IT IS SO ORDERED.

Kay Woods

Honorable Kay Woods
United States Bankruptcy Judge

Dated: September 28, 2009
03:24:26 PM

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:	*	
	*	
MICHELLE L. REESE,	*	CASE NUMBER 08-41173
	*	
Debtor.	*	
	*	
* * * * * * * * * * * * * * * * *	*	
	*	
WMS MOTOR SALES, LTD.	*	
dba PATRIOT MOTOR SALES,	*	ADVERSARY NUMBER 08-04172
	*	
Plaintiff,	*	
	*	
vs.	*	
	*	
MICHELLE L. REESE,	*	HONORABLE KAY WOODS
	*	
Defendant.	*	
	*	

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MEMORANDUM OPINION REGARDING MOTION FOR STAY OF EXECUTION PENDING APPEAL TO THE BANKRUPTCY APPELLATE PANEL AND IMPOSING REQUIREMENT OF SUPERSEDEAS BOND

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Before the Court is Motion for Stay of Execution Pending Appeal to the Bankruptcy Appellate Panel ("Motion for Stay") (Doc. # 53)

filed by Debtor/Defendant Michelle L. Reese ("Debtor") on September 23, 2009. Plaintiff WMS Motor Sales, Ltd. ("WMS")[1] filed Plaintiff Creditor's Memorandum Contra Stay of Execution or for the Requirement of a Supersedeas Bond ("Memo in Opposition") (Doc. # 54) on September 25, 2009. For the reasons set forth below, the Court (i) grants the Motion for Stay conditioned upon Debtor posting a supersedeas bond and (ii) imposes the obligation on Debtor to post a bond in an amount not less than $6,500.00 by October 15, 2009.

On June 26, 2009, this Court entered Memorandum Opinion Regarding Trial (Doc. # 24) and Order Regarding Trial (Doc. # 25) (collectively, "Trial Judgment"), which held that Debtor owes WMS a non-dischargeable debt in the amount of $6,343.00 ("Non-dischargeable Debt"). On July 24, 2009, Debtor filed (i) Motion to Extend Time to File Notice of Appeal to Bankruptcy Appellate Panel (Doc. # 27); and (ii) Notice of Appeal to Bankruptcy Appellate Panel (Doc. # 28). Four days later, on July 28, 2009, WMS filed Plaintiff Creditor's Memorandum Contra Debtor Defendant's Motion to Extend Time to File Notice of Appeal to Bankruptcy Appellate Panel (Doc. # 29). That same day, the Court entered Order Denying Motion to Extend Time to File Notice of Appeal to Bankruptcy Appellate Panel ("Denial Order") (Doc. # 30), finding that Debtor had failed to provide any reason to grant an extension of time beyond the ten-day period to appeal set forth in Federal Rule of Bankruptcy Procedure

[1] In all post-trial filings, Debtor has incorrectly listed WMS as "VMS Motor Sales Ltd." in the caption.

8002.

On July 29, 2009, Debtor filed Motion for Reconsideration of Order Denying Motion to Extend Time to File Notice of Appeal to Bankruptcy Panel [sic] (Doc. # 31), which argued that Debtor did not need to show excusable neglect because she filed her request to extend time within the twenty-day period after expiration of the ten-day appeal period. The Court entered Order Denying Motion for Reconsideration of Order Denying Motion to Extend Time to File Notice of Appeal to Bankruptcy Panel ("Reconsideration Order") (Doc. # 33) on July 30, 2009. Debtor filed Amended Notice of Appeal to Bankruptcy Appellate Panel (Doc. # 36) on August 6, 2009.

On September 23, 2009, Debtor filed the instant Motion for Stay, which states that, two weeks after entry of the Trial Judgment, WMS filed a lawsuit in Trumbull County Central Court ("State Court Lawsuit") against Debtor based on the undischarged debt. The Motion for Stay argues that if this Court does not issue a stay, Debtor will be subjected to "parallel litigation" on the same matter that is pending on appeal.

WMS notes that granting the Motion to Stay is within the sound discretion of the Court. WMS argues that although it "does not believe a stay of execution is proper in this case considering the lack of merit of the appeal," it does not object to a stay provided that any stay is conditioned upon Debtor posting a bond in an amount to cover what Debtor will owe WMS after disposition of the pending state court lawsuit, which WMS estimates to be $14,943.00. (Memo

in Opp. at unnumbered 3.)

This Court has jurisdiction pursuant to 28 U.S.C. § 1334 and the general order of reference (General Order No. 84) entered in this district pursuant to 28 U.S.C. § 157(a). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O). The following constitutes the Court's findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052.

I. STANDARD FOR IMPOSITION OF STAY

The Court is required to consider the following four factors in determining whether to grant a motion for stay: (i) the likelihood that the movant will prevail on appeal; (ii) the likelihood that movant will be irreparably harmed if a stay is not granted; (iii) whether others will be substantially harmed by granting a stay; and (iv) the public interest in granting the stay. *Stephenson v. Rickles Electronics & Satellites (In re Best Reception Sys., Inc.*), 219 B.R. 988, 992 (Bankr. E.D. Tenn. 1998); *accord*, *Mich. Coalition of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 153 (6th Cir. 1991). Debtor does not address any of these factors; rather she argues only that she will have to defend "parallel litigation" in the event a stay is not issued

The Court will examine each of the factors noted above. The first factor is the likelihood that Debtor will prevail on appeal. Debtor has attempted to appeal the Trial Judgment, but she must first prevail in her appeal of the Denial and Reconsideration

Orders, which held that her appeal of the Trial Judgment was not timely. This Court believes that: (i) Debtor's interpretation of Federal Rule of Bankruptcy Procedure 8002 cannot withstand scrutiny; and (ii) Debtor will not prevail on the merits regarding the timeliness of her appeal.

The next factor is the likelihood that Debtor will suffer irreparable harm if the stay is not imposed. For purposes of the Motion to Stay only, the Court will construe Debtor's argument regarding "parallel litigation" to constitute an allegation that she will be irreparably harmed if a stay is not granted. Although not expressly stated, this Court construes Debtor's argument to mean that she will have to expend money to defend the State Court Lawsuit, which she will not be able to recover and, if she were to be successful in her appeal(s), such expenditure would be for naught because the subject matter of the State Court Lawsuit would be discharged.

The third element is the likelihood of harm to WMS. WMS makes no argument of potential harm to itself in the event a stay is imposed and, indeed, states that it would agree to the imposition of a stay if the Court requires Debtor to post a supersedeas bond. As a consequence, the Court finds that continuing the status quo during the pendency of appeal will not result in harm to WMS.

The fourth factor of likelihood of harm to the public is not implicated in this case.

Applying the four factors, the Court finds that, balancing all

factors, Debtor has minimally established cause for the Court to stay execution of the Trial Judgment, pending appeal to the Bankruptcy Appellate Panel.

II. SUPERSEDEAS BOND

WMS argues that Debtor should be required to post a supersedeas bond in the amount of more than $14,000.00. Rules 7062 and 8005 of the Federal Rules of Bankruptcy Procedure govern appeals and posting of supersedeas bonds. Whether to require the posting of a bond is within the discretion of the Bankruptcy Court. See *Havens Steel Co. v. Commerce Bank, N.A.* (*In re Havens Steel Co.*), 2005 U.S. Dist. LEXIS 16859 (W.D. Mo. 2005) (Rule 8005 must be read in conjunction with Rule 7062; Bankruptcy Court has discretion to determine amount of supersedeas bond.)

The amount of the Non-dischargeable Debt is $6,343.00, upon which statutory interest will accumulate until paid. Consequently, to the extent WMS is delayed in collecting the Non-dischargeable Debt, the amount that Debtor owes to WMS will increase. Because WMS asks for punitive and other damages in the State Court Lawsuit, WMS estimates that the total amount Debtor will owe to WMS at the conclusion of the State Court Lawsuit will exceed $14,000.00.

Noting that when the four factors are met, a supersedeas bond is not necessary, the District Court for the Northern District of Illinois stated, "[t]he bankruptcy court may stay the sale without the posting of a supersedeas bond in certain situation." *Goldstein v. Bell* (*In re Normco, Inc.*), 1997 U.S. Dist. LEXIS 17673 at * 6-7

(N.D. Ill. 1997). "The bankruptcy court determines the amount of a supersedeas bond by reviewing the facts of each case." *Id*. at *9. "The 'purpose of a supersedeas bond is to preserve the status quo while protecting the non-appealing party's rights pending appeal.' . . . The amount of the bond and the sufficiency of the sureties are matters of discretion of and for determination by the Bankruptcy Court." *In re Innovative Commc'ns*, 2007 Bankr. LEXIS 4654 at * 17-18 (Bankr. D. V.I. 2007) (internal citations omitted).

In the instant case, although the Court has found that, on balance, the equities favor Debtor in imposing a stay of the Trial Judgment, the Court also notes that there is very serious doubt that Debtor will prevail on the merits of her appeal. As a consequence, to the extent a stay delays WMS from collecting the Non-discharged Debt, the amount of such debt will increase, thus increasing WMS's risk of collection. Accordingly, the Court will exercise its discretion and require Debtor to post a bond in the amount of $6,500.00 by October 15, 2009.

An appropriate order will follow.

# # #

IT IS SO ORDERED.

Kay Woods

Honorable Kay Woods
United States Bankruptcy Judge

Dated: September 28, 2009
03:24:26 PM

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NORTHERN DISTRICT OF OHIO

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Plaintiff,	*	
	*	
vs.	*	
	*	
MICHELLE L. REESE,	*	**HONORABLE KAY WOODS**
	*	
Defendant.	*	
	*	

****

ORDER (i) CONDITIONALLY GRANTING MOTION FOR STAY AND
(ii) IMPOSING OBLIGATION TO POST A SUPERSEDEAS BOND

****

This cause is before the Court on Motion for Stay of Execution Pending Appeal to the Bankruptcy Appellate Panel ("Motion for Stay") (Doc. # 53) filed by Debtor/Defendant Michelle L. Reese ("Debtor")

on September 23, 2009. Plaintiff WMS Motor Sales, Ltd. ("WMS") filed Plaintiff Creditor's Memorandum Contra Stay of Execution or for the Requirement of a Supersedeas Bond (Doc. # 54) on September 25, 2009. For the reasons set forth in the Court's Memorandum Opinion entered this date, the Court (i) grants the Motion for Stay conditioned upon Debtor posting a supersedeas bond and (ii) imposes the obligation on Debtor to post a supersedeas bond in an amount not less than $6,500.00 by October 15, 2009.

# # #