Dated: September 05 2006

Mary Ann Whipple
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In Re:	)	Case No. 06-31501
	)	
Tilton Corporation,	)	Chapter 7
	)	
Debtor.	)	
	)	JUDGE MARY ANN WHIPPLE

ORDER DENYING MOTION FOR STAY

This case is before the court on Debtor's Motion for Stay of Order Pending Appeal [Doc. # 85] and objections filed by the Chapter 7 Trustee ("Trustee") [Doc. # 88] and petitioning creditor, Lima Area Local No. 776 Health and Welfare Plan [Doc. # 102]. The court held a hearing on the motion on August 28, 2006. Debtor moves to stay this court's August 9, 2006, order denying Debtor's motion to dismiss this involuntary case pursuant to the abstention provisions of 11 U.S.C. § 305(a). The court finds that balancing the relevant factors does not favor a stay of proceedings and Debtor's motion will be denied.

BACKGROUND

On May 24, 2006, Debtor, along with related entities Moreland Leasing, Inc., and Tilton Industries Inc., commenced a voluntary receivership action in state court in order to wind up the corporations' affairs and liquidate their assets. Bruce French was appointed the receiver in the state court action. French has also filed a notice to substitute himself as counsel for the Debtor in this case. [Doc. # 109]. On June 21, 2006, petitioning creditors, Lima Area Local No. 776 Health and Welfare Plan, Sheet Metal Local Union No. 224 Welfare Plan and Ohio Carpenters Health & Welfare Fund (collectively "Employee Benefit Plans") filed

an involuntary Chapter 7 petition against Debtor, only, pursuant to 11 U.S.C. § 303. Thereafter, Debtor filed a motion seeking an order dismissing the involuntary petition pursuant to the abstention provisions of 11 U.S.C. § 305(a), which provides a bankruptcy court with discretion to dismiss a case under Title 11 if "the interests of creditors and the debtor would be better served by such dismissal. . . ." Because Debtor's § 305 motion presented no argument that the case was improperly commenced and raised no factual dispute with respect to the factors set forth in § 303(h), the court entered an order for relief under Chapter 7 on July 14, 2006.

The court held an evidentiary hearing on the motion for abstention on August 9, 2006. Testimony at the § 305 hearing indicated that Tilton Industries, Inc., is a holding company for Debtor and Moreland Leasing and, of the three companies, only Debtor had employees and only Debtor operated and generated any cash. Debtor's treasurer, Harold Coy, testified regarding payments made by Debtor Tilton Corporation to an insider (a shareholder or former shareholder in Tilton Industries, Inc.) and to other creditors during the months preceding the filing of the bankruptcy petition and during which time Debtor was not paying debts owed to the Employee Benefit Plans and to employees for accrued vacation and sick leave. He also testified regarding real estate owned by the related corporations, which apparently is one complex made up of multiple parcels, some of which are owned by Debtor while others are owned by Tilton Industries or Moreland Leasing. Coy testified that it is not clear who owns the parcels on which the buildings used in the conduct of Debtor's business are situated or whether the buildings are situated on more than one parcel. Although no attempt has been made in the state court proceeding to determine the ownership of the specific parcels of land, Coy testified that it could be accomplished by doing a survey. Coy also testified regarding the debts owed by Debtor, indicating that the debts owed to the Employee Benefit Plans represent approximately one-half of the estimated $2 million total debt owed. French testified regarding an informal claims resolution process to be used in the state court lawsuit that involves over 200 creditors. Neither Coy nor French opined that the state receivership proceeding would result in a 100% pay out to creditors.

At the conclusion of the hearing, the court denied Debtor's § 305 motion, finding, among other things, that Debtor failed to show that the best interests of all creditors would be better served by dismissal of the bankruptcy case. Rather, the court found that the federal rights, duties and procedures provided by the Bankruptcy Code and Rules are necessary to reach a just and equitable distribution to creditors in this case. In so finding, the court considered, among other things, what Congress has statutorily defined to be a just and equitable distribution and the strong federal policy that employees and employee benefit plans be afforded a priority in distribution of assets that is not afforded them under state law. *See* 11 U.S.C. §§

507(a)(4), (a)(5). The court also considered the large number of creditors involved and found that all creditors will be better served by a clear and defined set of procedures, rights and responsibilities as set forth in the Bankruptcy Code and Rules as compared to the lack of any such procedures under Ohio receivership law. The court also found that the Bankruptcy Code avoidance powers, 11 U.S.C. §§ 547-550, will be beneficial to all creditors of Debtor given testimony regarding various prepetition transfers to creditors as well as at least one to an insider. Given the apparent de facto substantive consolidation of the related entities that has occurred in state court, this court further found that the interests of Debtor's creditors will be better served by a Chapter 7 trustee who, unlike the state court receiver, has fiduciary duties to creditors of Debtor, the one corporation that was an operating entity and cash generator, and who has the responsibility to examine Debtor's situation vis-a-vis the other related entities.

Debtor filed a timely notice of appeal and a motion for stay of the court's order denying its § 305 motion.

LAW AND ANALYSIS

In bankruptcy proceedings, a motion for stay of a bankruptcy court order is governed by Rule 8005 of the Federal Rules of Bankruptcy Procedure. Rule 8005 provides in relevant part as follows:

> A motion for a stay of the judgment, order, or decree of a bankruptcy judge, for approval of a supersedeas bond, or for other relief pending appeal must ordinarily be presented to the bankruptcy judge in the first instance. Notwithstanding Rule 7062 but subject to the power of the district court and the bankruptcy appellate panel reserved hereinafter, the bankruptcy judge may suspend or order the continuation of other proceedings in the case under the Code or make any other appropriate order during the pendency of an appeal on such terms as will protect the rights of all parties in interest.

Under Sixth Circuit law this court must balance four factors when deciding whether a stay pending appeal should issue: (1) the likelihood that the party seeking the stay will prevail on the merits on appeal; (2) the likelihood that the moving party will be irreparably harmed absent a stay; (3) the prospect that others will be harmed if the court grants the stay; and (4) the public interest in granting the stay. *Michigan Coalition of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 153 (6th Cir.1991); *Stephenson v. Rickles Electronics & Satellites (In re Best Reception Systems, Inc.)*, 219 B.R. 988, 992 (Bankr. E.D. Tenn. 1998). In *Griepentrog*, the Sixth Circuit explained:

> To justify the granting of a stay, however, a movant need not always establish a high probability of success on the merits. The probability of success that must be demonstrated is inversely proportional to the amount of irreparable injury plaintiffs will suffer absent the stay. Simply stated, more of one excuses less of the other. This relationship, however, is not

> without its limits; the movant is always required to demonstrate more than the mere "possibility" of success on the merits. For example, even if a movant demonstrates irreparable harm that decidedly outweighs any potential harm to the defendant if a stay is granted, he is still required to show, at a minimum, "serious questions going to the merits."

Griepentrog, 945 F.2d at 153-154; *Family Trust Foundation of Kentucky, Inc. v. Kentucky Judicial Conduct Comm'n*, 388 F.3d 224, 227 (6th Cir. 2004). The Sixth Circuit has noted that "'the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes in its docket with economy of time and effort for itself, for counsel and for litigants,' and that the entry of such an order ordinarily rests with the sound discretion of the District Court." *Ohio Environmental Council v. U.S. Dist. Court, S.D.. of Ohio,* 565 F.2d 393, 396 (6th Cir. 1977) (quoting *Landis v. North American Company,* 299 U.S. 248, 254-55 (1936)). The trial court must consider and make specific findings regarding each of the four factors, unless fewer factors are dispositive of the issue. *Six Clinics Holding Corp., II v. Cafcomp Systems, Inc.*, 119 F.3d 393, 399 (6th Cir 1997). "Although no one factor is controlling, a finding that there is simply no likelihood of success on the merits is usually fatal." *Gonzales v. Nat'l Bd. of Med. Exam'rs*, 225 F.3d 620, 625 (6th Cir. 2000).

Neither Debtor's motion for stay nor its argument at the hearing on the motion adequately address the four factors that must be balanced.

As an initial matter, neither Debtor's written motion nor its arguments at the hearing enlighten the court as to what a stay of an order denying a motion to abstain and dismiss really means. In this case, an uncontested order for relief has been entered, which has not been appealed, and a Chapter 7 trustee has been appointed and is actively administering property of the estate with the objective of its prompt and efficient liquidation. A stay is generally imposed in order to maintain the status quo, which would mean that administration of this estate would stop while the appeal over abstention is determined. At the hearing, Debtor went further and suggested that this court should halt administration of Debtor's estate insofar as the sale of Debtor's assets, turn those assets over to the state court receiver and instead allow the state court receiver to dispose of those assets along with the assets of the other two entities while the appeal proceeded. That goes beyond maintaining the status quo to effectively granting the relief originally sought in the motion to abstain.[1]

[1]The only relief sought by the Debtor in the abstention proceedings was dismissal of the case under § 305, which relief Debtor continues to press for through appeal. *See* Doc. #14. As a custodian under 11 U.S.C. § 101(11), the state court receiver had a statutory obligation under 11 U.S.C. § 543(a) and (b) to cease administration of Debtor's assets, only, and to turn them over to the Chapter 7 trustee, which has in fact occurred. The Bankruptcy Code provides, however, that compliance with those

With respect to the first *Griepentrog* factor, the court concludes that Debtor has failed to demonstrate serious questions going to the merits of the court's decision on its motion to abstain and dismiss this bankruptcy case.[2] Abstention under 11 U.S.C. § 305 is an extraordinary power subject to limited appeal that must be exercised by bankruptcy courts with extraordinary care. *In re NRG Energy Inc.*, 294 B.R. 71, 79-80 (Bankr. Minn. 2003); *In re Pennino*, 299 B.R. 536, 538 (B.A.P. 8th Cir. 2003); 11 U.S.C. § 305(c). The decision to abstain is within the discretion of the bankruptcy court and reviewed for an abuse of that discretion. *Pennino*, 299 B,R, at 538.

In its statement of issues on appeal, Debtor identifies three errors, two of which are called errors of law. One of Debtor's identified errors of law is that the court mistakenly concluded that the lack of Ohio preference avoidance provisions and any Ohio statutes affording priority treatment for unsecured claims such as those held by the petitioning Employee Benefit Plans and employees was a basis for refusing to dismiss this case. Debtor does not contest that Ohio law lacks such statutes. Nor was any case law or other authority in support of this assignment of error brought to the court's attention in the written motion for stay or at the August 28 hearing. To the contrary, case law exists that explicitly identifies the existence or non-existence of preference and priority provisions in an alternative forum as factors that must be considered in exercising discretion to abstain or not abstain. *See, e.g., In re ABQ-MCB Joint Venture*, 153 B.R. 338, 341 (Bankr. D.N.M. 1993)(["T]he factors this Court should consider in deciding whether to

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obligations under 11 U.S.C. § 543(a) and (b) may be excused where the best interest of creditors would be better served by allowing the custodian to remain in control of assets. 11 U.S.C. § 543(d)(1). The state court receiver never requested that he be excused from compliance as a less drastic alternative to Debtor's requested dismissal of this case, to the clear detriment of the rights of the Employee Benefit Plans as petitioning creditors. As a result, the Chapter 7 Trustee was appointed and has taken control over the Debtor's assets and proceeded with protecting them, administering them and taking the steps necessary to sell them, including addressing utilities, insurance, security, and employing an auctioneer who has started work.

[2] Not only has Debtor failed to demonstrate serious questions going to the merit of its motion, it is also possible that the district court will dismiss the appeal of the order denying Debtor's motion to abstain and dismiss the case as a non-appealable interlocutory order. *See, e.g., Schuster v. Mims (In re Rupp & Bowman Co.)*, 109 F.3d 237, 2401 (5th Cir. 1997) (finding an order denying motion for mandatory abstention is not a final order under 28 U.S.C. § 1291); *The Merchants Bank v. C.R. Davidson Co. (In re C.R. Davidson Co.)*, 232 B.R. 549, 553 (B.A.P. 2d Cir. 1999) (finding an order denying abstention and denying a motion to dismiss is interlocutory); *Dunkley v. Rega Prop., Ltd. (In re Rega Prop., Ltd.)*, 894 F.2d 1136, 1139 (9th Cir. 1990) (finding order denying motion to dismiss Chapter 11 petition for bad faith was not a final order); *Gentry v. Gentry*, 207 B.R. 146, 149 (E.D. Ky. 1997) (finding that denial of motion for permissive abstention under § 1334 is not immediately reviewable); *see also Wicheff v. Baumgart (In re Wicheff)*, 215 B.R. 839, 843 (B.A.P. 6th Cir. 1998) (citing *Vitols v. Citizens Banking Co.*, 984 F.2d 168, 170 (6th Cir.1993) and explaining that an appellant seeking review of an interlocutory order must show: (1) the question involved is one of law; (2) the question is controlling; (3) there is substantial ground for difference of opinion respecting the correctness of the [bankruptcy] court's decision; and (4) an immediate appeal would materially advance the ultimate termination of the litigation). A motion for leave to appeal was filed after the notice of appeal and only after the court indicated at the hearing on the motion for stay that the order denying Debtor's motion to dismiss is likely an interlocutory order requiring leave to appeal. *See* Fed. R. Bankr. P. 8001(b); 8003.

abstain or dismiss under Section 305 are ... priorities in distribution, [and] capacity for dealing with frauds and preferences...). From a factual standpoint, even in the absence of any opportunity to date for comprehensive examination by an independent fiduciary, the limited testimony at the August 9 hearing showed that there is a high probability of transfers, including preferences not recoverable under Ohio law, that may need to be avoided. In the months leading up to voluntary commencement of liquidation proceedings in a forum chosen by those making decisions[3] as to what debts would be paid and what debts would not be paid, some creditors and at least one shareholder and debts of the related entities were getting paid while the Employee Benefit Plans were not getting paid to the extent of approximately $1 million. The Bankruptcy Code preference statute is the penultimate expression of the bankruptcy policy of equality of distribution. Debtor has failed to demonstrate any likelihood of success on the merits of this assignment of error.

Debtor's second identified error of law both misstates and overstates the court's ruling. The court did not find, contrary to the statement of issues in Debtor's designation of record on appeal, that the procedures of the court of common pleas were constitutionally deficient to provide procedural due process in review of creditors claims. Rather the informal, off the record "claims filing," review and determination process described by the state court receiver is very poorly suited to an efficient and equitable claims adjustment and distribution process that should be transparent to all creditors and parties in interest given more than 200 creditors of different classes and priorities who are collectively owed some $2 million. The "procedures" described by the state court receiver are suing creditors and requiring them to respond to the complaint with answers and perhaps counterclaims in 28 days. In the absence of an answer of record, however, the state court receiver and his lawyers were willing to entertain ad hoc unfiled letters from creditors and decide whether they would or would not pay those defendants. Debtor does not argue that there is in fact any transparent process and procedure of claims administration established under Ohio receivership law or the Ohio Civil Rules comparable to 11 U.S.C. §§ 501, 502, 503, Fed. R. Bankr. P. 3001-3008 and Official Form 10. Moreover, the initial representation was that at least the Employee Benefit Plan claims would be disputed, in contrast to the prima facie validity they would enjoy under federal procedure. 11 U.S.C. § 502(a); Fed. R. Bankr. P. 3001(f). The manner in which those disputes would be resolved in state court, the burdens of going forward, the burdens of proof and the rights of appeal are unknown.

[3] The state court receiver employed as his counsel the lawyers for the Debtor and the other two entities. These lawyers appeared in this court, presumably as lawyers for Debtor, before French substituted himself as counsel for the Debtor, albeit without filing the required disclosure of compensation and source of compensation under 11 U.S.C. § 329(a) and Fed. R. Bankr. P. 2016(b).

Were this a small case involving limited debt and a few similarly situated creditors, the ad hoc approach of suing your creditors and sorting out who gets paid what on or off the record would probably work just fine. The record showed this is not such a case. Debtor has also not cited any case law or other authority to show the court its mistake of law on this point. Debtor has not demonstrated any likelihood of success on the merits on this assignment of error.

Debtor's third assignment of error is that the existence of three separate entities before the state court and only one of those entities before this court mandated abstention. This assignment of error seems to be the real focus of both Debtor's written motion for stay and its argument at the hearing. In asserting it, Debtor seems to be more concerned with the other entities (one of which is its shareholder) than with the creditors of the entity before the bankruptcy court. Rather than a reason to have the liquidation and distribution of assets proceed together in the state court, the record of this case shows that there is ample reason arising from the fact of the three entities to have an independent fiduciary for this Debtor.

Coy testified that the vast bulk of the assets are Debtor's. In its written motion for stay Debtor asserts that, "according to the Trustee," disputes exist regarding the ownership of both real and personal property among Debtor and related entities Moreland Leasing and Tilton Industries. Debtor's argument, however, is misleading and misstates the testimony at the hearing. First, the Chapter 7 trustee did not testify at the hearing. Debtor apparently is referring to the testimony of state court receiver French, who is not the Chapter 7 trustee. However, neither French nor Coy, the only other witness at the hearing, testified that a dispute existed amongst the related entities. Rather, the testimony indicates only that the ownership of various parcels of real estate, on which are located buildings used in the conduct of Debtor's business, is not presently clear since a survey has not been done in the state court proceeding to determine specific ownership. Title work and a survey can clear up any confusion as to real estate. The testimony in the record also indicates that Moreland Leasing owns certain vehicles and that, although Coy was not certain as to which vehicles Moreland Leasing owned, certificates of title do exist. The only other potential issue, raised in argument by counsel in the August 28 hearing on the motion for stay, is that there may be questions about what is a fixture attached to and part of real estate owned by Moreland Leasing and what is not a fixture. And to the extent it turns out that Debtor claims ownership of certain assets and the other entities dispute that claim, the Bankruptcy Code provides a mechanism for sale of such assets and adequate protection of the interests of the other entities. *See* 11 U.S.C. § 363(e) and (f).

At the hearing on the motion for stay, Debtor argued that the value of the assets of all three entities would be maximized if the assets were sold together, an argument made, if at all, less directly on the merits

of the abstention motion. Debtor offered to present testimony at the August 28 hearing, which it did not present at the August 9 hearing, from the auctioneer engaged by the state court receiver. The court declined to hear such testimony as it should have been offered on August 9. Moreover, no legal or factual reason has been presented why the state court receiver cannot work together with the Chapter 7 trustee to effect a cooperative and efficient sale or sales of the assets of all three entities together if that is in fact what is in the best interest of all entities and parties in interest. Both the state court receiver as to Moreland Leasing and Tilton Industries and the Chapter 7 trustee as to Debtor have fiduciary duties to maximize asset values that should promote such cooperation if it is appropriate and necessary.

The record also showed the importance of having an independent fiduciary with a duty only to the estate of this Debtor dispose of this Debtor's assets, not a state court receiver who is now also functioning as counsel for Debtor and who has fiduciary duties to three separate corporations whose interests are not necessarily aligned with one another in the insolvency and liquidation mode. Coy's testimony showed that Debtor owns the substantial bulk of the collective assets and the Debtor was the only entity with employees, the only entity generating cash and the only entity with active business operations. The only identified creditors are creditors of Debtor. No creditors of the other two entities have been identified. At the stay hearing, it was represented that at least tax debts of the other entities were paid. It is not known whether other debts of those entities were paid. As the evidence showed that only Debtor had cash flow, it is fair to infer that the cash flowed upstream and sideways from Debtor to the other entities. At least one shareholder of Tilton Industries was paid to repurchase his shares during the months before bankruptcy while the Employee Benefit plans were not getting paid. It is fair to infer from the record that this transfer was effected with cash originating through Debtor's operations. Because Debtor is the entity with the most significant assets and all of the identified liabilities, as between the Chapter 7 trustee and the state court receiver, the fiduciary of Debtor's estate should sell its assets instead of a receiver who acknowledges that his job is to look out for the interests of the three corporations and not for the interests of this Debtor's estate in order to benefit its unsecured creditors. Moreover, if Debtor's assets are sold by the state court receiver, pursuant to a stay order that turns Debtor's assets back over to him, the proceeds of sale belonging to the bankruptcy estate will likely be double charged with the expenses of two fiduciaries: the state court receiver's fees at $150.00 per hour and the Chapter 7 Trustee's commission based on disbursement of the funds recovered, 11 U.S.C. § 326(a). That outcome is not in any creditor's best interest.

For all of the foregoing reasons, Debtor has not shown this court that there is any likelihood of success on the assignment of error that the court abused its discretion because there are two other related

entities involved as plaintiffs in the state court lawsuit against all of Debtor's creditors.

Debtor offers no other argument that the best interests of creditors of the Debtor will be served by this court abstaining and dismissing this bankruptcy case. Given the high standard that Debtor must meet on appeal, that is, that this court abused its discretion in denying the § 305 motion, the court finds any likelihood of success on appeal to be marginal at best.

As to the second *Griepentrog factor*, the court also finds that Debtor has failed to demonstrate that it will suffer any harm absent a stay, let alone irreparable harm. It argues only that "its assets will be liquidated and lost," [Doc. # 85, p.1], which of course is the goal of the involuntary Chapter 7 petition as well as of the *voluntary* receivership proceeding filed in state court. Debtor was not attempting to reorganize and continue its operations through the state court proceeding. No party in interest disputes that Debtor's assets must be sold. This factor, therefore, clearly does not weigh in favor of granting a stay.

With respect to the third *Griepentrog* factor, the court finds that if a stay is granted, administration of Debtor's estate is halted and the sale of Debtor's assets is stopped pending appeal, Debtor's creditors will be harmed irrespective of their priority. As the Chapter 7 trustee noted at the August 28 hearing, it is now September and Debtor's real property, vehicles and other assets need to be sold before winter, with much work still to be done to set up a proper auction. Insurance for Debtor's real and personal property (not including motor vehicles) is $6,649.23 per month, let alone other obvious carrying costs during the appeal such as utilities and security. As the state court receiver testified at the August 9 hearing, time is money to creditors. Debtor has not offered to post any bond funded by whomever is funding the appeal and the state court receiver's fees as counsel for Debtor to compensate for costs of delay in the likely event that it is unsuccessful on appeal.

The fourth *Griepentrog* factor requires consideration of the public interest. The court finds that the public interest will not be served by granting the stay. As all parties agree, a quick and efficient sale or liquidation of Debtor's assets will benefit the creditors in this case, who are in fact creditors of the Debtor and not of the other two entities in the state court proceeding. As pointed out by petitioning creditor Lima Area Local No. 776 Health and Welfare Plan, this appeal and the request for a stay directly contradicts that goal.

To the extent Debtor's conception of a stay pending appeal is that the Chapter 7 trustee turn Debtor's tangible assets back over to the state court receiver for sale, the court finds such an action wholly untenable for the reasons already discussed above regarding the need for an independent fiduciary looking

out only for the assets of this estate for the benefit of its creditors. That need has been magnified by the state court receiver's recent assumption of the role of lawyer in this case. To the extent this suggestion is premised on the alleged superiority and speed of the state court receivership in conducting a sale, the court found French's largely argumentative testimony in this regard at the August 9 hearing overstated. Debtor has not shown the court anything that would cause it to change its mind on this point. The Bankruptcy Code authorizes the sale of assets free and clear of liens and other interests, 11 U.S.C. § 363(b) and (f), with just 20 days notice subject to shortening for cause under the Bankruptcy Rules, Fed. R. Bankr. P. 2002(a). Moreover, at this point the only incremental delay absent a cessation of administration in both fora will be occasioned by the steps required to be taken by both auctioneers to prepare the assets for sale, advertise the sale and conduct the auction. There is no evidence that those steps will be any different now as between the two fora or the professionals involved. There is no identified legal or factual basis for either the merits of the motion to dismiss or the motion for stay to devolve upon the fulcrum of which sale will be more efficiently or effectively conducted by any of the professionals involved. The court acknowledges that the administrative transfer of possession and control of the assets between two fora has been a source of delay, but no further delay can be tolerated by doing it again. If the real need for an independent fiduciary could have been separated out, which has not been shown, these issues would have been best addressed under 11 U.S.C. § 543(d)(1), not through the drastic step of abstention and dismissal.

Given Debtor's failure to demonstrate any meaningful likelihood of success on the merits of its appeal, the public interest in the expeditious and efficient administration of bankruptcy cases for the benefit of unsecured creditors, *see* 11 U.S.C. § 105(d); Fed. R. Bankr. P. 1001, and the bankruptcy policy of equality of distribution according to statutory priorities established by Congress outweighs any public interest in resolving the issues presented in this case on appeal.

For all of the foregoing reasons, Debtor's motion to stay will be denied and the administration of the bankruptcy case will proceed while Debtor pursues its appeal of the order denying its § 305 motion in the absence of an order directing this court to the contrary from the district court.

THEREFORE, for the foregoing reasons, good cause appearing,

IT IS ORDERED that Debtor's motion for stay [Doc. # 85] be, and hereby is, **DENIED.**