

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO. 5:14-CV-482-BO

RAINBOW SCHOOL, INC.,)
Plaintiff,)
v.)
RAINBOW EARLY EDUCATION)
HOLDING LLC and REE SOUTHEAST, INC.)
Defendants.)

ORDER

This cause comes before the Court on defendants’ motion to stay the Court’s order entered on December 29, 2016, and all further proceedings related to that order, pending the resolution of defendants’ appeal to the United States Court of Appeals for the Fourth Circuit. [DE 129].

Defendants seek a stay of this Court’s December 29, 2016 order [DE 115] requiring that an audit be conducted at the expense of defendants to determine whether and to what extent defendants’ violations of the Court’s prior judgments continue; and from the Court’s January 30, 2017 order [D128], entered on the joint motion of the parties, which provided additional time for the parties to procure and execute the auditor’s report.

Federal Rule of Civil Procedure 62(d) states: “If an appeal is taken, the appellant may obtain a stay by supersedeas bond . . . The bond may be given upon or after filing the notice of appeal or after obtaining the order allowing the appeal. The stay takes effect when the court approves the bond.” Fed. R. Civ. P. 62(d). Thus, an appellant may obtain a stay as of right pursuant to Rule 62(d) by obtaining a supersedeas bond. *See, e.g., Southeast Booksellers Ass’n v. McMaster*, 233 F.R.D. 456, 457 (D.S.C. 2006); *Alexander v. Chesapeake, Potomac & Tidewater Books, Inc.*, 190 F.R.D. 190, 192 (E.D. Va. 1999). Because the Court’s December 29, 2016 order

required that the defendants pay for the cost of an audit, the Court holds, and the defendants agree in their motion, that the order was for a money judgment. As defendants have moved for a stay as of right under Rule 62(g), a bond is therefore required under the Rules as a condition of the stay in order to secure plaintiff on appeal.

For these reasons, defendants' motion to stay [DE 129] is preliminarily granted, pending approval by the Court of a supersedeas bond to be filed by defendants. Defendants are granted leave to file an adequate bond within twenty (20) days of the entry of this order. The bond should properly account for the cost of the audit, costs of appeal, and attorney's fees as required by law. A final order granting defendants' motion to stay will be entered upon approval of that bond by the Court.

SO ORDERED, this 30 day of March, 2017.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE