

United States District Court
For the Northern District of California

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

No. C 06-80356 SI

OFFICE DEPOT INC.,

Plaintiff,

v.

JOHN ZUCCARINI,

Defendant.

**ORDER DENYING DEFENDANT’S
MOTION TO STAY AUCTION OF
DOMAIN NAMES AND GRANTING
DEFENDANT’S MOTION TO ORDER
RECEIVER TO PROVIDE MONTHLY
REVENUE REPORTS**

DS HOLDINGS, LLC

Plaintiff,

v.

JOHN ZUCCARINI,

Defendant.

Defendant has filed a motion to stay auction of domain names and to order the receiver to provide monthly revenue reports. For the reasons set forth below, the Court hereby DENIES the motion to stay and GRANTS the motion for an order directing the receiver to provide monthly reports.

BACKGROUND

On September 10, 2007, the Court granted the ex parte application of assignee DS Holdings, LLC for appointment of a receiver to hold internet domain names owned by judgment debtor John Zuccarini, so that the domain names may be auctioned off to satisfy the judgment against Zuccarini. (Docket No. 30). On November 14, 2007, the Court granted Zuccarini’s motion to stay the auction

1 pending Zuccarini’s appeal to the Ninth Circuit. (Docket No. 47). The Ninth Circuit issued a published
2 opinion affirming this Court’s appointment of a receiver on February 26, 2010. (Docket No. 86).
3 Zuccarini now seeks a stay of the auction of domain names pending his filing of a petition for writ of
4 certiorari with the Supreme Court. Zuccarini also seeks an order requiring the receiver, Michael
5 Blacksborg, to provide him with monthly reports of the revenues generated from the use of the domain
6 names. The Court will address each request in turn.

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8 **I. Motion to Stay Auction of Domain Names**

9 Zuccarini moves to stay the auction of domain names until the time for seeking a writ of
10 certiorari from the Supreme Court has expired. As an initial matter, as DS Holdings points out, such
11 requests are ordinarily addressed to the Court of Appeals by filing a motion to stay issuance of the
12 mandate pursuant to Federal Rule of Appellate Procedure 41(d). When a motion to stay enforcement
13 of a judgment is addressed to the district court, however, the court must consider the following factors:
14 “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2)
15 whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will
16 substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.”
17 *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987). A court may also look to general equitable principles
18 when fashioning a stay of enforcement. *AmerisourceBergen Corp. v. Dialysist West, Inc.*, 465 F.3d 946,
19 956 (9th Cir. 2006).

20 In granting Zuccarini’s motion to stay the auction pending his Ninth Circuit appeal, the Court
21 found that Zuccarini showed a likelihood of irreparable injury, that a stay would not prejudice DS
22 Holdings, and that Zuccarini showed a potential for succeeding on the merits, given that this Court’s
23 appointment of the receiver addressed an issue of first impression. Nov. 14, 2007 Order at *2. In the
24 Court’s view, however, the *Hilton* factors no longer tilt in Zuccarini’s favor. The Ninth Circuit affirmed
25 this Court’s appointment of a receiver in this district in an eleven-page published opinion that squared
26 with California law, the law of other federal circuits, and the federal Anticybersquatting Consumer
27 Protection Act. *Office Depot, Inc. v. Zuccarini*, No. 07-16788, slip op. at 3129-31 (9th Cir. Feb. 26,
28 2010). Zuccarini has not shown a strong likelihood of succeeding in his cert petition. Additionally, the

1 receiver was appointed more than two years ago, and DS Holdings is suffering injury through its
2 inability to sell the domain names to satisfy its judgment. The Court believes it is no longer justified
3 to stay the auction, and DENIES Zuccarini's motion for a stay.

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5 **II. Motion to Order the Receiver to Provide Monthly Revenue Reports**

6 Zuccarini also moves for an order requiring the receiver, Michael Blacksborg, to provide
7 monthly reports detailing the revenues received and distributed from the use of the domain names.
8 Zuccarini relies on California Rule of Court 3.1182, which states that a receiver must provide the parties
9 with monthly reports which include: "(1) A narrative report of events; (2) A financial report; and (3) A
10 statement of all fees paid to the receiver, employees, and professionals showing: (A) Itemized services;
11 (B) A breakdown of the services by 1/10 hour increments; (C) If the fees are hourly, the hourly
12 fees; and (D) If the fees are on another basis, that basis." Cal. R. of Court 3.1182(a). This procedure
13 is applicable in these proceedings pursuant to Federal Rule of Civil Procedure 69, which provides that
14 the enforcement of a money judgment entered in federal court "must accord with the procedure of the
15 state where the court is located." Fed. R. Civ. P. 69(a)(1).

16 DS Holdings has filed a statement of non-opposition to the request for monthly revenue reports.
17 Zuccarini's motion for an order requiring the receiver to provide monthly reports is therefore
18 GRANTED. The receiver is directed to provide monthly reports to Zuccarini in accordance with the
19 terms of California Rule of Court 3.1182 until such time as the domain names have been auctioned off
20 and the revenue from the auctions has been reported to Zuccarini.

21
22 **CONCLUSION**

23 For the foregoing reasons and for good cause shown, the Court DENIES Zuccarini's motion to
24 stay the auction and GRANTS Zuccarini's motion to order the receiver to provide monthly reports.
25 (Docket No. 88).

26 **IT IS SO ORDERED.**

27 Dated: May 12, 2010

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SUSAN ILLSTON
United States District Judge