

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND – BALTIMORE DIVISION

ALBERT SNYDER,
Plaintiff,
vs. Case No. 1:06-cv-1389-RDB

FRED W. PHELPS, SR.;
SHIRLEY L. PHELPS-ROPER;
REBEKAH A. PHELPS-DAVIS; and,
WESTBORO BAPTIST CHURCH, INC.,
Defendants.

**DEFENDANTS FRED PHELPS' AND WESTBORO BAPTIST CHURCH'S
POST-TRIAL MOTION FOR STAY**

Defendants Fred Phelps, Sr. and Westboro Baptist Church (“Defendants”) respectfully move the Court for a stay of the verdict and judgment in this case, in full, without requiring a bond, pending resolution of post-trial motions and all appeals. This motion is made pursuant to Local Rule 110, Rule 62, Fed. R.Civ. P., and 28 U.S.C. § 1963. .

In support hereof, defendants show the Court the following:

1. Rule 62(b), Fed. R.Civ. P., gives this Court authority to stay execution of judgment pending resolution of post-trial motions.
2. Local Rule 110 gives this Court discretion in terms of any bond required pending appeal.
3. Rule 62(d) gives the Court discretion in terms of any bond required for a stay pending appeal.

4. The language of 28 U.S.C. § 1963 states that a judgment may be registered in any judicial district “when the judgment has become final by appeal or expiration of the time of appeal or when ordered by the court that entered the judgment for good cause shown.” Whether this statute allows the Court to issue a certificate of judgment pending appeal “[is] questionable at best” and that “question is undecided in [the Fourth Circuit],” *Ancona v. Umstadter*, 1986 WL 17423 at 3, fn 1 (4th Cir. 1986). The Supreme Court has noted that while judgments are given full faith and credit between states, the time, manner and mechanisms for enforcing judgments is up to the individual states. “Enforcement measures do not travel with the sister state judgment as preclusive effects do; such measures remain subject to the evenhanded control of forum law,” *Baker v. General Motors Corporation*, 522 U.S. 222, 235, 118 S.Ct. 657, 665, 139 L.Ed.2d 580 (1998).
5. Rule 62(f) states that “[i]n any state in which a judgment is a lien upon the property of the judgment debtor and in which the judgment debtor is entitled to a stay of execution, a judgment debtor is entitled, in the district court held therein, to such stay as would be accorded the judgment debtor had the action been maintained in the courts of that state.”

6. In Kansas, K.S.A. 60-3004(a) (which is part of the Kansas Uniform Enforcement of Foreign Judgments Act, K.S.A. 60-3001 *et seq.*) permits the filing of foreign judgments which have been appealed or are the subject of appeal, but stays enforcement thereof until the appeal is included, the time for appeal expires, or the stay of execution expires or is vacated. See *Estate of Rains*, 249 Kan. 178, 185, 815 P.2d 61, 65-66 (1991) (“Obviously, attempts to enforce a foreign judgment which is subject to modification would be a waste of everyone’s time.”) Further, K.S.A. 60-2202 makes any judgment a lien against the real estate of the judgment debtor, which is the other requirement of Rule 62(f).
7. When determining whether a stay is warranted, Courts have addressed merits and relative harm (though the cases under which these factors arise largely pertain to Rule 62(c), which pertains to injunctions, not monetary judgments). See, e.g., *Standard Havens Prods. v. Gencor Indus.*, 897 F.2d 511 (Fed. Cir. 1990), *cert denied*, 506 U.S. 817 (1992); *Motorola Credit Corporation v. Uzan*, 275 F.Supp.2d 519 (S.D.N.Y. 2003).

Regarding success on appeal, defendants believe that there are significant errors in this record, particularly pertaining to First Amendment issues, and the grossly excessive and unwarranted damages award, both compensatory and punitive, which are wholly

unsupported by the record, and clearly the product of passion and prejudice. Given that any of these many issues could result in reversal – together with the issues in Defendants’ oral and written Motions for Judgment -- setting aside and/or reduction of the award, this factor militates in favor of waiving the bond herein.

Regarding relative injury, defendants would note that plaintiff has received legal representation pro bono, and has received donations to address costs of litigation – *see* <http://matthewsnyder.org> (last checked November 13, 2007), so he will not be injured in that regard. Further, as addressed in more detail below, the few assets that defendants do have which would be recoverable in any execution of judgment are secure, and will not be jeopardized in any way pending the review of this case on appeal.

If defendants prevail on appeal on their First Amendment defense, such a victory will have less meaning if the judgment has not been stayed.

It is noteworthy that plaintiff’s attorney has publicly acknowledged the possibility of a reduced verdict – *see* <http://www.baltimoresun.com/news/local/carroll/bal-te.md.westboro02nov02,0,4500443.story?page=1> (last checked Nov. 13, 2007) – and that several First Amendment lawyers expect that the verdict should and will be reduced. *Id.*

8. As the Court knows, from having reviewed the financial information of the defendants, Defendants have very limited assets, and some of them are tied up in real property. One of the properties is the church itself, which includes a parish, where defendant Fred Phelps and his live, thus presenting questions of whether there is a homestead (which would be raised in the future at the appropriate time). The defendants have fully complied with all orders of the Court including providing all financial information required. Even though defendants strongly disagree with the Court taking jurisdiction over them, or allowing this case to go forward, as set out in the record, the record equally reflects that all orders of the Court have been followed. Thus, the Court has the assurance that the few assets defendants do have will remain intact and kept secure such as the Court requires, in the event the judgment is upheld. The Court can provide protective measures to the plaintiff's judgment, to the extent there is any property which can be executed on, pending the appeal of the issues in this case. The fact that most (if not all) recoverable assets are in a few pieces of real estate means that collection would be complex, and third parties may be harmed if they buy the property only to learn that the judgment is reversed. There is no reason to think the appeal will be unduly delayed, and in fact because of an interlocutory appeal pending with the Fourth

Circuit in this matter, the Fourth Circuit is already familiar with the case. The reality is that plaintiff will never be able to collect anything close to the \$10.9 million verdict and judgment in this case, because defendants simply do not have that amount of assets (attesting to the excessiveness of the verdict). Thus, it is not feasible to think defendants can post a bond in that amount either.

WHEREFORE, defendants request that the Court enter its stay in this matter, with such protective measures as are reasonable and realistic, ordering that the verdict and judgment be stayed in full pending resolution of post-trial motions and appeal in this matter, without requiring a bond.

Respectfully submitted,

_____/s/_____

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion was served by the CM/ECF filing system on November 14, 2007, to:

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_____/s/_____
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