

# United States Court of Appeals For the First Circuit

No. 10-1764

SIMON GLIK,

Plaintiff, Appellee,

v.

JOHN CUNNIFFE, in his individual capacity, et al.,

Defendants, Appellants.

Torruella, Lipez and Thompson,  
Circuit Judges.

## ORDER OF COURT

Entered: August 4, 2010

Defendants-appellants, the City of Boston and three individual Boston police officers, have filed a motion to stay the district court proceedings pending the resolution of the defendants' appeal from the district courts' denial of their motion to dismiss on grounds that included qualified immunity. The district court denied their stay request. Plaintiff-appellee opposes the motion only insofar as it seeks a stay of proceedings against defendant City of Boston.

"In Mitchell v. Forsyth, 472 U.S. 511 (1985), the Supreme Court ruled that a defendant denied qualified immunity by a district court could file an interlocutory appeal to obtain review of any disputed question of law." Rivera-Torres v. Ortiz Velez, 341 F.3d 86, 93 (1st Cir. 2003). While a Forsyth appeal is pending, proceedings as to those aspects of the case involved in the appeal shall be stayed unless the defendants had frivolously appealed or taken an interlocutory appeal from a non-appealable order. See id.; see also Hegarty v. Somerset County, 25 F.3d 17, 18 (1st Cir. 1994) (holding that appellant's motion for stay of discovery pending a Forsyth appeal should be granted so long as the appeal is non-frivolous).

In the absence of a frivolousness determination by the district court, and given plaintiff-appellee's non-opposition, defendants-appellants' motion for a stay of proceedings with respect to the individual police officer defendants is granted. We leave in effect, however, the district court's

denial of a stay with respect to the proceedings against the City of Boston. This order is without prejudice to the parties filing in the district court motions in favor of or in opposition to a partial or complete stay of proceedings against the City of Boston pending this appeal, and without prejudice to the plaintiff-appellee moving to lift the stay of proceedings against the individual defendants on the ground that the transcript of the hearing on the motion to dismiss (once produced) reveals that the appeal is frivolous.

So ordered.

By the Court:

/s/ Margaret Carter, Clerk.

cc:

Howard Friedman  
David Milton  
Sarah R. Wunsch  
Lisa A. Skehill  
Ian D. Prior