sidley Austin LLP, New York ([Deborah Sands](#) of counsel), for Wells Fargo Securities, LLC, appellant.

Bernstein Litowitz Berger & Grossmann LLP, New York ([John Rizio-Hamilton](#) of counsel), for respondent.

[Oing](#), J.P., Moulton, González, [Shulman](#), [Rosado](#), JJ.

Opinion

*1 Order, Supreme Court, New York County (Andrew Borrok, J.), entered on or about June 13, 2023, which denied defendants' motions for a stay of discovery pursuant to the Private Securities Litigation Reform Act (PSLRA) (15 USC § 77z–1[b][1]) and CPLR 2201 pending their appeals from an order, dated February 6, 2023, denying their motions to dismiss, unanimously affirmed, with costs.

As an initial matter, although raised for the first time on appeal, we may consider the purely legal issue of whether a PSLRA stay applies to actions in state court (*see Vanship Holdings Ltd. v. Energy Infrastructure Acquisition Corp.*, 65 A.D.3d 405, 408, 884 N.Y.S.2d 24 [1st Dept. 2009]). We conclude that it does.

15 USC § 77z–1(b)(1) provides, “In any private action arising under this subchapter, all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss.” By contrast, 15 USC § 77z–1(a)(1) states, “The provisions of this subsection shall apply to each private action arising under this subchapter that is brought as a plaintiff class action pursuant to the Federal Rules of Civil Procedure.” The plain language of the statute demonstrates that subsection (a) applies only to actions in federal court, whereas subsection (b) applies to any private action, whether brought in state or federal court (*see Matter of Everquote, Inc. Sec. Litig.*, 65 Misc.3d 226, 237, 106 N.Y.S.3d 828 [Sup. Ct., N.Y. County 2019]; *City of Livonia Retiree Health and Disability Benefits Plan v. Pitney Bowes Inc.*, 2019 WL 2293924, *4, 2019 Conn. Super. LEXIS 1604, *8–9 [May 15, 2019, No. X08 FST CV 18 6038160 S]; *Milano v. Auhll*, 1996 WL 33398997, *2–3, 1996 Cal. Super. LEXIS 2, *6–7 [Oct. 2, 1996, No. SB 213 476]).

Nevertheless, although we find that the PSLRA stay applies to state court actions, we conclude that it does not apply to stay discovery pending appeals from denials of motions to dismiss. As noted, 15 USC § 77z–1(b)(1) states that discovery shall be stayed “during the pendency of any motion to dismiss.” Thus, its plain language provides for a stay of discovery only while a motion to dismiss is awaiting disposition. Here, because defendants' motions to dismiss have been decided, the stay no longer applies. They are not entitled to a stay of discovery pending their appeals from the denial of the motions.

*2 Our determination is consistent with the statute's purpose. “The purpose of the statutory stay is to prevent abusive, expensive discovery in frivolous lawsuits by postponing

discovery until after the Court has sustained the legal sufficiency of the complaint. In a case where the court already has sustained the legal sufficiency of the complaint, this purpose has been served” (*In re Salomon Analyst Litig.*, 373 F.Supp.2d 252, 254–255 [S.D.N.Y.2005] [internal quotation marks and citation omitted]; *see also In re Lernout & Hauspie Sec. Litig.*, 214 F.Supp.2d 100, 106 [D. Mass. 2000]).

Additionally, in the federal system, there are no interlocutory appeals as of right. Holding that the PSLRA stay does not apply during the pendency of an appeal from a denial of a motion to dismiss would maintain uniformity between the federal and state systems, preventing an incentive for forum shopping (*see Everquote*, 65 Misc.3d at 240, 106 N.Y.S.3d

828; *Milano*, 1996 WL 33398997 at *4, 1996 Cal. Super. LEXIS 2 at *10).

We decline to grant a discretionary stay (*see CPLR 2201*; 5519[c]). We note that we have previously denied defendants' motions for a stay pending the appeals (*see Camelot Event Driven Fund v. Morgan Stanley & Co. LLC*, 2023 N.Y. Slip Op. 71434[U] [1st Dept. 2023]).

All Citations

--- N.Y.S.3d ----, 2023 WL 7198938, 2023 N.Y. Slip Op. 05534