SO ORDERED,

Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: December 18, 2015

The Order of the Court is set forth below. The docket reflects the date entered.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI

IN RE:

STACY HOWARD AND **CASE NO. 00-51897-NPO**
STEPHANIE HOWARD,

DEBTORS. **CHAPTER 13**

ORDER DENYING DEBTOR'S MOTION TO STAY PENDING APPEAL OF ABANDONMENT AND SETTLEMENT ORDER

This matter came before the Court[1] for hearing (the "Hearing") on November 17, 2015, on the Debtor's Motion to Stay Pending Appeal (the "Motion to Stay Pending Appeal") (Bankr. Dkt. 209)[2] filed by Stephanie Howard (the "Debtor");[3] the Debtor's Memorandum in Support of Motion to Stay Pending Appeal (the "Brief in Support of Motion to Stay Pending Appeal") (Bankr. Dkt. 210) filed by the Debtor; the Plaintiffs' Response in Opposition to Debtor's Motion

[1] The above-styled bankruptcy case (the "Bankruptcy Case") was transferred from U.S. Bankruptcy Judge Katharine M. Samson to the above signed on June 11, 2014.

[2] Citations to the record are as follows: (1) citations to docket entries in the Bankruptcy Case are cited as "(Bankr. Dkt. ___)"; and citations to docket entries in the related adversary proceeding, Adv. Proc. No. 14-05009-NPO (the "Adversary") are cited as "(Adv. Dkt. ___)".

[3] The Bankruptcy Case was commenced on May 5, 2000, by joint debtors, Stephanie Howard and Stacy Howard (collectively, the "Debtors") (Bankr. Dkt. 1). Because Stacy Howard is now deceased, the Court refers only to Stephanie Howard as the "Debtor."

to Stay Pending Appeal (the "Reynolds Parties Response") (Bankr. Dkt. 214) filed by Fina Oil and Chemical Company; Murphy Oil U.S.A., Inc.; Vintage Petroleum, Inc.; Champlin Petroleum Company; Exxon Corporation; Oryx Energy Corporation; TXO Production; Oxy USA Inc.; Placid Oil Company; Amoco Production Company; Union Oil Company of California; Phillips Petroleum Company; Conoco, Inc.; Bass Enterprises Production Company; ARCO Oil and Gas Company; Mobil Oil Exploration & Producing Southeast, Inc.; and Inexco Oil Company (collectively, the "Reynolds Parties"); the Joinder of Chevron U.S.A. Inc., Chevron Corporation, Texaco Inc., Four Star Oil & Gas Company, and Shell Western E&P, Inc. in the Reynolds Plaintiffs' Response in Opposition to Debtor's Motion to Stay Pending Appeal (Bankr. Dkt. 215) filed by Chevron U.S.A. Inc., Chevron Corporation, Texaco Inc., Four Star Oil & Gas Company, and Shell Western E&P, Inc. (collectively "Chevron/Shell"); the Trustee's Response to Motion for Stay Pending Appeal (the "Trustee Response") (Bankr. Dkt. 216) filed by J.C. Bell, the standing chapter 13 trustee (the "Trustee"); the Joinder of Moon-Hines-Tigrett Operating Company, Inc. in Reynolds Plaintiffs' Response in Opposition to Debtor's Motion to Stay Pending Appeal (Bankr. Dkt. 218) filed by Moon-Hines-Tigrett Operating Company, Inc. ("Moon-Hines-Tigrett" or, together with the Reynolds Parties and Chevron/Shell, the "Grouped Settling Defendants");[4] and the Plaintiffs' Notice of Supplemental Authority (the "Reynolds Parties Supplemental Authority") (Bankr. Dkt. 222) filed by the Reynolds Parties in the Bankruptcy Case. At the Hearing, Jeffrey P. Reynolds argued on behalf of the Reynolds Parties

[4] Conquest Exploration Co. ("Conquest"), whose proposed settlement with the Trustee was not approved by the Court, is not a party in the Debtor's appeal.

and Sean S. Cassidy argued on behalf of the Debtor. After considering the matter, the Court finds as follows:[5]

Jurisdiction

The Court has jurisdiction over the parties to and the subject matter of this case pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O). Notice of the Motion to Stay Pending Appeal was proper under the circumstances.

Facts

The Court recounted the facts of this matter in detail in the Memorandum Opinion and Order: (1) Overruling Objection to Abandonment; (2) Granting the Grouped Settling Defendants Joint Motion to Settle; and (3) Denying the Conquest Joint Motion to Settle (the "Abandonment and Settlement Order") (Bankr. Dkt. 191) issued by the Court on July 23, 2015. *See In re Howard*, 533 B.R. 532 (Bankr. S.D. Miss. 2015). Only a brief summary of the relevant facts necessary for the Court's determination of the present Motion to Stay Pending Appeal follows below.

1. The Debtor's father, Gerald Donald ("Donald"), acquired certain real property located in Wayne County, Mississippi (the "Subject Property") in a foreclosure sale. When Donald allegedly discovered radioactive waste on the Subject Property, he filed two (2) nearly-identical lawsuits against a number of parties, including the Grouped Settling Defendants, seeking damages because of the purported contamination.

2. On May 5, 2000, the Debtor, along with her late husband, initiated the Bankruptcy Case by filing a joint petition for relief (Bankr. Dkt. 1) pursuant to chapter 13 of the

[5] The Court makes the following finds of fact and conclusions of law in accordance with Rule 7052 of the Federal Rules of Bankruptcy Procedure.

Bankruptcy Code. On August 7, 2000, the Debtors filed statements and schedules regarding their income, expenses, and creditors (the "Statements and Schedules") (Bankr. Dkt. 2).

3. Donald died in 2001. The Debtor, who was Donald's sole heir and beneficiary, was substituted as the plaintiff in the lawsuits concerning the Subject Property. (Adv. Dkt. 45, Ex. 17 at 24-25). These lawsuits are:

> (a.) "Circuit Court Lawsuit"—*Stephanie Howard, Executrix of the Estate of Gerald Donald v. Fina Oil and Chemical Company, et al*., No. 5-97-55, filed on May 17, 1996 in the Circuit Court of Hinds County, Mississippi and subsequently transferred to the Circuit Court of Wayne County, Mississippi (the "Circuit Court") where the Subject Property is located, and
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> (b.) "District Court Lawsuit"—*Stephanie Howard, Executrix of the Estate of Gerald Donald v. Marvin Lewis Davis, et al.*, No. 2:98-CV-15-KS-MTP, filed on January 20, 1998 in the United States District Court for the Southern District of Mississippi.

4. On August 15, 2005, the Court entered the Discharge of Debtor After Completion of Chapter 13 Plan (Bankr. Dkt. 43) and the Final Decree/Order Closing Case (Bankr. Dkt. 44). During the pendency of the Bankruptcy Case, the Debtors did not amend the Statements and Schedules to provide information regarding the Subject Property, the Circuit Court Lawsuit, or the District Court Lawsuit.

5. On December 12, 2005, the Circuit Court issued a Memorandum Opinion (Adv. Dkt. 1, Ex. 12) directing the Debtor either to exhaust her administrative remedies with the Mississippi Commission on Environmental Quality ("MCEQ"), such as requiring the remediation or closure of the Subject Property, or proceed with the Circuit Court Lawsuit without being allowed to seek monetary damages for the possible remediation or closure of the Subject Property.

6. The Debtor chose to pursue her administrative remedies before the MCEQ and on January 9, 2006, filed the Petition and Request for Hearing (Adv. Dkt. 1, Ex. 5), as follows:

> "MCEQ Litigation"[6]—*Stephanie Howard, Executrix of the Estate of Gerald Donald v. Marvin Lewis Davis et al.*

The Debtor did not amend the Statement and Schedules to disclose the MCEQ Litigation during the pendency of the Bankruptcy Case. From this point forward, the MCEQ Litigation, the Circuit Court Lawsuit, and the District Court Lawsuit are collectively referred to as the "Related Proceedings."

7. The Grouped Settling Defendants discovered the existence of the closed Bankruptcy Case in July 2013. Soon thereafter, they asserted the doctrine of judicial estoppel as a defense to the claims asserted against them in the Related Proceedings. According to the Debtor and the Grouped Settling Defendants, the Related Proceedings are all currently stayed pending the resolution of various matters.[7]

8. In the Bankruptcy Case, the Debtor filed the Motion to Vacate Final Decree and to Re-Open Case to Amend Schedules and State[ment] of Financial Affairs (Bankr. Dkt. 50) on September 24, 2013. On November 25, 2013, the Court entered the Order Vacating Final Decree and Re-Opening Proceeding (Bankr. Dkt. 61).

9. On February 12, 2014, the Reynolds Parties initiated the Adversary by filing the Complaint for Declaratory Judgment (Adv. Dkt. 1), alleging that the Debtor should be judicially estopped from pursuing her claims against them in the Related Proceedings because she never

[6] The Debtor filed an Amended Petition and Request for Hearing (Adv. Dkt. 1, Ex. 6) on March 24, 2011, adding the Grouped Settling Defendants as parties.

[7] In each of the Related Proceedings, the Grouped Settling Defendants have filed a motion asking that the stay be lifted. (Bankr. Dkt. 210-1; Bankr. Dkt. 210-2; Bankr. Dkt. 210-3).

disclosed her inheritance of the Subject Property or the Related Proceedings to the Court or the Trustee during the pendency of the Bankruptcy Case. Conquest, Moon-Hines-Tigrett, and Chevron/Shell subsequently intervened in the Adversary.

10. In the Adversary, the Reynolds Parties and the Debtor filed cross-motions for summary judgment (Adv. Dkt. 45; Adv. Dkt. 49) on May 1, 2014. Conquest, Chevron/Shell, and Moon-Hines-Tigrett joined in the Reynolds Parties' summary judgment motion. (Adv. Dkt. 47; Adv. Dkt. 48; Adv. Dkt. 52).

11. In the Adversary, the Court issued on October 27, 2014, the Memorandum Opinion and Order: (1) Granting the Plaintiffs' Summary Judgment Motion and (2) Denying the Debtor's Summary Judgment Motion (the "Judicial Estoppel Opinion") (Adv. Dkt. 81), holding that the Debtor, but not the Trustee, is judicially estopped from pursuing the Related Proceedings.

12. On November 10, 2014, the Debtor filed the Debtor's Motion to Alter or Amend Judgment or for New Trial (Adv. Dkt. 85) regarding the Judicial Estoppel Opinion. On that same day, the Debtor filed her first Motion to Stay Judgment Pending Motion to Alter or Amend Judgment or for New Trial or, in the Alternative, Motion to Stay Pending Appeal (the "First Motion to Stay Pending Appeal") (Adv. Dkt. 87).

13. On February 6, 2015, the Court issued the Memorandum Opinion and Order Denying: (1) Debtor's Motion to Alter or Amend Judgment or for New Trial; (2) Motion to Stay Judgment Pending Motion to Alter or Amend Judgment or for New Trial or, in the Alternative, Motion to Stay Pending Appeal; and (3) Debtor's Motion to Extend Deadlines to File Amended Schedules (the "Order Denying Motion to Amend Judicial Estoppel Opinion") (Adv. Dkt. 117). *See Fina Oil & Chem. Co. v. Howard (In re Howard)*, No. 14-05009-NPO, 2015 WL 534559

(Bankr. S.D. Miss. Feb. 6, 2015). The Court denied the First Motion to Stay Pending Appeal because the Debtor had not yet appealed the Judicial Estoppel Opinion, and, therefore, the First Motion to Stay Pending Appeal was premature.

14. On February 19, 2015, the Debtor filed the Notice of Appeal (Adv. Dkt. 121) of the Order Denying Motion to Amend Judicial Estoppel Opinion. That appeal remains pending before the U.S. District Court for the Southern District of Mississippi in Civil Action No. 1:15-CV-0048-HSO-JCG.

15. The Trustee filed the Notice of Proposed Abandonment of Real Property (Bankr. Dkt. 124) on April 12, 2015, providing notice of his intent to abandon the Subject Property from the bankruptcy estate pursuant to 11 U.S.C. § 554.[8]

16. On May 8, 2015, the Reynolds Parties and the Trustee filed the Joint Motion to Settle and Compromise Disputed Claim Pursuant to Rule 9019 of the Bankruptcy Rules of Procedure (the "Reynolds Parties Joint Motion to Settle") (Bankr. Dkt. 143). Chevron/Shell and Moon-Hines-Tigrett subsequently joined in the Reynolds Parties Joint Motion to Settle. (Bankr. Dkt. 145; Bankr. Dkt. 147). Hereinafter, the Court will refer to the Reynolds Parties Joint Motion to Settle and the joinders filed by Chevron/Shell and Moon-Hines-Tigrett collectively as the "Grouped Settling Defendants Joint Motion to Settle." The proposed settlement was contingent on the Trustee's successful abandonment of the Subject Property.

17. On May 26, 2015, the Debtor filed her second Motion to Stay Pending Appeal (the "Second Motion to Stay Pending Appeal") (Bankr. Dkt. 167), related to the Order Denying Motion to Amend Judicial Estoppel Opinion.

[8] Hereinafter, all code sections refer to the Code found at title 11 of the United States Code unless otherwise noted.

18. On June 25, 2015, the Court issued the Order Denying Motion to Stay Pending Appeal (the "Order Denying Second Motion to Stay Pending Appeal") (Adv. Dkt. 203) related to the Order Denying Motion to Amend Judicial Estoppel Opinion.

19. On July 23, 2015, the Court issued the Abandonment and Settlement Order overruling the Debtor's objection to the abandonment of the Subject Property and granting the Grouped Settling Defendants Joint Motion to Settle.

20. On July 31, 2015, the Trustee and the Grouped Settling Defendants entered into an Absolute and Final Release and Settlement Agreement (Bankr. Dkt. 214-1), and on August 4, 2015, the Reynolds Parties tendered the settlement funds to the Trustee (Bankr. Dkt. 214-2).

21. On September 2, 2015, the Grouped Settling Defendants filed a motion to lift the stay to allow them to seek dismissal of the Debtor's claims for lack of subject matter jurisdiction in each of the Related Proceedings. (Bankr. Dkt. 210-1; Bankr. Dkt. 210-2; Bankr. Dkt. 210-3). The Grouped Settling Defendants maintained that the Judicial Estoppel Opinion rendered the matters moot.

22. The Debtor filed a Notice of Appeal (Bankr. Dkt. 193) of the Abandonment and Settlement Order on August 6, 2015.

23. On September 25, 2015, the Debtor filed the third Motion to Stay Pending Appeal and Brief in Support of Motion to Stay Pending Appeal related to the Abandonment and Settlement Order. The Reynolds Parties filed the Reynolds Parties Response on October 26, 2015. On that same day, Chevron/Shell filed its joinder in the Reynolds Parties Response. Both the Trustee Response and the joinder of Moon-Hines-Tigrett in the Reynolds Parties Response were filed on October 27, 2015.

24. One day after the Hearing on the Motion to Stay Pending Appeal, the U.S. District Court for the Southern District of Mississippi (the "District Court") issued the Memorandum Opinion and Order (the "District Court Order") dismissing the "second" issue raised by the Debtor in her appeal of the Abandonment and Settlement Order, which challenged the Court's approval of the Grouped Settling Parties Joint Motion to Settle. *See Howard v. Fina Oil & Chem. Co.*, Civil Action No. 2:15-CV-107-KS-MTP, 2015 WL 7302751 (S.D. Miss. Nov. 18, 2015). The District Court ruled that the Debtor lacked standing to appeal the second issue. *Id*. Accordingly, only the issue relating to the Trustee's abandonment of the Subject Property remains pending in that appeal.

25. On November 25, 2015, the Reynolds Parties filed the Reynolds Parties Supplemental Authority in which they argued that the recent District Court Order further supported the denial of the Motion to Stay Pending Appeal.

Discussion

The stay of an order pending appeal is an "intrusion into the ordinary processes of administration and judicial review." *Niken v. Holder*, 556 U.S. 418, 427 (2009) (quotation omitted). For that reason, a stay is not a matter of right but an "extraordinary remedy," the propriety of which depends on the circumstances of the particular case. *Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott*, 734 F.3d 406, 410 (5th Cir. 2013); *Voting for Am., Inc. v. Andrade*, 488 F. App'x 890, 905 (5th Cir. 2012). Yet the Debtor has filed three (3) motions to stay pending appeals.[9] The present Motion to Stay Pending Appeal pertains to the

[9] (Adv. Dkt. 87; Bankr. Dkt. 167; Bankr. Dkt. 209). The second Motion to Stay Pending Appeal (Bankr. Dkt. 167) filed by the Debtor in the Bankruptcy Case on May 26, 2015, is identical to the one filed in the Adversary on the same date (Adv. Dkt. 194), and for that reason is not counted separately.

Debtor's appeal of the Abandonment and Settlement Order entered in the Bankruptcy Case. Previously, the Court denied the First Motion to Stay Pending Appeal and the Second Motion to Stay Pending Appeal, both of which were related to the Order Denying Motion to Amend Judicial Estoppel Opinion entered in the Adversary. Much of the background discussion below is taken from the Order Denying Second Motion to Stay Pending Appeal.

A. Legal Standards for Stay Pending Appeal

Under Rule 8007(a) of the Federal Rules of Bankruptcy Procedure, a party may file a motion for a stay pending the appeal with the bankruptcy court. FED. R. BANKR. P. 8007(a). The decision to grant or deny a motion for stay pending appeal lies in the sound discretion of the court whose order is being appealed. *Mounce v. Wells Fargo Home Mortg. (In re Mounce),* Adv. No. 04-5182-lmc, 2008 WL 2714423, at *1 (Bankr. W.D. Tex. July 10, 2008) (analyzing a motion to stay pending appeal under FED. R. BANKR. P. 8005, the predecessor to FED. R. BANKR. P. 8007(a)). In exercising that discretion, a court must consider the following four (4) criteria: (1) whether the movant has made a showing of a likelihood of success on the merits; (2) whether the movant has made a showing of irreparable injury if the stay is *not* granted; (3) whether the granting of the stay would substantially harm the other parties; and (4) whether the granting of the stay would serve the public interest. *Arnold v. Garlock, Inc.*, 278 F.3d 426, 439-42 (5th Cir. 2001); *In re First S. Sav. Ass'n*, 820 F.2d 700, 704 (5th Cir. 1987). The party requesting the stay bears the burden of showing that the circumstances justify an exercise of the court's discretion to grant the stay. *Mounce*, 2008 WL 2714423, at *2.

B. Has the Debtor made a showing of likelihood of success on the merits?

With regard to the merits of the Debtor's appeal, the Court notes that the standard of appellate review depends on whether the decision of the bankruptcy court is based on a legal

conclusion or a factual finding. *Century Indem. Co. v. Nat'l Gypsum Co. Settlement Trust (In re Nat'l Gypsum Co.)*, 208 F.3d 498, 504 (5th Cir. 2000). The bankruptcy court has broad discretion over a factual finding, and a factual finding is subject to review only for clear error. *In re Burkett*, 279 B.R. 816, 817 (Bankr. W.D. Tex. 2002). A finding of fact is clearly erroneous only if, on the entire evidence, the reviewing court is left with the definite and firm conviction that a mistake has been made. *Anderson v. City of Bessemer City*, 470 U.S. 564, 573 (1985) (quotation omitted). In contrast, a bankruptcy court's conclusions of law are reviewed *de novo*. *Nat'l Gypsum Co.*, 208 F.3d at 504. Thus, it is more difficult for a movant to satisfy the first element of a stay with respect to a question of fact. *In re Westwood Plaza Apartments, Ltd*., 150 B.R. 163, 168 (Bankr. E.D. Tex. 1993).

Under the "traditional standard" governing a court's consideration of a motion for stay pending appeal, a movant must satisfy all four (4) factors. *Niken*, 556 U.S. at 433-34. The Fifth Circuit Court of Appeals, however, has held that a movant's burden on the first prong may be lightened under certain circumstances. *Ruiz v. Estelle (Ruiz I)*, 650 F.2d 555, 565 (5th Cir. Unit A 1981). Rather than showing a "likelihood of success" or "probability of success" on the merits, the movant may satisfy the first element by making a "substantial case" on the merits if there is a "serious legal question" at stake and if the "balance of the equities"—that is, consideration of the remaining three (3) criteria—heavily tilt in favor of granting the stay. *United States v. Transocean Deepwater Drilling, Inc.*, 537 F. App'x 358, 360-61 (5th Cir. 2013) (citations omitted); *see also First S. Sav. Ass'n*, 820 F.2d at 709 n.10.

Here, the Debtor does not attempt to satisfy the traditional stay factors. Instead, she contends that she has met the lesser burden of presenting a substantial case on the merits and that the balance of equities weighs heavily in favor of granting the stay. (Br. in Supp. of Mot. to Stay

Pending Appeal at 3-5). She does not identify any serious legal question involved in her appeal and apparently ignores that element altogether. The Court first considers whether the Debtor has shown a substantial case on the merits that implicates a serious legal question, beginning with the portion of the Abandonment and Settlement Order that overruled her objection to the Trustee's abandonment of the Subject Property from the bankruptcy estate.

1. Abandonment

In the Abandonment and Settlement Order, the Court found as a factual matter that the Subject Property was both burdensome to the estate and of inconsequential value and benefit to the estate. (Aband. & Settl. Order at 17). Consequently, the Court concluded that the proposed abandonment by the Trustee satisfied the provisions of § 554(a).[10] (Aband. & Settl. Order at 17). The Court then considered and rejected the Debtor's argument that the Trustee owed a duty to the Debtor to ensure that the Subject Property is environmentally remediated. (*Id.*). The Court's ultimate decision approving the abandonment of the Subject Property is subject to review on appeal under an abuse of discretion standard. *Geisler v. Seidel (In re Roberdeau)*, 83 F. App'x 664, 664 (5th Cir. 2003). As mentioned previously, the factual findings underlying that decision are reviewed for clear error.

In the Brief in Support of Motion to Stay Pending Appeal, the Debtor asserts that she "amply demonstrated that the Subject Property's condition creates an imminent and identified harm to public health and safety." (Br. in Supp. of Mot. to Stay Pending Appeal at 4). She also rehashes her argument that the Trustee is the "sole entity able" to pursue remediation of the Subject Property (given that she is judicially estopped from pursuing her claims in the Related

[10] Section 554(a) provides that "[a]fter notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C. § 544(a).

Proceedings) and that the Trustee "has the fiduciary obligation" to remediate the Subject Property. (*Id*.).

In the Abandonment and Settlement Order, the Court correctly rejected the Debtor's factual allegation that the Subject Property poses an "imminent and identified harm" to the public health and safety. (Aband. & Settl. Order at 29). The only proof submitted by the Debtor in support of her allegation were documents generated more than fifteen (15) years ago, and the documents did not provide "any information regarding how the presence of the materials can or will affect the public health or safety." (*Id.* at 25). The passage of fifteen (15) years without any evidence of harm to the public and the inaction of the Mississippi Department of Environmental Quality ("MDEQ")[11] since it became aware of the purported contamination of the Subject Property on January 9, 2006, showed that no harm was imminent. Because these are factual findings, they are unlikely to be overturned on appeal.

The Debtor also challenges the Court's legal conclusion that the Trustee did not owe a duty to the Debtor to remediate the Subject Property. First, the Court noted that § 1302, which enumerates the duties of a chapter 13 trustee, does not specifically require a trustee to seek the remediation of a debtor's purportedly contaminated property. The Debtor was unable to point to any statutory authority supporting her position. Second, the Court followed the majority view in narrowly interpreting the exception to a trustee's abandonment power under § 554(a) set forth by the U.S. Supreme Court in *Midlantic National Bank v. New Jersey Department of Environmental Protection*, 474 U.S. 494 (1986) ("*Midlantic*"). There, the Supreme Court held that a trustee may not abandon property in contravention of a state statute or regulation that is reasonably

[11] MDEQ is responsible for enforcing Mississippi's Solid Wastes Disposal Law, MISS. CODE ANN. §§ 17-17-1 to -503.

designed to protect the public health or safety from identified hazards. 474 U.S. at 502-07. A majority of courts, however, have held that *Midlantic*'s exception to the trustee's abandonment power applies only in situations where an imminent and identified harm to the public health and safety exists.[12] The Fifth Circuit Court of Appeals recognized this limitation in *Commonwealth Oil Refining Co. v. U.S. Environmental Protection Agency (In re Commonwealth Oil Refining Co.)*, 805 F.2d 1175 (5th Cir. 1986). Accordingly, because the Debtor did not show that the condition of the Subject Property created an imminent and identified harm to the public, the Court concluded that the narrow exception in *Midlantic* did not apply and overruled the Debtor's objection to the abandonment.

The Court's decision did not implicate a serious legal question. The Debtor was unable to produce any statutory authority supporting her position that the Trustee owed the Debtor a duty to remediate the Subject Property. Moreover, the Court followed Fifth Circuit precedent and the majority view in its interpretation of *Midlantic*. Thus, with respect to its decision on the abandonment issue, the Court finds both that the Debtor has not presented a substantial case on the merits or demonstrated that the appeal involves a serious legal question. The Court turns next to the settlement issue.

2. Settlement

The District Court recently dismissed the Debtor's appeal of the Court's approval of the Grouped Settling Defendants' settlement because it found that the Debtor lacked standing to prosecute the appeal. The District Court ruled that the Debtor was not a "person aggrieved" because she had no direct pecuniary interest in the settlement due to her being judicially

[12] For a collection of cases holding the majority view, see the Abandonment and Settlement Order at 19-22.

estopped from pursuing any claims directly. *See In re Coho Energy, Inc.*, 395 F.3d 198, 202 (5th Cir. 2004) (holding that standing in a bankruptcy appeal is governed by the "person aggrieved" test). The Debtor's loss of the second issue raised in her appeal demonstrates that the Debtor has not shown a substantial case on the merits or a serious legal question with respect to that issue.

Notwithstanding the partial dismissal of her appeal for lack of standing, the Debtor asserts that she "amply demonstrated that the proposed settlement is not fair, equitable[,] or in the best interest of the Debtor's bankruptcy estate." (Br. in Supp. of Mot. to Stay Pending Appeal at 4). Under the proposed settlement, the Trustee, on behalf of the Debtor's bankruptcy estate, agreed to release all claims related to the Subject Property, including those asserted in the Related Proceedings. In turn, the Grouped Settling Defendants agreed to pay the Trustee $2,700.00, an amount sufficient to pay all unpaid creditors who filed proofs of claims and the Trustee's statutory fee. *See* 28 U.S.C. § 586(e). Any surplus would be returned to the Grouped Settling Defendants, who also agreed to indemnify the Trustee from any governmental claims related to the remediation of the Subject Property. The Debtor contends that the Court erred by not conditioning the Trustee's settlement with the Grouped Settling Defendants on the remediation of the Subject Property. Much of her argument about the Court's approval of the settlement is duplicative of the argument she made in opposition to the Trustee's proposed abandonment of the Subject Property.

In the Abandonment and Settlement Order, the Court weighed several factors before concluding that the proposed settlement was in the best interest of the creditors and the result of arms-length bargaining. (Aband. & Settl. Order at 38); *see Official Comm. of Unsecured Creditors v. Cajun Elec. Power Coop., Inc. (In re Cajun Elec. Power Coop., Inc.)*, 119 F.3d 349, 355 (5th Cir. 1997) (setting forth three (3) factors to consider when determining whether a

settlement is fair and equitable). As mentioned previously, factual findings are reversible on appeal only if they are clearly erroneous. Given this standard of appellate review, the Court finds that the Debtor has not demonstrated a substantial case on the merits even assuming the absence of a standing issue.

C. Do the Remaining Three Factors "Heavily Tilt" in Favor of Granting a Stay?

The Court already has concluded that the Debtor has not presented a substantial case on the merits of her appeal of the Abandonment and Settlement Order or shown that her appeal involves a serious legal question. These conclusions alone are sufficient to deny the Motion to Stay Pending Appeal. In the interest of completeness, the Court considers whether the Debtor has shown that the balance of the equities (that is, the final three (3) factors for granting a discretionary stay under the traditional standard) "heavily tilt" in her favor. *See United States v. Estelle (Ruiz II)*, 666 F.2d 854, 857 (5th Cir. 1982).

1. Has the Debtor made a showing of irreparable injury if the stay is not granted?

To prove a substantial threat of irreparable harm, the Debtor "must allege specific facts; conclusory allegations of speculative harm will not suffice." *Merchants & Farmers Bank v. Fryer*, No. 3:09-MC-37-SA, 2009 WL 3188241, at *2 (N.D. Miss. Oct. 1, 2009) (quotation omitted). "Mere injuries, however substantial, in terms of money, time, and energy necessarily expended in the absence of a stay, are not enough." *In re F.G. Metals, Inc.*, 390 B.R. 467, 477 (Bankr. M.D. Fla. 2008) (quotation omitted). The Debtor alleges that she will suffer an irreparable injury if the stay is not granted because her pending claims in the Related Proceedings "stand to be dismissed." As pointed out by the Grouped Settling Defendants, the Debtor waited about two (2) months before filing the Motion to Stay Pending Appeal, well after

the settlement funds had exchanged hands. Moreover, the Grouped Settling Defendants already have filed documents in each of the Related Proceedings to have the Debtor's claims dismissed for lack of subject matter jurisdiction. The Debtor is apparently opposing the dismissals on the ground that her pending appeal of the Order Denying Motion to Amend Judicial Estoppel Opinion keeps the controversy alive.

The Court previously addressed the Debtor's contentions in the Order Denying Second Motion to Stay Pending Appeal when it found that any dismissal of the Related Proceedings would not be irreparable. The Court noted that the Debtor's argument that a stay of the Order Denying Motion to Amend Judicial Estoppel Opinion would prevent the parties from having to return to three (3) different forums to "undo actions" showed that any potential harm was "reparable." (Order Denying Second Mot. to Stay Pending Appeal at 14). Likewise, if the Court's denial of her Motion to Stay Pending Appeal results in a dismissal of the Related Proceedings and if the District Court rules in favor of the Debtor on the abandonment issue in the appeal, the Debtor may simply return to those forums to reinstate the Related Proceedings. "The possibility that adequate compensatory or other corrective relief will be available at a late date, in the ordinary course of litigation, [weighs] heavily against a claim of irreparable harm." *Melancon v. City of New Orleans*, 703 F.3d 262, 279 (5th Cir. 2012) (quotation omitted). The Debtor has not proved that the second factor is heavily tilted in her favor.

2. Will granting the stay substantially harm the Grouped Settling Defendants?

"To establish the third criterion for a stay pending appeal under Rule 8005 [now Rule 8007], the [movant] must show that other parties will suffer no substantial harm if a stay is granted." *In re F.G. Metals, Inc.*, 390 B.R. at 478. According to the Debtor, a stay of the Abandonment and Settlement Order will not inflict harm upon any party but merely will preserve

her appeal rights and maintain order with respect to the Related Proceedings. (Br. in Supp. of Mot. to Stay Pending Appeal at 6). To the contrary, the Grouped Settling Defendants insist that a stay will unduly delay closure of the Bankruptcy Case and the Related Proceedings—litigation that is more than nineteen (19) years old. In addition, the Grouped Settling Defendants point out that they already have paid the settlement funds to the Trustee and pursued dismissal of the Related Proceedings, actions they would not have taken if the Debtor had filed the Motion to Stay Pending Appeal in a timely manner. The Court agrees with the Grouped Settling Defendants that the Debtor has not met her burden in showing that the third factor is heavily tilted in her favor.

3. Will granting the stay serve the public interest?

The Debtor has not put forth any evidence that granting the Motion to Stay Pending Appeal will serve the public interest. The Court finds that granting the stay would disserve the public interest in the efficient and timely administration of the Debtor's bankruptcy estate. Indeed, the unpaid creditors have been unpaid for over fifteen (15) years. Therefore, the Court finds that the Debtor has not satisfied her burden of showing that the fourth factor is heavily tilted in her favor.

Conclusion

For the above and foregoing reasons, the Court finds that the Debtor has not presented a substantial case on the merits or shown that the appeal of the Abandonment and Settlement Order involves a serious legal question. Even assuming that the Debtor has demonstrated a substantial case with respect to a serious legal question, she has not met her burden of showing that the balance of equities (that is, the final three (3) factors under the traditional stay standard) is heavily tilted in her favor. The Court, therefore, declines to exercise its discretion to issue a

stay pending the Debtor's appeal of the Abandonment and Settlement Order. Accordingly, the Court finds that the Motion to Stay Pending Appeal should be denied.

IT IS, THEREFORE, ORDERED that the Motion to Stay Pending Appeal hereby is denied.

##END OF ORDER##