

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

MARK JAVERY & BRIAN DEJAN

CIVIL ACTION

VERSUS

NO: 17-5106

LOCKHEED MARTIN CORP.

SECTION: "A" (1)

ORDER AND REASONS

The following motion is before the Court: **Motion to Stay Execution of Bill of Costs (Rec. Doc. 60)** filed by Plaintiffs, Mark Javery and Brian Dejan. Defendant, Lockheed Martin Corporation, opposes the motion. The motion, submitted on January 9, 2019, is before the Court on the briefs without oral argument.

Plaintiffs Mark Javery and Brian Dejan filed suit against Lockheed Martin Corporation asserting claims for retaliation under the False Claims Act, 31 U.S.C. § 3730(h) ("FCA"). On August 23, 2018, a final judgment was entered in favor of Lockheed based on res judicata. (Rec. Doc. 51). Plaintiff filed a notice of appeal on September 20, 2018. (Rec. Doc. 52). The Clerk of Court for this district taxed costs against Plaintiff in the amount of \$17,578.76. (Rec. Doc. 59). Lockheed has made demand upon Plaintiffs for the costs owed. (Rec. Doc. 60-4).

Plaintiffs now move to stay execution of the bill of costs in light of their pending appeal. Plaintiffs request the stay without the requirement of posting a bond. Plaintiffs point out that if they are successful on appeal then the award of costs will be moot.

To determine whether to stay a cost award, the court considers the likelihood of

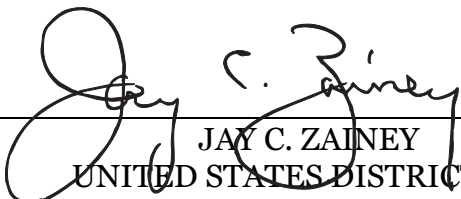
the movant's success on appeal, whether the movant will be irreparably harmed, whether the nonmoving party will be injured, and any public interest. *Payan v. United Parcel Serv.*, No. 14-400, 2017 WL 4844651, at *2 (D. Utah Sept. 1, 2017) (citing *Cnty. Tel. of Utah, LLC v. Aereo, Inc.*, 997 F. Supp. 2d 1191, 1209 (D. Utah 2014); see also *Tolan v. Cotton*, No. 09-1324, 2012 WL 12893484 (S.D. Tex. July 12, 2012) (citing *Hilton v. Braunskill*, 481 U.S. 770 (1987))).

Plaintiffs have not demonstrated that a stay without a bond is appropriate in this case. Plaintiffs' sole argument in support of the stay is that a reversal on appeal would moot the cost award. But this is true in every case. Plaintiffs do not address the likelihood of success on appeal in light of this Court's prior ruling, and they do not address how paying the award now and obtaining reimbursement in the event of a successful appeal would be injurious to them.

Accordingly, and for the foregoing reasons;

IT IS ORDERED that the **Motion to Stay Execution of Bill of Costs (Rec. Doc. 60)** filed by Plaintiffs, Mark Javery and Brian Dejan is **DENIED**.

January 11, 2019



JAY C. ZAINERY
UNITED STATES DISTRICT JUDGE