



Before the Court are two motions seeking stays pending appeal, as follows: (i) Motion for Stay of Execution Pending Appeal ("Motion One for Stay") (Doc. # 105) filed by Irene K. Makridis, Esquire, on behalf of herself on June 23, 2011; and (ii) Motion for Stay of Execution of Contempt Order Pending Ruling by B.A.P. on Motion for Stay Pending Appeal ("Motion Two for Stay") (Doc. # 108) filed by Ms. Makridis, on behalf of herself on June 24, 2011.

The Motion One for Stay requests this Court to stay execution of this Court's Order Imposing Sanctions ("Sanctions Order") (Doc. # 83) entered on September 23, 2010, which, among other things, awarded attorney fees to WMS Motor Sales, Ltd. ("WMS") in the amount of \$7,613.85 ("Sanction Amount") as a sanction for Ms. Makridis filing a frivolous appeal. The Motion One for Stay was filed at 3:49 p.m. on the same day (but following) the Court's hearing ("Show Cause Hearing") on Order for Irene Makridis to Appear and Show Cause Why She Should Not Be Held in Contempt for Violating Order Imposing Sanctions and Why Further Sanctions Should Not Be Imposed ("Show Cause Order") (Doc. # 103), which was entered on June 14, 2011.

At 9:46 a.m., on June 23, 2011, the Court held the Show Cause Hearing, at which appeared (i) Ms. Makridis, on behalf of herself; and (ii) Randil J. Rudloff, Esquire, on behalf of WMS. Following the Show Cause Hearing, the Court entered Order (i) Finding Irene Makridis in Contempt; and (ii) Requiring Irene Makridis to Pay Sanctions Plus Interest ("Order Finding Contempt") (Doc. # 106),

which was filed on June 23, 2011, at 1:55 p.m., but not docketed until the following morning at 11:04 a.m. The Order Finding Contempt memorialized the Court's oral ruling ("Bench Ruling") at the Show Cause Hearing (i) finding Ms. Makridis in contempt; and (ii) imposing sanction in connection with such contempt.

The Motion Two for Stay seeks a stay of the Order Finding Contempt on the basis that Ms. Makridis has filed a motion with the Sixth Circuit Bankruptcy Appellate Panel ("B.A.P."), which requests the B.A.P. to stay execution of the B.A.P. opinion and judgment dated May 18, 2011 ("B.A.P. Order") (Doc. # 100), which affirmed this Court's Sanctions Order.

Because the two Motions are related, for purposes of efficiency and judicial economy, the Court will deal with them together in this single Memorandum Opinion. For the reasons set forth below, the Court will deny Motion One for Stay and Motion Two for Stay.

#### **I. FACTUAL BACKGROUND**

The following background facts are taken from the record before this Court and, except as noted otherwise, all docket numbers are from the docket in this adversary proceeding.

1. Debtor Michelle Reese ("Debtor") filed a voluntary petition pursuant to chapter 7 of title 11 (Case No. 08-41173) on April 25, 2008. The Debtor was represented by Ms. Makridis. Ms. Makridis was terminated as the Debtor's attorney on January 29, 2010. (See Doc. # 63 in Main Case.)

2. On August 25, 2008, WMS timely filed the instant adversary proceeding seeking to have a debt owed to it by the Debtor in the amount of \$6,343.08 to be held non-dischargeable pursuant to 11 U.S.C. § 523(a)(2). The Debtor filed an answer and the parties completed discovery.
3. The Court conducted a trial in this adversary proceeding on May 26, 2009. At the conclusion of the trial, the Court took the matter under advisement.
4. On June 26, 2009, the Court entered (i) Memorandum Opinion Regarding Trial (Doc. # 24); and (ii) Order Regarding Trial (Doc. # 25) (collectively, "Trial Judgment").
5. On July 24, 2009, Ms. Makridis, on behalf of the Debtor, filed Motion to Extend Time to File Notice of Appeal to Bankruptcy Appellate Panel ("Motion to Extend Time") (Doc. # 27). The entirety of the Motion to Extend Time consisted of the following two sentences: "Now comes Defendant Michelle L. Reese and moves the Court, pursuant to Rule 8002(c), to extend the time to file her Notice of Appeal to the Bankruptcy Appellate Panel. Defendant states that 20 days have not passed after the expiration of the time to file her notice of appeal from the judgment of the Court on June 28, 2009 [sic]." (Mot. to Extend Time at 1.)

6. On July 28, 2009, the Court issued Order Denying Motion to Extend Time to File Notice of Appeal to Bankruptcy Appellate Panel ("Order Denying Motion to Extend Time") (Doc. # 30). The Court cited Federal Rule of Bankruptcy Procedure 8002, which expressly provides that time for an appeal may be extended after ten days following entry of an order but less than twenty days after expiration of the ten-day period<sup>1</sup> upon a "showing of excusable neglect." The Court explicitly found that the Motion to Extend Time was wholly devoid of any reason to grant the requested extension of time.
7. The next day – July 29, 2009 – Ms. Makridis filed Motion for Reconsideration of Order Denying Motion to Extend Time to File Notice of Appeal to Bankruptcy Panel [sic] ("Motion for Reconsideration") (Doc. # 31). Ms. Makridis argued in the Motion for Reconsideration that, "Rule 8002(c)(2) mentions the showing of excusable neglect only when the motion to extend time is made beyond the 20 days after the notice of appeal was due: 'such a motion filed not later than 20 days after the expiration of the time for filing a notice of appeal may be granted upon a showing of excusable neglect.'" (Mot. for Reconsideration at 2 (emphasis removed).)

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<sup>1</sup>Rule 8002 has since been amended to change the ten-day period to fourteen days and the twenty-day period to twenty-one days.

8. On July 30, 2009, the Court issued Order Denying Motion for Reconsideration of Order Denying Motion to Extend Time to File Notice of Appeal to Bankruptcy Panel (Doc. # 33), finding that Ms. Makridis's "failure to correctly read and interpret Rule 8002 is not grounds for reconsideration." (Doc. # 33 at 4.)
9. On August 6, 2009, the Debtor, through Ms. Makridis, filed Amended Notice of Appeal to Bankruptcy Appellate Panel (Doc. # 36), which appealed the Court's Order Denying Motion to Extend Time. Ms. Makridis also appealed the Trial Judgment. (See Docs. ## 28, 36.)
10. While the appeal of the Trial Judgment was pending before the B.A.P., on September 23, 2009 (two months after entry of the Trial Judgment), the Debtor, through Ms. Makridis, filed Motion for Stay of Execution Pending Appeal to the Bankruptcy Appellate Panel (Doc. # 53), which sought a stay of execution of the Trial Judgment finding the Debtor's debt to WMS to be non-dischargeable.
11. On September 28, 2009, the Court entered (1) Memorandum Opinion Regarding Motion for Stay of Execution Pending Appeal to the Bankruptcy Appellate Panel and Imposing Requirement of Supersedeas Bond ("Memo Opinion Regarding Stay") (Doc. # 55); and (2) Order (i) Conditionally Granting Motion for Stay and (ii) Imposing Obligation to Post a Supersedeas Bond ("Conditional Stay Order")

(Doc. # 56). The Conditional Stay Order granted the Motion for Stay conditioned upon the Debtor posting a supersedeas bond in an amount not less than \$6,500.00 no later than October 15, 2009.

12. The Memo Opinion Regarding Stay set forth in detail the standard for imposition of a stay, which required the Court to consider four factors: (i) the likelihood that the movant will prevail on appeal; (ii) the likelihood that the 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 a stay.
13. On December 8, 2009, the B.A.P. ordered the appeal of the Trial Judgment and Order Denying Motion to Extend Time dismissed, based on the Debtor's motion to voluntarily dismiss the appeal. (See Docs. ## 63-64.)
14. WMS filed motions for sanctions pursuant to Rule 11 with this Court and the B.A.P. By order dated January 22, 2010 (Doc. # 76), this Court held the motion in abeyance pending resolution of the motion before the B.A.P.
15. On February 22, 2010, the B.A.P. issued order (Doc. # 78), which (i) held "[t]his appeal does not involve serious, controversial, doubtful, or even novel questions[,]. . . . Makridis's arguments lack any conceivable merit, and this has been apparent for a long

time[;]" (ii) granted WMS's motion for sanctions; and (iii) remanded the matter to this Court for a hearing to determine the proper damages and costs to be awarded to WMS "for Makridis's filing and pursuing a frivolous appeal." (Order at 5.)

16. Ms. Makridis appealed the February 22, 2010 B.A.P. order to the Sixth Circuit, which dismissed the appeal, *sua sponte*, on July 13, 2010, "for lack of a final appealable order." (Doc. # 79 at 2.)
17. On remand, the Court held an evidentiary hearing on August 31, 2010, to determine the amount of damages.
18. The Court entered the Sanctions Order on September 23, 2010, which, among other things: (i) sanctioned Ms. Makridis; (ii) found WMS's damages for attorney fees to be the Sanction Amount; and (iii) ordered the Sanction Amount to be paid to WMS within thirty (30) days after entry of the Sanctions Order.
19. Ms. Makridis appealed the Sanctions Order to the B.A.P. on October 6, 2010. (See Doc. # 85.)
20. On May 18, 2011, the B.A.P. entered the B.A.P. Order, which affirmed the Sanctions Order.
21. On June 13, 2011, WMS filed a motion (Doc. # 102) seeking an order from this Court for Ms. Makridis to show cause why she should not be held in contempt for failing to pay the Sanction Amount to WMS and requesting imposition of

interest at the statutory rate of 4% on the Sanction Amount.

22. On June 14, 2011, the Court issued the Show Cause Order.
23. At the Show Cause Hearing, the Court's Bench Ruling (i) found Ms. Makridis to be in contempt for failing to comply with the Sanctions Order; and (ii) imposed interest at the requested rate of 4% per annum on the Sanction Amount. The Court entered Order Finding Contempt to memorialize the Bench Ruling.
24. On June 24, 2011, WMS filed Memorandum in Response to Irene K. Makridis' Motion for Stay of Execution Pending Appeal (Doc. # 107).
25. On June 24, 2011, Ms. Makridis filed Motion Two for Stay, to which was attached "Motion for Stay of Execution Pending Appeal" ("B.A.P. Motion"), which is not file-stamped. Ms. Makridis does not otherwise indicate that the B.A.P. Motion was actually filed with the B.A.P., but for purposes of this Memorandum Opinion, the Court will assume that the B.A.P. Motion was timely and properly filed.
26. On June 29, 2011, WMS filed Memorandum in Opposition to Irene K. Makridis' Motion for Stay of Execution of Contempt Order Pending Ruling by B.A.P. on Motion for Stay Pending Appeal (Doc. # 110).

## II. STANDARD FOR REVIEW OF MOTION FOR STAY

In determining whether to grant a stay, a court should consider the same factors applicable to granting an injunction.

In determining whether a stay should be granted under Fed. R. App. P. 8(a), we consider the same four factors that are traditionally considered in evaluating the granting of a preliminary injunction. See *Frisch's Restaurant, Inc. v. Shoney's Inc.*, 759 F.2d 1261, 1263, 225 U.S.P.Q. (BNA) 1169 (6th Cir. 1985); *In re DeLorean Motor Co.*, 755 F.2d 1223, 1228 (6th Cir. 1985). These well-known factors are: (1) the likelihood that the party seeking the stay will prevail on the merits of the 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. *Ohio ex rel Celebrezze v. Nuclear Regulatory Comm'n*, 812 F.2d 288, 290 (6th Cir. 1987); see also *Hilton v. Braunskill*, 481 U.S. 770, 776, 95 L. Ed. 2d 724, 107 S.Ct. 2113 (1987) (factors are the same under Fed. R. Civ. P. 62(c) and under Fed. R. App. P. 8(a)). These factors are not prerequisites that must be met, but are interrelated considerations that must be balanced together. *DeLorean*, 755 F.2d at 1229.

*Michigan Coal. of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 153 (6th Cir. 1991). These four factors are to be applied by a bankruptcy judge. See *City of Akron v. Akron Thermal, Ltd. P'ship (In re Akron Thermal Ltd. P'ship)*, 414 B.R. 193, 199-200 (N.D. Ohio 2009).

## III. MS. MAKRIDIS FAILS TO ADDRESS ANY OF THE FOUR FACTORS

Both Motion One for Stay and Motion Two for Stay are wholly deficient because they fail to address any of the four factors set forth in *Griepentrog*. With respect to Motion One for Stay, not only does Ms. Makridis fail to address the four factors, but this Motion is inaccurate, misleading and incomplete because she fails to

disclose that she asked for leave to move for a stay at the Show Cause Hearing, which request was denied. In denying that request, the Court specifically referenced the B.A.P. Order, which affirmed the Sanctions Order. As the Court stated, the B.A.P. Order provided no basis whatsoever to believe that Ms. Makridis had any likelihood of having the Sanctions Order reversed.

**Ms. Makridis:** I should have filed, Your Honor, I believe a motion for stay of execution of the judgment under Rule 8005, and I did not. And I should have posted a supersedeas bond, as well, which I did not. I think I erroneously assumed that the judgment would just automatically stay pending the appeal. I think under Federal Rules I do have to file a motion. I think I should have filed and posted the bond within 30 days. After reviewing that late last night, I realized that. I don't know if I have leave of court to do that now, or, [what] I can still do, I'm not sure.

**The Court:** Ms. Makridis, this has gone up and down several times already. The B.A.P. found that there was absolutely no basis for you to have filed the appeal to begin with, and remanded it to me to impose the sanctions. I imposed the sanctions after an evidentiary hearing. The B.A.P. has now – you appealed that – the B.A.P. has now affirmed that award of sanctions. There's no basis whatsoever, if you read the opinion, to think that there's any reason to stay the judgment. And I'm not going to permit you leave at this late date, nine months after the award was – the judgment – was entered, to move to stay it. . . .

Show Cause Hr'g at 9:47:45 - 9:49:13 (emphasis added).

Despite knowing that the Court denied the request to move for a stay of execution of the Sanctions Order at the Show Cause Hearing, the Motion One for Stay makes no reference to Ms. Makridis's oral motion and the Court's denial of such motion. Ms. Makridis acknowledged at the Show Cause Hearing that she did not look at the Federal Rules to see what was required until late the

night before the Show Cause Hearing. Toward the end of the Show Cause Hearing, Ms. Makridis acknowledged that she knew she did not have leave to seek a stay. Ms. Makridis also stated that she "assumed" – inexplicably – that the Sanctions Order would be stayed automatically pending her appeal of the Sanctions Order to the B.A.P.<sup>2</sup>

Even though Ms. Makridis fails to address any of the four *Griepentrog* factors, this Court finds that there is no basis for imposition of a stay of the Sanctions Order. First, as set forth above, despite Ms. Makridis's appeal of the B.A.P. Order to the Sixth Circuit, the B.A.P. has already affirmed the Sanctions Order and reiterated that the original appeal was frivolous. Ms. Makridis has demonstrated no reason to find that she is likely to succeed in her appeal to the Sixth Circuit.

Second, there is no showing of irreparable harm if a stay is not granted. The only possible harm that Ms. Makridis could have asserted is the financial harm that would result to her if she has to pay WMS the Sanction Amount. It is a well-settled proposition that mere financial harm does not and cannot constitute irreparable harm. "Even under the traditional standards of *Virginia Petroleum Jobbers [Assn. v. FPC]*, 259 F.2d 921 (D.C. Cir. 1958)], it seems clear that the temporary loss of income, ultimately to be recovered,

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<sup>2</sup>It is surprising that Ms. Makridis purports not to have realized that she needed to file a motion for a stay pending execution of the Sanctions Order since she knew to do so when she attempted to stay execution of the Trial Judgment. Moreover, she was aware of her evidentiary burden to obtain a stay here because the factors were laid out in the Memo Opinion Regarding Stay. (*See supra* at 7, ¶ 12.)

does not usually constitute irreparable injury." *Sampson v. Murray*, 415 U.S. 61, 90 (1974); see also *McCreery & Assoc., Inc. v. Abbo (In re Abbo)*, 191 B.R. 680, 684 (Bankr. N.D. Ohio 1996) ("The monetary harm that the Debtor would suffer if the plaintiffs are permitted to enforce their prepetition state court judgment against him does not constitute irreparable harm.")

If and when Ms. Makridis ultimately complies with the Sanctions Order by paying WMS the Sanction Amount, any such payment could be disgorged and returned to Ms. Makridis in the unlikely event that the Sanctions Order is not affirmed. There is absolutely no evidence – or even a suggestion – that WMS would not be able to return all or any part of the Sanction Amount that Ms. Makridis may pay to WMS in the future in the event the Sanctions Order might be reversed. "Normally the mere payment of money is not considered irreparable, but that is because money can usually be recovered from the person to whom it is paid." *Philip Morris USA Inc. v. Scott*, 131 S. Ct. 1, 4 (2010) (internal citations omitted).

In any event, Ms. Makridis cannot even allege that payment of the Sanction Amount would or could constitute irreparable harm because such allegation would directly contradict her proposal to "post[] . . . a cash bond in the amount of the judgment." (Mot. One for Stay at 1.) If Ms. Makridis has the ability, as she proposes, to post a cash bond in the amount of the Sanction Amount if this Court were to grant a stay of the Sanctions Order, she has the ability to pay WMS the Sanction Amount, without injury.

The third element is the absence of substantial harm to other parties. Unlike the second element, which requires harm to be irreparable, the Court must consider only if a stay would harm the non-moving party. Here, WMS is harmed by Ms. Makridis's failure to comply with the Sanctions Order. Ms. Makridis was required to pay WMS \$7,613.85 no later than October 23, 2010, which was eight months ago. Ms. Makridis's failure to comply with the Sanctions Order has harmed WMS and any stay of the Sanctions Order would perpetuate that harm.

Fourth, the Court is to consider the public interest in granting the stay. This element is applicable here because Ms. Makridis was sanctioned for filing a frivolous appeal and she has failed – without justification – to comply with an order of this Court. Imposition of a stay nine months after entry of the Sanctions Order would reward and condone Ms. Makridis's willful conduct in failing and refusing to comply with a court order. The Court finds no public purpose can or would be served by imposition of a stay.

The analysis, above, is equally applicable to Motion Two for Stay. Although Ms. Makridis asks for this Court to stay the Order Finding Contempt pending her appeal to the B.A.P. for a stay of the B.A.P. Order (which affirmed the Sanctions Order), she fails to address the four *Griepentrog* factors in the B.A.P. Motion. First, Ms. Makridis inaccurately and misleadingly portrays this Court's Order Finding Contempt as an end run around her Motion One for Stay.

Ms. Makridis was before the Court at the Show Cause Hearing when the Court issued the Bench Ruling that she owed WMS \$7,613.85 plus 4% interest from September 23, 2010, and that such payment was due "immediately." At the time of the Bench Ruling, Ms. Makridis had no motion for stay pending and, indeed, her request for a stay had been denied. The Order Finding Contempt merely memorialized that Bench Ruling.

The Court: Well, I'm actually going to award judgment in the way of additional interest at 4% since September 23, 2010. And, so, that payment arrangement that you are going to seek to work out with Mr. Rudloff needs to take into consideration that interest is running. There's no justification for the failure to pay. There was no stay. There was no motion even seeking a stay filed. So, I am going to grant him judgment, to the extent you already don't have the judgment, I think that the [Sanctions] Order that the Court entered actually serves as a judgment, Mr. Rudloff, but at 4% interest. . . . So, at the moment, I'm only going to order you to pay Mr. Rudloff, on behalf of his client, immediately, that interest is running, at the rate of 4% per annum. And, to the extent you can work out a payment arrangement, that's fine. But if you don't, the money is owed. . . . I'm going to conclude this show cause order with what I have put on the record.

. . .

Show Cause Hr'g 9:50:30 - 9:52:14 (emphasis added). As can be seen, the Court ruled from the bench that Ms. Makridis was required to pay WMS immediately. The Bench Ruling occurred prior to her filing Motion One for Stay. Indeed, the Order Finding Contempt merely reinforced this Court's Sanctions Order, which had required Ms. Makridis to pay the Sanction Amount no later than thirty (30) days after September 23, 2010. As a consequence, Ms. Makridis's reasoning that the Order Finding Contempt relieves her of the

obligation in Federal Rule of Bankruptcy Procedure 8005 to first seek a ruling from this Court on Motion One for Stay before seeking the same relief from the B.A.P. is without foundation or merit.

Because the B.A.P. Motion is procedurally and substantively deficient, Ms. Makridis has presented no reason for this Court to stay the Order Finding Contempt until the B.A.P. rules on such motion. If, however, the B.A.P. grants the B.A.P. Motion, Ms. Makridis would at that time be free to seek a stay from this Court of the Order Finding Contempt.

#### **IV. MS. MAKRIDIS'S INCONSISTENT REPRESENTATIONS**

At the Show Cause Hearing, Ms. Makridis stated that her failure to comply with the Sanctions Order was due to her financial inability to do so.

**The Court:** You owe WMS Motor Sales \$7,613.85. What is the reason you haven't made that payment?

**Ms. Makridis:** Unavailability of funds. I have three children to support and they're all in college. I don't have it, in all honesty, I do not have it. I can make payments, I suppose, pending the appeal. Perhaps some payments at the first of the month. . . .

Show Cause Hr'g 9:49:16 - 9:49:45. Ms. Makridis is a licensed attorney and an officer of the Court. She is required to make truthful representations to the Court. Despite representing to the Court at the Show Cause Hearing that she was without funds to pay WMS the Sanction Amount, less than six hours later she affirmatively states that she can post the entire amount of the Sanction Amount as a "cash bond" if the Court grants a stay. These statements are totally at odds with each other. How can Ms. Makridis have no money

to pay WMS, but – on the same day – have cash to post a cash bond in the amount due to WMS? Ms. Makridis's inconsistent statements indicate to the Court that she was either not truthful at the Show Cause Hearing or she is not truthful in Motion One for Stay.

**V. CONCLUSION**

As set forth above, both Motion One for Stay and Motion Two for Stay contain inaccurate and misleading factual statements. Neither Motion addresses the four factors the Court must consider in determining whether a stay is appropriate. The Court will deny Motion One for Stay and Motion Two for Stay. An appropriate order will follow.

# # #



Before the Court are two motions seeking stays pending appeal, as follows: (i) Motion for Stay of Execution Pending Appeal ("Motion One for Stay") (Doc. # 105) filed by Irene K. Makridis, Esquire, on behalf of herself on June 23, 2011; and (ii) Motion for Stay of Execution of Contempt Order Pending Ruling by B.A.P. on Motion for Stay Pending Appeal ("Motion Two for Stay") (Doc. # 108) filed by Ms. Makridis, on behalf of herself on June 24, 2011.

For the reasons set forth in this Court's Memorandum Opinion Regarding (i) Motion for Stay of Execution Pending Appeal (Doc. # 105) and (ii) Motion for Stay of Execution of Contempt Order Pending Ruling by B.A.P. on Motion for Stay Pending Appeal (Doc. # 108) entered on this date, this Court hereby:

1. Finds that neither Motion One for Stay nor Motion Two for Stay addresses the four factors the Court must consider in determining whether a stay is appropriate;
2. Finds that neither Motion One for Stay nor Motion Two for Stay contains any basis for this Court to grant a stay of execution pending appeal;
3. Denies Motion One for Stay; and
4. Denies Motion Two for Stay.

**IT IS SO ORDERED.**

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