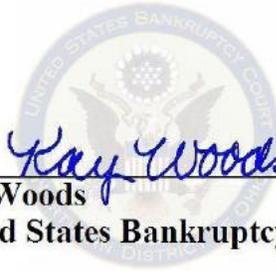


IT IS SO ORDERED.

Dated: August 6, 2012
01:29:43 PM



Kay Woods
 Kay Woods
 United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:	*	
	*	
	*	CASE NUMBER 11-42995
SHANNON J. CASSETTO and	*	
FRANK A. CASSETTO, JR.,	*	CHAPTER 7
	*	
Debtors.	*	HONORABLE KAY WOODS
	*	

 MEMORANDUM OPINION REGARDING DEBTORS' MOTION TO STAY
 ORDER GRANTING TRUSTEE'S MOTION TO EFFECTUATE
 EXECUTION OF OIL AND GAS LEASE

This cause is before the Court on Motion to Stay (Doc. # 68) filed by Debtors Shannon J. Cassetto and Frank A. Cassetto, Jr. ("Debtors") on August 3, 2012. The Debtors seek a stay, pending appeal of this Court's Order Granting Chapter 7 Trustee's Motion to Effectuate Execution of Oil and Gas Lease ("Lease Order") (Doc. # 65) entered on July 25, 2012. The Debtors filed a Notice of Appeal of the Lease Order on August 3, 2012 (Doc. # 67).

This Court has jurisdiction pursuant to 28 U.S.C. § 1334 and the general orders of reference (General Order Nos. 84 and 2012-7)

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). The following constitutes the Court's findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052.

I. BACKGROUND

By way of background, Andrew W. Suhar, Chapter 7 Trustee ("Trustee"), filed Motion to Effectuate Execution of Oil and Gas Lease ("Motion to Lease") (Doc. # 52) on May 24, 2012, which sought authorization to enter into an oil and gas lease for property used by Debtor Shannon J. Cassetto as her residence ("Property"). The Trustee claimed that executing the lease would result in a signing bonus of \$60,450.00 ("Signing Bonus") for the Trustee to administer for the benefit of creditors of the bankruptcy estate. The Trustee further represented that, after signing the lease and receipt of the Signing Bonus, he would abandon the Property and the oil and gas lease to the Debtors, who would then be the recipients of any royalties resulting from such lease.

The Debtors opposed the Motion to Lease on the grounds of alleged unspecified environmental concerns, as well as the noise and machinery that oil and gas drilling could entail on the Property. In the alternative, the Debtors asserted that the Signing Bonus was subject to the Ohio Homestead Exemption in O.R.C. § 2329.66 in the amount of \$21,625.00.

The Court held a hearing and requested additional briefs, which

the parties supplied. After reviewing all pleadings, briefs and the entire record of this case, on July 25, 2012, the Court entered Memorandum Opinion Regarding Chapter 7 Trustee's Motion to Effectuate Execution of Oil and Gas Lease ("Memorandum Opinion") (Doc. # 64) and the Lease Order. The Court found that the Debtors had already received the full benefit of the Ohio Homestead Exemption when they avoided two judgment liens against the Property. Moreover, the Court found that the Ohio Homestead Exemption did not apply to oil and gas rights that had not been valued and could not be valued as of the Petition Date.

II. 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 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 the stay. *Stephenson v. Rickles Elecs. & Satellites (In re Best Reception Sys., Inc.)*, 219 B.R. 988, 992 (Bankr. E.D. Tenn. 1998); accord, *Mich. Coal. of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 153 (6th Cir. 1991). The Debtors do not address any of these factors; rather they only state, "If a Stay is not entered, the execution of the lease can lead to the very events that the appeal is attempting to prevent." (Mot. to Stay at 1.)

The Court will examine each of the factors noted above. The

first factor is the likelihood that the Debtors will prevail on appeal. The Debtors expressly acknowledged that the oil and gas rights are property of the bankruptcy estate. They have presented no reason why the Trustee should not be authorized to administer this property for the benefit of the Debtors' creditors. Even if, *arguendo*, the Ohio Homestead exemption is found, on appeal, to apply to oil and gas rights that are not capable of being valued as of the Petition Date, the Debtors have already received the full benefit of the Ohio Homestead Exemption by avoiding two judicial liens. As a consequence, this Court believes that the Debtors will not prevail on the merits of their appeal. This factor favors denial of the requested stay.

The next factor is the likelihood that the Debtors will suffer irreparable harm if the stay is not imposed. For purposes of the Motion to Stay only, the Court will assume that execution of the oil and gas lease will lead to actual drilling on the Property and that such drilling will cause noise and be accompanied by machinery. Despite this assumption, the Debtors failed to specify how the alleged noise and machinery would adversely affect them, let alone that they will suffer irreparable harm. Indeed, in the Motion to Stay, the Debtors not only fail to allege irreparable harm, they only state that if a stay is not entered, execution of the oil and gas lease "can" – not will – lead to "the very events" they are seeking to prevent. The Trustee cited Ohio statutes and regulations that provide for restoration of property at the end of an oil and

gas lease. As a consequence, any alleged harm the Debtors may suffer will be, at most, temporary. Moreover, the Debtors fail to state how they will be harmed in any way if the Trustee executes the oil and gas lease. Accordingly, this factor favors denial of the requested stay.

The third element is the likelihood of substantial harm to the Trustee on behalf of the creditors of the bankruptcy estate. The Court currently cannot evaluate whether the Trustee will lose the opportunity to finalize the oil and gas lease in the event imposition of a stay results in significant delay. If the opportunity for effectuating the oil and gas lease is lost, the Signing Bonus in the amount of \$60,450.00 is also lost. If delay resulting from imposition of a stay causes the Trustee to lose the opportunity to administer the Signing Bonus, the creditors of the bankruptcy estate will be seriously and substantially harmed because the Trustee's distributions will be diminished by \$60,450.00. Even if the opportunity to finalize the oil and gas lease is not lost in its entirety, at minimum, imposition of the stay will result in delay in administration of the bankruptcy estate and payment to creditors. Because of the time value of money, delay in payment will have at least some negative effect on the creditors. Accordingly, although the Court cannot determine to what extent the creditors may or will be harmed by continuing the status quo during the pendency of appeal, this factor favors denial of imposition of the stay.

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

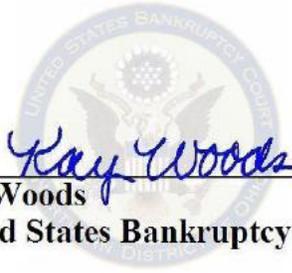
Applying the four factors, the Court finds that the Debtors have not established cause for the Court to stay the Lease Order pending appeal to the District Court.

An appropriate order will follow.

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IT IS SO ORDERED.

Dated: August 6, 2012
01:29:44 PM


Kay Woods

Kay Woods
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:	*	
	*	
	*	CASE NUMBER 11-42995
	*	
SHANNON J. CASSETTO and	*	
FRANK A. CASSETTO, JR.,	*	CHAPTER 7
	*	
Debtors.	*	HONORABLE KAY WOODS
	*	

ORDER DENYING DEBTORS' MOTION TO STAY
ORDER GRANTING TRUSTEE'S MOTION TO EFFECTUATE
EXECUTION OF OIL AND GAS LEASE

This cause is before the Court on Motion to Stay (Doc. # 68) filed by Debtors Shannon J. Cassetto and Frank A. Cassetto, Jr. ("Debtors") on August 3, 2012. The Debtors seek a stay, pending appeal of this Court's Order Granting Chapter 7 Trustee's Motion to Effectuate Execution of Oil and Gas Lease ("Lease Order") (Doc. # 65) entered on July 25, 2012.

For the reasons set forth in this Court's Memorandum Opinion Regarding Debtors' Motion to Stay Order Granting Trustee's Motion to Effectuate Execution of Oil and Gas Lease entered on this date,

the Court hereby:

1. Finds that the Debtors are not likely to prevail on appeal;
2. Finds that the Debtors will not be irreparably harmed if a stay is not granted;
3. Finds that the Trustee on behalf of the creditors of the bankruptcy estate may be substantially harmed if a stay is granted;
4. Finds that likelihood of harm to the public is not implicated in this case;
5. Finds that the Debtors have not established cause for the Court to stay the Lease Order pending appeal; and
6. Denies the Motion to Stay.

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