

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

TURNER CONSTRUCTION CO., INC.,
Plaintiff-Appellee,

v.

UNITED STATES,
Defendant-Appellant,

and

MCCARTHY/HUNT, JV,
Defendant,

and

B.L. HARBERT-BRASFIELD & GORRIE, JV,
Defendant-Appellant.

2010-5146, -5158

Appeal from the United States Court of Federal
Claims in case no. 10-CV-195, Senior Judge Bohdan A.
Futey.

ON MOTION

Before LOURIE, MAYER, and DYK, *Circuit Judges.*

DYK, *Circuit Judge*.

O R D E R

B.L. Harbert-Brasfield & Gorrie, JV, moves for a stay, pending disposition of this appeal, of the judgment entered by the United States Court of Federal Claims. Turner Construction Co., Inc. opposes. The United States opposes. B.L. Harbert-Brasfield & Gorrie replies.

To obtain a stay, pending appeal, a movant must establish a strong likelihood of success on the merits or, failing that, nonetheless demonstrate a substantial case on the merits provided that the harm factors militate in its favor. *Standard Havens Prods. v. Gencor Indus.*, 897 F.2d 511, 513 (Fed. Cir. 1990) (citing *Hilton v. Braunskill*, 481 U.S. 770, 778 (1987)). In deciding whether to grant a stay, pending appeal, this court "assesses the movant's chances of success on the merits and weighs the equities as they affect the parties and the public." *E.I. du Pont de Nemours & Co. v. Phillips Petroleum Co.*, 835 F.2d 277, 278 (Fed. Cir. 1987); *see also Standard Havens Prods.*, 897 F.2d at 513.

Based on the arguments in the motions papers, and without prejudicing the ultimate disposition of this case by a merits panel, we determine that B.L. Harbert-Brasfield & Gorrie has not met its burden to obtain a stay of the judgment.

Upon consideration thereof,

IT IS ORDERED THAT:

The motion is denied.

FOR THE COURT

DEC 08 2010

Date

/s/ Jan Horbaly

Jan Horbaly

Clerk

cc: Laurence Schor, Esq.
Scott M. McCaleb, Esq.
Anuj Vohra, Esq.

FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

DEC 08 2010

JAN HORBALY
CLERK