

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STROHL SYSTEMS GROUP, INC., and                   :           CIVIL ACTION  
MYLES L. STROHL                                    :           :  
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WILLIAM FALLON                                    :           No. 05-CV-0822

**MEMORANDUM AND ORDER**

Before me is defendant William Fallon’s emergency motion for a stay of proceedings in this court pending the appeal of my September 29, 2006 order granting summary judgment in favor of the plaintiffs. Fallon contends that the appeal falls within the category of interlocutory orders that are appealable as a matter of right under 28 U.S.C. § 1292(a)(1). I conclude that the order is not appealable and deny the motion for a stay.

In my September 29, 2006 order, I found that Fallon had breached the confidentiality provisions of the parties’ investment and subscription agreements by disclosing confidential information to a person unrelated to and unaffiliated with Strohl Systems Group, Inc. (“Company”). I also concluded that the contractual remedies for the breach were enforceable. Thereafter, I referred the matter to Magistrate Judge David R. Strawbridge for the conduct of discovery pertaining to the contract provisions for the buy-back of Fallon’s shares in the company, the appropriate date for the valuation of those shares, and the amount, if any, of additional damages that should be awarded. On October 16, 2006, Fallon filed a motion for clarification of the summary judgment order. This motion was granted on October 19, 2006. Fallon filed a motion for reconsideration on October 16, 2006, and his notice of appeal on

October 23, 2006. His motion for reconsideration remains pending.

The ultimate determination of the appealability of my September 29, 2006 order naturally rests with the Third Circuit; however, the likelihood of its hearing the appeal at this time is determinative of Fallon's request for a stay. Under 28 U.S.C. § 1292(a)(1), courts of appeals have jurisdiction of appeals from interlocutory orders granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve injunctions. Thus, I must consider whether my order in this case is injunctive within the meaning of this statute. *See Cohen v. Bd. of Trustees*, 867 F.2d 1455, 1464 (3d Cir. 1989). I find that it is not.

An "injunction" for the purposes of § 1292(a)(1) is an order "[1] directed to a party, [2] enforceable by contempt, and [3] designed to accord or protect 'some or all of the substantive relief sought by the complaint' in more than a [temporary] fashion." *In re: Pressman-Gutman Co., Inc.*, 259 F.3d 383, 392 (3d Cir. 2006) (quoting *Cohen*, 867 F.2d at 1465 n.9). Further, §1292(a)(1) "should be construed narrowly so as not to swallow the final-judgment rule." *Id.* quoting *Hershey Foods Corp. v. Hershey Creamery Co.*, 945 F.2d 1272, 1276 (3d Cir. 1991). Because § 1292(a)(1) was intended to carve out only a limited exception to the final-judgment rule, a litigant must show that an interlocutory order of the district court might have a serious, perhaps irreparable, consequence, and that the order can be effectively challenged only by an immediate appeal. *Ross v. Zavarella*, 916 F.2d 898, 901-902 (3d Cir. 1990) (citing *Carson v. American Brands, Inc.*, 450 U.S. 79, 84 (1981)); *see also McNasby v. Crown Cork and Seal, Co., Inc.*, 832 F.2d 47, 50-51 (3d Cir. 1987) (same).

Moreover, not every case that is enforceable by civil contempt is such an injunction. Exceptions include discovery orders, sanctions precluding evidence for failure to make discovery, and orders staying or refusing to stay an action for equitable relief. *See Cohen*, 867

F.2d at 1464 [citations omitted]. In such circumstances, the order does not grant or deny the ultimate relief sought by the claimant. *Id.*

In this case, the Company seeks an order requiring Fallon to sell back its shares of stock to the Company's other investors for half of its appraised value based on Fallon's breach of confidentiality. I have found that Fallon has committed such a breach and have required the parties to proceed to the next phase of the inquiry, specifically, ascertaining the value of the shares and determining if any other damages should be awarded. I have not ordered the ultimate relief sought - the return of the shares, nor have I ordered the payment of damages. Thus, I conclude that my order of September 29, 2006 is not appealable.

While my belief that this matter is not presently appealable ends the question of whether I should grant a stay at this time, Fallon has failed to otherwise establish that he meets the criteria for a stay. If I were considering the issuance of a stay, I would have to determine whether: (1) the applicant has made a strong showing that he is likely to succeed on the merits; (2) the applicant will be irreparably harmed absent a stay; (3) issuance of the stay will substantially injure other parties interested in the proceeding; and (4) where the public interest lies. *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987).

The greater part of Fallon's motion to stay is devoted to, once again, rearguing the merits of my decision granting summary judgment in favor of the plaintiffs. I remain unpersuaded.

Fallon also asserts he will suffer irreparable harm because he must proceed with the process of obtaining an appraisal of his stock and forfeiting his ownership interest in the Company. I disagree. First, Fallon has not provided any evidence of the costs he will incur in the appraisal process. Second, and perhaps more importantly, he has not been yet ordered to forfeit his ownership in the Company or take any action that would implicate tax consequences.

Such an order could not be entered until the appraisal process is completed and a determination has been made concerning other remedies that may or may not be available to the Company under the agreements.

It may be arguable that any injury to the Company resulting from a stay will not be substantial, but I do not agree that it is in the public interest to grant the stay. The public has an interest in the full adjudication of a case prior to appeal.

An appropriate order follows.

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STROHL SYSTEMS GROUP, INC., and	:	CIVIL ACTION
MYLES L. STROHL	:	
	:	
v.	:	
	:	
WILLIAM FALLON	:	No. 05-CV-0822

**ORDER**

AND NOW, this 16th day of November, 2006, it is HEREBY ORDERED that defendant's emergency motion for a stay of proceedings pending appeal (Dkt. # 70) is DENIED.

BY THE COURT:

/s/ J. William Ditter, Jr.  
J. WILLIAM DITTER, JR. S.J.