

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT

Brigade Calvary Fund Ltd. v. Chirico

2025 N.Y. Slip Op. 06784 (Supreme Court of the State of New York Appellate Division First Department 2025) ·
No. Index No. 655678/24; Appeal No. 5292; Case No. 2025-03695 · Decided December 4, 2025

SUMMARY

The New York Appellate Division, First Department modified and affirmed an order concerning whether to continue a stay of discovery in a state action related to a federal securities class action. The court continued the stay pending the federal court's determination of a motion to stay discovery and deferred to that court on whether the stay was required under the Securities Litigation Uniform Standards Act or another basis.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Per Curiam; Kern, J.P.; Friedman, J.; Gesmer, J.; Pitt-Burke, J.; O'Neill Levy, J.
JURISDICTION	New York Appellate Division, First Department
DECIDED	December 4, 2025
DOCKET	Index No. 655678/24; Appeal No. 5292; Case No. 2025-03695
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant McGrath appealed from an order of Supreme Court, New York County, denying his request to continue a previously imposed stay of discovery while motions to dismiss were pending in a related federal securities class action.
STANDARD OF REVIEW	Abuse of discretion, with modification on the law; the court referred to the motion court's discretionary decision concerning a discovery stay.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Kieran J. McGrath v. Brigade Calvary Fund Ltd., et al.

TOPICS

- discovery dispute
- motions to dismiss
- appellate procedure
- civil procedure
- commercial litigation

PRACTICE AREAS

civil procedure

securities litigation

appellate procedure

commercial litigation

QUESTIONS PRESENTED

1. Whether discovery in the state action should remain stayed while the federal court determines whether discovery should be stayed under the Securities Litigation Uniform Standards Act of 1998 or on another basis.
2. Whether the Appellate Division should reach defendant's substantive challenges concerning the identity of the state and federal actions and potential prejudice from permitting discovery before resolution of the federal motions to dismiss.

HOLDINGS

1. The stay of discovery in the state action should continue pending the federal court's determination of a motion to stay discovery in the state action while the federal court considers motions to dismiss in the related federal action.
2. The court abstained from addressing defendant's remaining substantive challenges, including whether the state and federal actions shared a substantial identity and whether permitting discovery would cause undue prejudice to plaintiffs in the federal action.

KEY QUOTATIONS

“The court presiding over the federal action should first address whether discovery in this action should be stayed pursuant to the Securities Litigation Uniform Standards Act of 1998 (15 USC § 78u-4[b][3][D]) or on another basis.” ([*1])

“We defer to the federal court, and abstain from otherwise addressing defendant's substantive challenges to the motion court's discretionary decision not to continue the stay of discovery subsequent to its decision on defendant's motion to dismiss” ([*1])

FACTUAL BACKGROUND

The state action involved discovery while a related securities class action, *Jiang v. Chirico, et al.*, No. 23-cv-01258, was pending in the United States District Court for the Southern District of New York. A stay of discovery had previously been imposed in the state action. After the motion court declined to continue the stay, defendant appealed, asserting that discovery should remain stayed while the federal court considered motions to dismiss and the related question of a discovery stay.

PROCEDURAL HISTORY

Supreme Court, New York County, had imposed a stay of discovery on or about January 10, 2025, and later denied defendant's request to continue that stay after deciding defendant's motion to dismiss. The Appellate Division modified the order to continue the stay pending the federal court's determination of whether discovery in the state action should be stayed while the federal motions to dismiss were considered, and otherwise affirmed.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

Discovery in the state action is to remain stayed pending the federal court's determination of a motion to stay discovery in this action. The federal court should first address whether the stay is warranted under 15 U.S.C. § 78u-4(b)(3)(D) or on another basis.

CASES CITED

- Jiang v. Chirico, et al., No. 23-cv-01258

OPINION

PER CURIAM.

Brigade Calvary Fund Ltd v Chirico (2025 NY Slip Op 06784) Brigade Calvary Fund Ltd v Chirico 2025 NY Slip Op 06784 Decided on December 04, 2025 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided and Entered: December 04, 2025 Before: Kern, J.P., Friedman, Gesmer, Pitt-Burke, O'Neill Levy, JJ. Index No. 655678/24|Appeal No. 5292|Case No. 2025-03695| [*1]Brigade Calvary Fund Ltd, et al., Plaintiffs-Respondents, v James M. Chirico, Jr., Defendant, Kieran J. McGrath, Defendant-Appellant. Sher Tremonte LLP, New York (Douglas R. Jensen of counsel), and Kellogg, Hansen, Todd, Figel & Frederick, PLLC, Washington, D.C.

(Christopher C. Goodnow of the bar of the State of California and District of Columbia, admitted pro hac vice, of counsel), for appellant. Debevoise & Plimpton LLP, New York (Maeve O'Connor of counsel), for respondents. Order, Supreme Court, New York County (Melissa A. Crane, J.), entered on or about May 28, 2025, which denied the appealing defendant's request to continue a stay of discovery previously imposed in this action, pending resolution of motions to dismiss in a related securities class action in the United States District Court, Southern District of New York, entitled Jiang v Chirico, et al., No. 23-cv-01258, unanimously modified, on the law, to the extent of continuing the stay of discovery imposed on or about January 10, 2025, pending the federal court's determination of a motion to stay discovery in this action while the federal court considers motions to dismiss in the federal action, and otherwise affirmed, without costs.

The court presiding over the federal action should first address whether discovery in this action should be stayed pursuant to the Securities Litigation Uniform Standards Act of 1998 (15 USC § 78u-4[b][3][D]) or on another basis.

We defer to the federal court, and abstain from otherwise addressing defendant's substantive challenges to the motion court's discretionary decision not to continue the stay of discovery subsequent to its decision on defendant's motion to dismiss, including whether the state and federal actions share a substantial identity and whether allowing discovery in this action prior to a resolution of the motions to dismiss in the federal action would cause undue prejudice to the plaintiffs in that action.

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: December 4, 2025

PER CURIAM.

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The court presiding over the federal action should first address whether discovery in this action should be stayed pursuant to the Securities Litigation Uniform Standards Act of 1998 (15 USC § 78u-4[b][3][D]) or on another basis.

We defer to the federal court, and abstain from otherwise addressing defendant's substantive challenges to the motion court's discretionary decision not to continue the stay of discovery subsequent to its decision on defendant's motion to dismiss, including whether the state and federal actions share a substantial identity and whether allowing discovery in this action prior to a

resolution of the motions to dismiss in the federal action would cause undue prejudice to the plaintiffs in that action.

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT,
APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: December 4, 2025

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