

1 WO
2
3
4
5

6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Lexington Insurance Company,

No. CV-12-02119-PHX-JAT

10 Plaintiff/
11 Counterdefendant,

ORDER

12 v.

13 Scott Homes Multifamily Incorporated, et
14 al.,

15 Defendants/
Counterclaimants.

16 Pending before the Court is Plaintiff/Counterdefendant Lexington Insurance
17 Company (“Lexington”)’s Emergency Motion to Extend the Temporary Stay of
18 Execution on the Judgment (First Request). (Doc. 487). Defendants/Counterclaimants
19 Silverbell 290 L.P. (“Silverbell”) and Scott Homes Multifamily, Inc. (“Scott Homes”)
20 filed a response. (Doc. 488). The Court now rules on the motion.

21 **I. Background**

22 Lexington requests—on an emergency basis—that the Court extend the 14-day
23 automatic temporary stay of execution on the judgment, which expires Friday, November
24 13, 2015. (Doc. 487 at 1). Lexington contends that the Court should extend the 14-day
25 temporary stay until the Court disposes of “Lexington’s forthcoming post-trial motions”
26 that apparently could impact the calculation of the judgment as currently entered. (*Id.*)
27 Assuming the Court was inclined to deny all of Lexington’s yet-to-be-filed motions,
28 Lexington asserts that it will file a notice of appeal and obtain a stay by posting a

1 supersedeas bond. (*Id.* at 2–3). Therefore, Lexington explains that it needs additional time
2 to: (1) perform an independent calculation of pre-judgment interest due to the Court’s
3 “unclear” rulings, (2) secure a supersedeas bond, and (3) obtain judicial approval of the
4 bond before filing a notice of appeal. (*Id.*)

5 **II. Legal Standard**

6 This Court has summarized the relevant legal standard as follows:

7 Rule 62(b) of the Federal Rules of Civil Procedure allows a federal
8 court to “stay the execution of a judgment” pending disposition of certain
9 post-trial motions. Such a stay can only be granted “[o]n appropriate terms
10 for the opposing party’s security.” *Id.* An unsecured stay is disfavored
11 under Rule 62(b). *See, e.g., Int’l Wood Processors v. Power Dry, Inc.*, 102
12 F.R.D. 212, 214 (D. S.C.1984) (“Rule 62, taken in its entirety, indicates a
13 policy against any unsecured stay of execution after the expiration of the
14 time for filing a motion for a new trial.” (citing cases)). Nevertheless, while
15 security should be provided “in normal circumstances,” a district court in
16 its discretion may grant an unsecured stay in “unusual circumstances,”
17 where the granting of such a stay will not “unduly endanger the judgment
creditor’s interest in ultimate recovery.” *Fed. Prescription Serv., Inc. v. Am.*
Pharm. Ass’n, 636 F.2d 755, 760–61 (D.C. Cir. 1980) (addressing stay
pending appeal pursuant to Rule 62(d)); *see also In re Combined Metals*
Reduction Co., 557 F.2d 179, 193 (9th Cir. 1977) (recognizing district
court’s discretion to grant unsecured stay under Rule 62(d)).

18 *In re Apollo Grp., Inc. Sec. Litig.*, 2008 WL 410625, at *1 (D. Ariz. Feb. 13, 2008). The
19 Court also included a footnote that explained:

20 Some courts have held that an unsecured stay should only be granted when
21 the judgment debtor demonstrates that providing security is “impossible or
22 impractical.” *E.g., Int’l Wood Processors*, 102 F.R.D. at 214; *Gallatin*
Fuels v. Westchester Fire Ins. Co., No. 02–CV–2116, 2006 WL 952203, at
23 *2 (W.D. Pa. 2006); *Frankel v. ICD Holdings S.A.*, 168 F.R.D. 19, 22
24 (S.D.N.Y. 1996). The Court, however, does not find these authorities
25 persuasive. Such a standard would be more restrictive than the standard
26 applied to unsecured stays pending appeal under Rule 62(d). *Cf. Fed.*
Prescription, 636 F.2d at 759 (focusing on the judgment debtor’s financial
27 condition as a factor that can weigh in favor of granting an unsecured stay).
28 If anything, due to the greater risk inherent in the longer stay under Rule
62(d), the standard governing the court’s discretion in the Rule 62(b)
context should be less restrictive.

1 *Id.* at *1, n.1.

2 **III. Analysis**

3 Initially, Lexington’s motion does not suggest whether it seeks a secured or an
4 unsecured stay of execution of the judgment. *See* (Doc. 487). As nothing is before the
5 Court evidencing Lexington’s financial ability or intent to provide a secured stay, the
6 Court assumes Lexington seeks to extend the current stay of execution of the judgment
7 on an unsecured basis.

8 In this regard, Lexington has not convinced the Court that this case presents
9 “unusual circumstances,” nor has Lexington provided any information to show that
10 Defendants/Counterclaimants’ interests will be adequately protected in the absence of
11 security. Lexington did not offer the Court any evidence of its financial condition or other
12 evidence showing its ability to pay the judgment pending resolution of its “forthcoming
13 post-trial motions.” Moreover, Lexington’s assertion that it will file the motions
14 enumerated in Rule 62(b) at some future time possibly makes the present motion
15 premature. Rule 62(b) permits a court to stay the execution of a judgment pending the
16 disposition of motions filed under Rule 50, 52(b), 59, and 60. For Rule 62(b) to apply,
17 however, it is presumed that such motions *have been filed* by the requesting party. Here,
18 there is arguably no basis for the Court to extend the current stay of execution of the
19 judgment pursuant to Rule 62(b) because Lexington has not yet filed any post-trial
20 motions.

21 Nevertheless, if Lexington wishes to extend the automatic stay of execution of the
22 judgment until the Court disposes of its “forthcoming post-trial motions,” the Court will
23 permit it to do so—contingent upon Lexington’s provision of adequate security to protect
24 Defendants/Counterclaimants’ interests. As to the question of how much security
25 Lexington will be required to provide, this Court has stated:

26 The purpose of security under Rule 62(b) is to preserve the status quo
27 pending disposition of post-trial motions. *Int’l Wood Processors*, 102
28 F.R.D. at 215. Accordingly, courts typically require security in the full
amount of the judgment. *Id.* at 215–16 (setting bond at full amount of
judgment plus three months’ interest); *Gallatin Fuels*, 2006 WL 952203 at

1 *2 (setting bond at full amount of judgment); *Frankel*, 168 F.R.D. at 22
2 (setting bond at 110% of amount of judgment).

3 *In re Apollo Grp., Inc. Sec. Litig.*, 2008 WL 410625, at *2; *see also Fredianelli v.*
4 *Jenkins*, 2013 WL 5934988, at *1 (N.D. Cal. Nov. 4, 2013) (“Because Rule 62(b) is
5 intended to preserve the status quo while protecting the prevailing party’s interest in the
6 judgment, a stay of judgment usually requires a bond. Typically, the amount of the bond
7 will be set in an amount that will permit satisfaction of the judgment in full, together with
8 costs, interest, and damages for delay.” (internal quotations omitted)). Consequently, the
9 Court will follow the general rule here and permit Lexington to extend the automatic stay
10 until the Court disposes of its “forthcoming post-trial motions” if it posts a bond in the
11 amount of (1) the judgment (\$3,410,000.01 plus pre-judgment interest¹) plus (2) post-
12 judgment interest at 0.23% for seven months from the date judgment was entered² with
13 the Clerk of Court before the current stay expires on Friday, November 13, 2015.

14 Pursuant to Rule 59, Lexington’s post-trial motions must filed by Friday,
15 November 27, 2015. If Lexington posts a bond in the required amount before the current
16 stay expires but does not file any post-trial motions by November 27, 2015, then the bond
17 shall be exonerated and Defendants/Counterclaimants may immediately execute on the
18 judgment, unless Lexington has properly obtained a stay of execution pursuant to Rule
19 62. The Court warns that no time extensions regarding post-trial motions will be granted.

20 **IV. Conclusion**

21 Based on the foregoing,

22 **IT IS ORDERED** that Lexington’s Emergency Motion to Extend the Temporary
23 Stay of Execution on the Judgment (First Request) (Doc. 487) is granted on the condition

24
25 ¹ Lexington complains in its motion that it has been unable to calculate the
26 judgment’s pre-judgment interest due to the Court’s “unclear” rulings. (Doc. 487 at 3).
27 The Court trusts that its recent clarification dispelled any confusion. *See* (Doc. 489).

28 ² This amount is \$4,575.00. Yearly post-judgment interest for the judgment
 amount of \$3,410,000.01 is approximately \$7,843.00. Thus, interest for seven months is
 approximately \$4,575.00.

1 that Lexington post a bond with the Clerk of Court no later than Friday, November 13,
2 2015 in the amount of (1) \$3,410,000.01 plus pre-judgment interest plus (2) post-
3 judgment interest at 0.23% for seven months from the date judgment was entered.
4 However, if Lexington either (1) fails to post the full bond by November 13, 2015 or (2)
5 fails to file its post-trial motions by November 27, 2015, then the stay shall automatically
6 be lifted. If Lexington posts the full bond by November 13, 2015 and files its post-trial
7 motions by November 27, 2015, then the stay shall continue until the Court disposes of
8 Lexington's post-trial motions.

9 Dated this 10th day of November, 2015.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

