

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

THOMAS LEE TAYLOR and : CIVIL ACTION
PATRICIA ANN TAYLOR :
 :
v. :
 :
CHEVROLET MOTOR DIVISION OF :
THE GENERAL MOTORS CORPORATION : NO. 97-2988

MEMORANDUM ORDER

Presently before the court is defendant's Motion to Approve Supersedeas Bond and Stay Proceedings Pursuant to Fed. R. of Civ. P. 62(d). Defendant asks the court to stay enforcement of the judgment in this case upon the posting of a bond pending its appeal of the court's denial of defendant's Rule 60(b) motion to vacate that judgment, denial of its motion to reconsider that denial and denial of defendant's successive Rule 60(b) motion to vacate.

The only federal appeals court to address the issue has held that Rule 62(d) does not authorize a stay pending an appeal from the denial of a Rule 60(b) motion. See In re Zapata Gulf Marine Corp., 941 F.2d 293, 295 (5th Cir. 1991) (reversing order granting stay pending appeal upon posting of \$20 million bond). Defendant offers no reason why the court should reject or ignore the Fifth Circuit's decision which has not been repudiated or criticized in any reported case or treatise.

Moreover, even if a Rule 62(d) stay were available, defendant has failed to show or even to attempt to show that it would be entitled to a stay under the factors traditionally employed by the courts. Generally, in determining entitlement to a stay under Rule 62(d), courts assess (1) whether the defendant has made a strong showing that it is likely to succeed on the merits of its appeal; (2) whether the defendant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure other interested parties; and, (4) the public interest. See, e.g., Bank of Nova Scotia v. Pemberton, 964 F. Supp. 189, 190 (D.V.I. 1997); Endress + Hauser, Inc. v. Hawk Measurement Sys. Pty. Ltd., 932 F. Supp. 1147, 1148 (S.D. Ind. 1996); Federal Ins. Co. v. County of Westchester, 921 F. Supp. 1136, 1139 (S.D.N.Y. 1996). See also Susquenita School Dist. v. Raelee S., 96 F.3d 78, 80 (3d Cir. 1996) (noting four factor test applicable to Rule 62(d) request for stay).

There is no suggestion that any third party has an interest in these proceedings or that the public interest is implicated.

Defendant makes no argument, let alone a strong showing, that it is likely to succeed on the merits of its appeal. The court cannot conscientiously conclude that defendant is likely to do so. Relief under Rule 60(b) is appropriate only in "extraordinary circumstances." Bohus v. Beloff, 950 F.2d 919,

930 (3d Cir. 1991). Relief from a judgment based on a Rule 68 offer is appropriate only in the "most extraordinary circumstances." 12 Charles Allan Wright, et al., Federal Practice and Procedure § 3005.2 (1997). It appears quite unlikely that defendant will succeed in vacating a judgment entered on the terms it proposed in a Rule 68 offer.

As the court has noted:

Defendant's offer of judgment is clear and unambiguous. Defendant, in plain language, offered to have a \$27,498.22 judgment entered against it in exchange for the pick-up truck and the termination of this action. Plaintiffs accepted the settlement terms as drafted by defendant. Nothing in the offer of judgment calls for a \$16,717.77 credit.

Taylor v. Chevrolet Motor Div. of the Gen. Motors Corp., 1998 WL 288434, *2 (E.D. Pa. June 3, 1998). The court also observed that:

It is inconceivable that if defendant had not contemplated the entry of a judgment for \$27,489.22 it would have limited its [unrelated request to correct a mathematical error] to a \$646 reduction and defendant does not contend otherwise. Defendant's assertion that despite specifying a \$27,498.22 judgment, it was nevertheless implicit that defendant would be obligated to pay only \$10,770.45 is simply unsupported by the language of the Rule 68 offer.

Id.

Defendant also makes no showing that it will suffer irreparable injury if it does not obtain a stay. Defendant is a giant corporation which can readily satisfy the Rule 68 judgment entered in this case. There has been no showing that should it

succeed on appeal, defendant will be unable to secure from plaintiffs the return of any monies owed with the expenditure of less effort and resources than it has incurred pursuing requests for reconsideration and stays.

ACCORDINGLY, this day of August, upon consideration of defendant's Motion to Approve Supersedeas Bond and Stay Proceedings Pursuant to Fed. R. Civ. P.62(d) (Doc. #24), and plaintiffs' opposition thereto, **IT IS HEREBY ORDERED** that said Motion is **DENIED**.

BY THE COURT:

JAY C. WALDMAN