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

ALBERT SNYDER, Plaintiff	
v.	Civil Action No. 06-CV-1389 RDB
FRED W. PHELPS, SR., SHIRLEY L. PHELPS-ROPER, REBEKAH A. PHELPS-DAVIS, and WESTBORO BAPTIST CHURCH, INC. Defendants	

PLAINTIFF'S RESPONSE TO DEFENDANTS PHELPS-DAVIS AND PHELPS-ROPER'S POST-TRIAL MOTION FOR STAY

Plaintiff, Albert Snyder, by and through counsel, files the within Response to Defendants Phelps-Davis and Phelps-Roper's Post-Trial Motion For Stay.

1. Defendants seek to obtain a full stay of the judgment and verdict in this case without the presentation of a bond pending the resolution of post-trial motions and all appeals. This Court, "in its discretion *and on such conditions for the security of the adverse party as are proper*," may stay the execution of judgment. Fed. R. Civ. P. 62(b) (emphasis added).

2. Defendants reference the rule but fail to identify the terms of the bond required pending appeal. D. Md. Loc. Civ. R. 110(a) provides that the amount of the supersedeas bond filed to stay execution of a money judgment pending appeal shall be 120% of the amount of the judgment plus an additional $500 to cover costs on appeal.

3. Fed. R. Civ. P. 62(d) provides that appellant may obtain a stay by posting a supersedeas bond.

4. Defendants reference a footnote in an unpublished opinion from 1986 to suggest for the Court that the registration of a judgment pending appeal "[is]" questionable at best." In

fact, however, the language of 28 U.S.C. § 1963 (2000) explicitly permits the registration of a judgment in another district during the appeal period so long as the registration is done by court order and for good cause. "Good cause" can be shown "upon a mere showing that the defendant[s] [have] substantial property in the other district and insufficient in the rendering district to satisfy the judgment." Siegel, Commentary to the 1988 Revision, 28 U.S.C. 1963 *quoted in* Associated Bus. Tel. Sys. Corp. v. Greater Capital Corp., 128 F.R.D. 63 (D.N.J. 1989). Additionally, Plaintiff fears that, given the time to do so, Defendants will transfer or conceal the property it owns in order to obviate Plaintiff's collection of the judgment. In the case of Chicago Downs Ass'n v. Chase, 944 F.2d 366 (7th Cir. 1991), the court held that the plaintiff's belief that defendant would transfer or conceal the property it owned in another district, along with defendant's election not to post a bond to secure the judgment entered against it, satisfied the "good cause" requirement for allowing the registration of the judgment in another district. If defendants are given the length of the appellate period to transfer, hide and squander assets, nothing will remain. In the instant matter, Defendants have:

(a) already claimed that the largest corporate asset is a "homestead" despite record evidence that the property is owned by the corporation (Doc. No. 212, p. 6 of 8);

(b) made misstatements under oath. Defendant Phelps-Roper stated in her Affidavit that she reviewed hundreds of documents produced to defendants Phelps and WBC and that she even summarized the same. Phelps-Roper Affidavit 106-109. However, on June 14, 2007, defendant Phelps-Roper swore under oath that she did not review any documents produced in this lawsuit. Phelps-Roper Depo. pp. 37-38, Appendix Ex. A. Similarly, defendants Phelps-Davis swore under oath in an Affidavit that she reviewed and summarized documents produced

during this litigation. Phelps-Davis Affidavit 100-102. However, on June 14, 2007, defendant Phelps-Davis testified under oath, contrary to her sworn testimony in her Affidavit, that she did not review any documents exchanged during this litigation. "Did you review any [documents] that were requested by Mr. Katz on his -- behalf of his clients? No. None? Nope. Certain? Certain." Phelps-Davis Depo. p. 94, Appendix Ex. B. The Affidavits were signed on April 22, 2007 and the deposition was held on June 14, 2007.

(c) claimed under penalty of perjury that the liabilities of the corporation are $19,288 in current debt and $86,696 in mortgage debt. However, corporate designee Tim Phelps testified in his deposition that the real property was paid off. Tim Phelps Depo. p. 29, Appendix Ex. C. The corporate defendant was required to disclose "[a]ny and all documents reflecting a Westboro Baptist Church, Inc. financial liability in excess of $500." Appendix Ex. D. The response was unequivocal -- "Defendant has no such documents." Id. Defendants are aware of their duty to update discovery responses and did not do so concerning any liabilities. The Court can use its common sense to conclude that a bank would not give a mortgage of $86,696 without some type of documentation.

(d) disclosed during discovery that the corporate bank account had a balance of $42,380.46 on June 29, 2007. Appendix Ex. E. However, Tim Phelps claimed that the corporate defendant had only $13,136 in cash in his financial statement disclosure. Appendix Ex. F.

(e) a history of making deliberate misstatements under oath. See State v. Phelps, 226 Kan. 371, 598 P.2d 180 (Ks. 1979); Id. at 380, 598 P.2d at 187 ("The seriousness of

the present case coupled with his previous record leads this court to the conclusion that [Defendant Fred Phelps] has little regard for the ethics of his profession.")

(f) Defendant Phelps-Davis claimed in her "Personal Financial Statement," see Appendix Ex. G, that her house was owned jointly by her and her husband -- "This is our homestead and my husband has a 1/2 interest in this property." However, in her deposition, Phelps-Davis acknowledged that the property was owned by her and her alone. Phelps-Davis Depo. p. 165. See Appendix Ex. G. Defendant Phelps-Davis is either (1) not telling the truth or (2) has begun the process of fraudulent transfers. Indeed, public records show that Phelps-Davis owned her property just prior to trial. Appendix Ex. H.

(g) made incredible declarations under oath. Consequently, the jury concluded that defendants were not telling the truth. For example, Phelps-Davis claimed that she had $306 of cash as her only liquid asset. Simultaneously, she claimed that she was going to continue terrorizing families across the country by protesting funerals. Defendant Fred Phelps, for example, claimed that he never thought children would be at Matt Snyder's funeral. This is a blatant misstatement under oath. The jury concluded that Defendants made deliberate misstatements under oath and this Honorable Court should conclude the same.

5. Rule 62(f) speaks for itself.

6. Defendants' characterization of Kansas' procedure for registering foreign judgments is misleading as a matter of course. The Kansas Code of Civil Procedure Section 60-3004(a) states the following:

> If the judgment debtor shows the district court that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is

> vacated, *upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered*.

Kan. Civ. Proc. Code Ann. § 60-3004(a) (West 2006) (Emphasis added).

7. Defendants have entirely failed to present the evidence required to obtain the stay requested. A stay pending appeal is extraordinary relief for which the moving party bears a heavy burden of proof. In Long v. Robinson, 432 F.2d 977, 979 (4th Cir. 1970), the Fourth Circuit Court of Appeals defined the four factors that *must* be met in order for Defendants' motion for stay to succeed: (1) that defendant will likely prevail on the merits of the appeal; (2) that defendant will suffer irreparable injury if the stay is denied; (3) that other parties will not be substantially harmed by the stay; and (4) that the public interest will be served by granting the stay. Defendants have addressed only two of these four well established factors, and in addressing those two factors, Defendants have failed to provide any evidentiary support.

(a) With regard to success on appeal factor, Defendants have failed to present any evidence to support their argument that "significant errors in this record" have occurred on which they believe the judgment against them will be overturned. To support their argument on likelihood of success on appeal, Defendants rely solely on newspaper articles that are not part of the evidentiary record.

(b) Under Long, Defendants are also required to show that they will suffer irreparable harm if the requested stay is denied. Defendants have entirely failed to establish that they would suffer irreparable injury if the requested stay is denied. In fact, they have altogether failed to address the issue.

(c) Defendants are also required under Long to present evidence that other parties will not be substantially harmed by the stay if it is granted. Defendants have presented

only their opinion regarding Plaintiff's legal fees, with no evidentiary support, that Plaintiff will suffer no injury if the requested stay is granted. Moreover, financial injury is not the only harm that may be considered in analyzing this factor. In Sisters of Mercy Health Sys. v. Kula, 2006 WL 2090090 (W.D.Okla. 2006), the District Court held that a stay that compounds emotional injuries was considered substantial harm. Defendants have suggested that Plaintiff will not be harmed in any way because his legal representation is being handled on a pro bono basis and because a fund has been set up for the recovery of costs. Defendants have presented no evidence to support their belief that Plaintiff will not be substantially harmed in any other way. Defendants have not addressed, and certainly have not disproved, the obvious emotional and psychological damage that further delays to closure of this matter will render upon Plaintiff. Put differently, Defendants have failed to carry their burden.

(d) Finally, Defendants are *required* to satisfy the fourth factor under Long that the public interest will be served by granting the stay. Defendants have, once again, failed to meet this requirement. Maryland has a strong interest concerning the protection of grieving families and Defendants have repeatedly stated that they will continue protesting funerals. In short, the public interest will be served by allowing Plaintiff to execute the judgment.

Defendants' reliance upon comments made by "plaintiff's attorney, as well as several First Amendment scholars" is of no moment. Importantly, any reduction in the punitive damage award presumes that defendants have accurately disclosed their financial status. Where, as here, it is apparent that Defendants have made deliberate misstatements under oath, this Honorable Court would reward defendants for their misstatements if any reduction in the award is based upon Defendants' so-called "Personal Financial Statements." Reliance upon attorneys that did

not hear the evidence at trial and were not privy to the Court's instructions is frivolous and worthy of sanctions.

8. Fed. R. Civ. P. 62(d) provides that an appellant may obtain a stay of judgment upon the posting of a supersedeas bond. A district court may also exercise its discretion to waive the bond requirement imposed by Rule 62(d). Dillon v. City of Chicago, 866 F.2d 902, 904 (7th Cir. 1988). Although the district court has the discretion to waive the bond requirement, it can only do so upon presentation of objective evidence to support the waiver. If this Honorable Court is going to entertain the request to reduce the requisite bond, a hearing should be held and Defendants should be required to explain their discrepancies under oath. In any event, Defendants should be required to post a bond of some amount.

9. Defendants have provided no evidence that would permit the court to objectively determine that they are incapable of securing the judgment. If a court chooses to depart from the usual requirement of a full security supersedeas bond to suspend the operation of an unconditional money judgment, it should place the burden on the moving party to objectively demonstrate the reasons for such a departure. Poplar Grove Planting and Ref. Co., Inc. v. Bache Halsey Stuart, 600 F.2d 1189 (5th Cir. 1979). "It is not the burden of the judgment creditor to initiate contrary proof". Id. at 1191. Again, this Honorable Court should not rely upon the financial disclosures made concerning the punitive damage phase of the trial--to do so would reward the Defendants for making deliberate misstatements under oath. As a reminder, all Defendants (and the designee) are attorneys and aware of their obligation to tell the truth.

For the foregoing reasons and in light of Defendants' failure to make the required legal showing, Plaintiff requests that this Honorable Court deny Defendants Phelps-Davis and Phelps-Roper's Post-Trial Motion for Stay.

BARLEY SNYDER LLC

/s/ Sean E. Summers

By:_____

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CERTIFICATE OF SERVICE

I hereby certify that on this date true and correct copies of PLAINTIFF'S RESPONSE TO DEFENDANTS PHELPS-DAVIS AND PHELPS-ROPER'S POST-TRIAL MOTION FOR STAY are being served in the following manner:

Via First Class Mail:
Shirley L. Phelps-Roper
3640 Churchill Road
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Rebekah A. Phelps-Davis
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Via ECF:
Jonathan R. Katz, Esq.

BARLEY SNYDER LLC

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Date: November 26, 2007