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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

DANIEL E. RUFF,)	No. CV-F-05-631 OWW/GSA
)	
)	MEMORANDUM DECISION AND
)	ORDER GRANTING DEFENDANTS'
Plaintiff,)	EX PARTE APPLICATION FOR
)	STAY OF ENFORCEMENT OF
vs.)	JUDGMENT PENDING POST TRIAL
)	MOTIONS AND APPEAL (Doc.
)	212)
COUNTY OF KINGS, et al.,)	
)	
Defendants.)	
)	
)	

Judgment for Plaintiff for monetary damages was entered under Rule 54(b), Federal Rules of Civil Procedure, on September 24, 2009. Defendants' application for stay of enforcement of judgment pending resolution of post trial motions and appeal was filed on October 26, 2009 and was opposed by Plaintiff on October 27, 2009. To some extent, Defendants' application is moot because Plaintiff's post trial motions for prejudgment interest and declaratory relief and Defendants' renewed motion for judgment or for new trial were heard on November 23, 2009. Plaintiff's motion for attorney's fees was filed on October 22,

1 2009 and is now noticed for hearing on February 22, 2010. Rule

2 4(a)(4)(A), Federal Rules of Appellate Procedure, provides:

3 If a party timely files in the district court
4 any of the following motions under the
5 Federal Rules of Civil Procedure, the time to
6 file an appeal runs for all parties from the
7 entry of the order disposing of the last such
8 remaining motion:

9 (i) for judgment under Rule 50(b);

10 (ii) to amend or make additional
11 factual findings under Rule 52(b),
12 whether or not granting the motion
13 would alter the judgment;

14 (iii) for attorney's fees under
15 Rule 54 if the district court
16 extends the time to appeal under
17 Rule 58;

18 (iv) to alter or amend the judgment
19 under Rule 59;

20 (v) for a new trial under Rule 59;
21 or

22 (vi) for relief under Rule 60 if
23 the motion is filed no later than
24 10 days after the judgment is
25 entered.

26 Rule 58(e), Federal Rules of Civil Procedure, provides:

Ordinarily, the entry of judgment may not be
delayed, nor the time for appeal extended, in
order to tax costs or award fees. But if a
timely motion for attorney's fees is made
under Rule 54(d)(2), the court may act before
a notice of appeal has been filed and become
effective to order that the motion have the
same effect under Federal Rules of Appellate
Procedure 4(a)(4) as a timely motion under
Rule 59.

All of these motions extend the time to file the notice of
appeal. Consequently, the only issue to be resolved is whether a

1 stay of enforcement of the Judgment should be granted pending
2 appeal.

3 Rule 62(d), Federal Rules of Civil Procedure, provides:

4 If an appeal is taken, the appellant may
5 obtain a stay by supersedeas bond, except in
6 an action described in Rule 62(a)(1) or (2).
7 The bond may be given upon or after filing
8 the notice of appeal or after obtaining the
9 order allowing the appeal. The stay takes
10 effect when the court approves the bond.

11 Defendants represent their intent to appeal the Judgment and any
12 post trial rulings. Although they request that the stay of
13 judgment be issued without the requirement of a supersedeas bond,
14 Defendants also state they will post a supersedeas bond if
15 required by the Court and request that the supersedeas bond be
16 limited to the amount of the Judgment, i.e., \$200,000. As
17 explained in Wright, Miller & Kane, 11 Federal Practice and
18 Procedure, § 9405:

19 Although the amount of the bond usually will
20 be set in an amount that will permit
21 satisfaction of the judgment in full,
22 together with costs, interest, and damages
23 for delay, the courts have inherent power ...
24 to provide for a bond in a lesser amount or
25 to permit security other than the bond.

26 Plaintiff, referring to arguments made in support of his
27 motion for declaratory and ancillary relief, contends that
28 granting a stay of enforcement of the Judgment pursuant to Rule
29 62 during the pendency of the appeal will cause Plaintiff
30 "irreparable harm, including the likely loss of the subject
31 property, the continued inability to move forward with his
32 recycling center until proceedings are fully and finally

1 resolved, and additional damages as a result of the further delay
2 of the vindication of the procedural due process rights found by
3 the jury." Plaintiff asserts that, if his motion for declaratory
4 and ancillary relief is granted, which motion includes a request
5 an injunction compelling immediate payment of the monetary
6 damages awarded by the jury, Rule 62(a) precludes a stay of
7 enforcement "of a final judgment in an action for an injunction"
8 even if an appeal is taken.

9 As Wright, Miller & Kane, *supra*, explains, "[i]f a judgment
10 includes both a money award and the grant or denial of an
11 injunction, a supersedeas bond stays the monetary award but not
12 that part of the judgment that deals with injunctive relief." By
13 seeking an injunction compelling the immediate payment of the
14 monetary portion of the Judgment, Plaintiff is attempting to
15 preclude Defendants' right to stay enforcement of the Judgment by
16 filing a supersedeas bond. If Defendants file a notice of
17 appeal and post a supersedeas bond, the Court does not have the
18 authority to compel payment of the Judgment while it is on
19 appeal. As explained in *Exxon Valdez v. Exxon Mobil*, 568 F.2d
20 1077, 1085 (9th Cir.2009) (Kleinfeld, J., concurring):

21 The rationale for a supersedeas bond is that
22 there can be no certainty about who is in the
23 right until the appeals are done; the party
24 that lost should not have to pay the winner
25 until the district court's decision is
26 finally affirmed, but in the meantime, the
party that won in district court should not
be at risk of the money disappearing. To
protect the winner from the risk that the
loser will not have the money if and when the
judgment is affirmed, the bond is ordinarily

1 secured by property or by surety.

2 At the hearing, Plaintiff requested that the Court compel
3 payment by Defendants of \$70,000.00 of the Judgment and asserted
4 that Plaintiff could post the Property as security for repayment
5 of that amount if the Judgment is reversed on appeal.

6 Plaintiff provides no authority that the Court can compel
7 partial payment of a Judgment if a supersedeas bond is posted.
8 There are practical difficulties to Plaintiff's approach.
9 Plaintiff will not have fee title to the property until he makes
10 the timely \$70,000 balloon payment to Mr. Brieno. Plaintiff's
11 oral assurances that he will then have fee simple title to the
12 property free and clear of any liens and that the value of the
13 property will suffice to secure the payment of \$70,000 of the
14 Judgment, Defendants are entitled to the protection of a title
15 report and an appraisal, for which Defendants cannot be expected
16 to pay. Finally, Government Code §§ 970.4 - 970.6 set forth the
17 applicable procedures for enforcement of a judgment against a
18 local public entity. The local public entity cannot be compelled
19 to pay a final money judgment in a fiscal year in which there are
20 not funds to do so. Plaintiff presents no evidence that the
21 County has sufficient funds in this fiscal year to pay any
22 portion of the Judgment.

23 The supersedeas bond should reflect the amount of monetary
24 damages, prejudgment interest, recoverable costs, and some amount
25 for delay. Based on the present economic climate, it cannot be
26 assumed that the County of Kings will actually have the funds to

1 pay these amounts should the jury's verdict be affirmed on
2 appeal.

3 Defendants shall post a supersedeas bond in the amount of
4 \$250,000.00.

5 For the reasons stated, Defendants' application for stay of
6 enforcement of the judgment for money damages pending resolution
7 of post trial motions and appeal is GRANTED subject to Defendants
8 posting a supersedeas bond in the amount of \$250,000.00 and in a
9 form and by a surety, in accordance with the requirements of law
10 as to the surety's financial ability to pay the bond.

11 IT IS SO ORDERED.

12 Dated: December 18, 2009

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE