

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

KEY CORPORATE CAPITAL, INC.,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
DAVID A. TILLEY, et al.,	:	
	:	
Defendants.	:	04-1652

MEMORANDUM AND ORDER

On December 20, 2004, this court found that Key Corporate Capital, Inc. was entitled to judgment on its conversion claims against David A. Tilley and Pennco Machine, Inc. and on its officer participation claim against Tilley. This court, therefore, entered judgment in favor of Key Corporate Capital and against Tilley and Pennco Machine, Inc. in the amount of \$80,000.00, plus interest and costs. Defendants now request that this court stay the judgment pending appeal. Defendants also request that this court waive any bond requirement because they are unable to pay the underlying judgment.

Rule 62(d) of the Federal Rules of Civil Procedure provides that when an appeal is taken, a party may obtain a stay of a money judgment by posting a supersedeas bond. HCB Contractors v. Rouse & Associates, 168 F.R.D. 508, 512 (E.D.Pa. 1995). The purpose of requiring the posting of a supersedeas bond is “to preserve the status quo during the pendency of any appeal, [protecting the winning party] from the possibility of loss resulting from the delay in execution.”

Id.

[T]he court possesses the power to waive the requirement of a supersedeas bond. That power, however, has been exercised only in “extraordinary circumstances,” and only where alternative means of securing the judgment creditor’s interest were available.

In no case . . . has a court approved security different from a full supersedeas bond without a specific showing of good cause by the party seeking the stay. It is the appellant's burden to demonstrate objectively that posting a full bond is impossible or impracticable; likewise, it is the appellant's duty to propose a plan that will provide adequate (or as adequate as possible) security for the appellee.

Id. Courts will deny a motion to stay when the movant does not propose a plan that will provide adequate alternative security or when the movant does not support his allegation that he is unable to post a bond. U.S. on Behalf of Small Business Admin. v. Kurtz, 528 F.Supp. 1113, 1115 (E.D.Pa. 1981) (denying motion to stay because movant offered "only his unsupported allegation that he is financially unable to satisfy the judgment or to post a bond, and he has not proposed any alternative arrangement"); Bank of Nova Scotia v. Pemberton, 964 F.Supp. 189, 192 (D.V.I. 1997) (denying motion to stay because movant "utterly failed to satisfy his burden of proposing a plan to provide adequate alternate security for the prevailing parties").

In this case, defendants have not supported their allegation that they are unable to post a bond. Defendants have not filed any affidavits or presented any evidence showing their financial condition. Furthermore, defendants have not proposed any alternative arrangements to provide adequate security for Key Corporate Capital. Therefore, this court is constrained to deny defendants' motion to stay. An appropriate order follows.

AND NOW, this 27th day of January, 2005, upon consideration of defendants' motion to stay (Doc. # 41), and replies thereto, it is hereby ORDERED that said motion is DENIED.

/s/

LAWRENCE F. STENGEL, J.