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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

PAUL F. SOARES,  
Plaintiff,

v.

JEFFREY LORONO, et al.,  
Defendants.

Case No. [12-cv-05979-WHO](#)

**ORDER DENYING MOTION TO STAY  
EXECUTION OF JUDGMENT  
PENDING APPEAL AND DENYING  
MOTION TO ALTER OR AMEND  
JUDGMENT OR FOR A NEW TRIAL**

Re: Dkt. No. 361, 364

After I entered judgment against plaintiff Paul F. Soares, he moves to stay execution of judgment pending appeal without posting a supersedeas bond as required by Federal Rule of Civil Procedure 62. He also moves for a new trial or in the alternative to alter or amend the judgment. I find that allowing Soares to stay the execution of judgment without a bond would be inequitable, and decline to exercise my discretion to waive the supersedeas requirement. In addition, Soares’s arguments for a new trial or to alter or amend judgment are without merit. Both of Soares’s motions are accordingly DENIED.

Both of Soares’s motions are currently scheduled for hearing on March 25, 2015. Pursuant to Civil Local Rule 7-1(b), this matter is appropriate for resolution without oral argument and I VACATE the hearing.

**BACKGROUND**

The judgment in this case arose from a consolidated case consisting of a civil action and an adversary proceeding in bankruptcy court. Soares brought the civil proceeding in this Court against Jeffrey Lorono, Lisa Lorono, Salinas Valley Roofing Incorporated (“SVR”), Adolfo Rangel, and Village Heating and Sheet Metal (“Village”) (collectively, “defendants”) for breach of contract, breach of warranty, and fraud. Memorandum Opinion (“Opinion”) at 1-2 (Dkt. No. 335).

1 SVR and Village brought the adversary proceeding against Soares, seeking non-dischargeability  
2 of Soares's debt to them due to fraud. *Id.*

3 After a one-day bench trial on December 8, 2014, I issued judgment in favor of the  
4 defendants in both the civil and adversary proceedings. *Id.* at 2-3. In the civil proceeding, I found  
5 that Soares failed to meet the burden of proof for his claims of breach of contract and breach of  
6 warranty because he did not prove damages or causation, and because he failed to present any  
7 evidence of fraud. *Id.* at 2. In the adversary proceeding, I found that Soares owed \$5,697.00 to  
8 SVR and \$14,517.36 to Village, and that both debts were non-dischargeable under 11 U.S.C. §  
9 523(a)(6). *Id.* at 2-3.

10 After filing a notice of appeal of this Court's judgment, Soares moves to stay execution  
11 pending appeal without a supersedeas bond. *See* Mot. Stay (Dkt. No. 361); FED. R. CIV. P. 62(d).  
12 He also moves for a new trial, or in the alternative to amend or alter the judgment pursuant to  
13 Federal Rule of Civil Procedure 59. Mot. Amend (Dkt. No. 364).<sup>1</sup>

## 14 LEGAL STANDARD

### 15 I. MOTION TO STAY EXECUTION OF JUDGMENT PURSUANT TO RULE 62

16 Federal Rule of Civil Procedure 62 provides that a supersedeas bond may be used to stay  
17 execution of a judgment pending appeal. FED. R. CIV. P. 62(d). Courts have held that although a  
18 party is entitled to a stay if he pays a supersedeas bond, "the court has discretion to allow other  
19 forms of judgment guarantee." *Int'l Telemeter Corp. v. Hamlin Int'l Corp.*, 754 F.2d 1492, 1495  
20 (9th Cir. 1985); *see also Kranson v. Fed. Express Corp.*, No. 11-CV-05826-YGR, 2013 WL  
21 6872495, at \*2 (N.D. Cal. Dec. 31, 2013).

22 Courts look to several factors in making a determination of whether to waive a supersedeas  
23 bond requirement. *Cotton ex rel. McClure v. City of Eureka, Cal.*, 860 F. Supp. 2d 999, 1028  
24 (N.D. Cal. 2012). These include:

25  
26  
27 <sup>1</sup> The defendants object to the extension that I granted to Soares to file his motions for a new trial  
28 and for reconsideration, claiming that Federal Rule of Civil Procedure 6 prevents the Court from  
viewing Soares's motion as anything but a motion for relief under Rule 60. *See* Dkt. No. 366 at 2.  
Whether treated as a motion for a new trial, a motion to alter or amend judgment, or a motion for  
relief from judgment, Soares's motion is denied and the defendants' arguments are moot.

1 (1) the complexity of the collection process; (2) the amount of time  
2 required to obtain a judgment after it is affirmed on appeal; (3) the  
3 degree of confidence that the district court has in the availability of  
4 funds to pay the judgment; (4) whether the defendant’s ability to pay  
the judgment is so plain that the cost of a bond would be a waste of  
money; and (5) whether the defendant is in such a precarious  
financial situation that the requirement to post a bond would place  
other creditors of the defendant in an insecure position.

5 *Id.* (internal citations and quotations omitted).

6 **II. MOTION FOR A NEW TRIAL OR TO ALTER OR AMEND JUDGMENT**  
7 **PURSUANT TO RULE 59**

8 Rule 59 sets forth grounds for granting a new trial or for altering or amending a judgment.  
9 A court may grant a new bench trial “for any reason for which a rehearing has heretofore been  
10 granted in a suit in equity in federal court.” FED. R. CIV. P. 59(a)(1)(B). “[T]he trial court may  
11 grant a new trial only if the verdict is contrary to the clear weight of the evidence, is based upon  
12 false or perjurious evidence, or to prevent a miscarriage of justice.” *Molski v. M.J. Cable, Inc.*,  
13 481 F.3d 724, 729 (9th Cir. 2007) (internal citations and quotations omitted).

14 A motion to alter or amend a judgment may be made pursuant to Rule 59(e). “A motion  
15 for reconsideration under Rule 59(e) should not be granted[] absent highly unusual  
16 circumstances . . . .” *McDowell v. Calderon*, 197 F.3d 1253, 1255 (9th Cir. 1999) (internal  
17 citations and quotations omitted); *see also John M. Floyd & Associates, Inc. v. TAPCO Credit*  
18 *Union*, 550 F. App’x 359, 361 (9th Cir. 2013). “There are four grounds upon which a Rule 59(e)  
19 motion may be granted: 1) the motion is necessary to correct *manifest errors of law or fact upon*  
20 *which the judgment is based*; 2) the moving party presents newly discovered or previously  
21 unavailable evidence; 3) the motion is necessary to prevent manifest injustice; or 4) there is an  
22 intervening change in controlling law.” *Turner v. Burlington N. Santa Fe R. Co.*, 338 F.3d 1058,  
23 1063 (9th Cir. 2003) (internal citations and quotations omitted).

24 **DISCUSSION**

25 **I. SOARES IS NOT ENTITLED TO A STAY OF JUDGMENT WITHOUT OBTAINING**  
26 **A SUPERSEDEAS BOND**

27 Soares argues that this Court has discretion to stay execution of its judgment without  
28 posting a supersedeas bond. Mot. Stay 2-3. He claims that in determining whether to grant his  
motion, this Court should be guided by “general equitable principles.” *Id.* at 4. Although Soares

1 cites to a number of cases that discuss the standards for a court’s decision to grant a stay without  
2 supersedeas, I look to the principles followed by district courts within the Ninth Circuit, set forth  
3 in *Cotton*. See 860 F. Supp. 2d at 1028.

4 In this case, the collection process is likely to be complex, as Soares has repeatedly failed  
5 to pay his debts and is currently a debtor in bankruptcy. *Inhale, Inc. v. Starbuzz Tobacco, Inc.*,  
6 No. 2:11-CV-3838-ODW, 2013 WL 361109, at \*2 (C.D. Cal. Jan. 30, 2013) (“collecting from a  
7 party having financial hardships (whether now or later) is difficult, complex, and costly”).

8 The second factor, the amount of time required to obtain a judgment after it is affirmed on  
9 appeal, also weighs in favor of the defendants. This case involves a debt that originated over six  
10 years ago. Requiring the defendants to wait several more years until Soares has exhausted the  
11 appeals process would further prejudice them.

12 Third, it is not clear that Soares has assets to pay the judgment. He is in the midst of  
13 lengthy bankruptcy proceedings and has not paid court judgments in the past. See Opinion at 5-  
14 18. Accordingly, Soares’s ability to pay the judgment is not plain and the cost of a bond would  
15 not be a waste of money.

16 Finally, I consider whether Soares is in such a precarious financial situation as to allow  
17 waiver of the bond in order to protect other creditors in an insecure position. Soares emphasizes  
18 this element in his briefs, claiming that the defendants will not receive the judgment anyway as “it  
19 belongs to the United States” due to outstanding tax liens. Mot. Stay 5-7. He also points to “the  
20 risk of yet another bankruptcy,” citing to *Olympia Equipment Leasing Co. v. Western Union*  
21 *Telegraph Co.*, which discussed waiver of supersedeas bonds where “the requirement would put  
22 the defendant’s other creditors in undue jeopardy.” *Id.* at 3-5; 786 F.2d 794, 796 (7th Cir. 1986).

23 While it may be true that requiring Soares to post a supersedeas bond pending his appeal  
24 will endanger other creditors, I do not see how the danger to creditors will be substantially greater  
25 than it already is. Soares is already in bankruptcy and his debtors face an uphill battle in  
26 recovering their debts. This case is unlike *Olympia*, where a supersedeas bond may have pushed  
27 the debtor into bankruptcy. See 786 F.2d at 797-99. In addition, the judgment in *Olympia*  
28 involved large punitive damages, which the court found were indicative of “an age of titanic

1 damage judgments.” *Id.* at 796. By contrast, the judgment in this case results from Soares’s  
2 longtime failure to pay monies owed to the defendants. *See Inhale, Inc.*, 2013 WL 361109, at \*2  
3 (“The fact that Inhale ‘does not have sufficient liquid assets’ to cover the award of attorneys’ fees  
4 and costs is precisely why it must post a supersedeas bond”). I am not persuaded by Soares’s  
5 argument.

6           Allowing Soares to obtain a stay of judgment without obtaining a supersedeas bond would  
7 serve to condone Soares’s persistent attempts to avoid his debts and his willingness to engage in  
8 protracted and borderline frivolous litigation to accomplish that end. I decline to exercise my  
9 discretion to waive Rule 62’s requirements. If Soares wishes to obtain a stay of judgment  
10 pursuant to Rule 62, he must obtain a supersedeas bond.

11 **II. SOARES IS NOT ENTITLED TO A NEW TRIAL OR TO AN ALTERED OR**  
12 **AMENDED JUDGMENT**

13           In making his motion under Rule 59(a) and (e), Soares does not present any argument that  
14 there is newly discovered evidence or an intervening change in the controlling law. Instead, he  
15 essentially moves for reconsideration, suggesting that I made manifest errors of fact and that  
16 manifest injustice will result if I do not grant his motion. Mot. Amend 2.<sup>2</sup>

17           Soares lists several alleged errors. First, he asserts that I erred in finding that the Loronos  
18 were credible witnesses, pointing to various judgments against them in support of this contention.  
19 Mot. Amend 2-6. I find no reason to alter my prior determination of credibility. Adverse  
20 judgments do not necessarily destroy a witness’s credibility, and the Loronos’ unrelated litigation  
21 had very limited relevance to this case. On the other hand, I concluded that Soares was not  
22 credible based on a remarkable history of evasion of debts, fraud, and other indicia of  
23 untrustworthiness, including his demeanor and testimony at trial, and not simply prior judgments  
24 against him that were relevant. *See* Opinion at 3-4. There was no evidence that the Loronos  
25 exhibited a similar lack of credibility.

26 \_\_\_\_\_  
27 <sup>2</sup> As part of the motion, Soares refers to several documents that are not in the record. Soares offers  
28 no justification for his post-trial submission, and it does not appear that any of the documents are  
newly discovered or otherwise justifiably considered by me at this late time. I will not consider  
any evidence cited by Soares that was not admitted at trial.



United States District Court  
Northern District of California

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