



SO ORDERED,

Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: June 24, 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
STEPHANIE HOWARD,**

CASE NO. 00-51897-NPO

DEBTORS.

CHAPTER 13

**FINA OIL AND CHEMICAL COMPANY,
ET AL.**

PLAINTIFFS

**CONQUEST EXPLORATION COMPANY,
ET AL.**

INTERVENOR PLAINTIFFS

VS.

ADV. PROC. NO. 14-05009-NPO

STEPHANIE HOWARD

DEFENDANT

ORDER DENYING MOTION TO STAY PENDING APPEAL

This matter came before the Court¹ for hearing (the “Hearing”) on June 16, 2015 on the Motion to Stay Pending Appeal (the “Motion to Stay Pending Appeal”) (Adv. Dkt. 194)² filed by

¹ The above-styled bankruptcy case (the “Bankruptcy Case”) and the above-styled adversary proceeding (the “Adversary”) were transferred from the Honorable Katharine M. Samson, United States Bankruptcy Judge, Southern District of Mississippi to the Honorable Neil P. Olack, United States Bankruptcy Judge, Southern District of Mississippi on June 11, 2014.

Stephanie Howard (the “Debtor”);³ the Memorandum in Support Motion to Stay Pending Appeal (the “Brief in Support of Motion to Stay Pending Appeal”) (Adv. Dkt. 195) filed by the Debtor; the Plaintiffs’ Response in Opposition to Debtor’s Motion to Stay Pending Appeal (the “Response to the Motion to Stay Pending Appeal”) (Adv. Dkt. 197) filed by Fina Oil and Chemical Company; Murphy Oil U.S.A. Inc.; Vintage Petroleum, Inc. (Vintage Petroleum, LLC following merger); Champlin Petroleum Company; Exxon Corporation; Kerr-McGee Oil & Gas Corporation n/k/a Anadarko US Offshore Corporation, a former affiliate of Oryx Energy Corporation; TXO Production; Oxy USA Inc., Placid Oil Company; Amoco Production Company; Union Oil Company of California; Phillips Petroleum Company; ConocoPhillips Company (formerly known as Phillips Petroleum Company and successor in interest by merger to Conoco, Inc.); Bass Enterprises Production Company; ARCO Oil and Gas Company; Mobil Oil Exploration & Producing Southeast, Inc.; and Inexco Oil Company (collectively, the “Reynolds Plaintiffs”); the Joinder of Conquest Exploration Company in the Response in Opposition to Debtor’s Motion to Stay Pending Appeal (Adv. Dkt. 198) filed by Conquest Exploration Company (“Conquest”); 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 (Adv. Dkt. 199) 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”); and the Joinder of Moon-Hines-

² Citations to the record are as follows: (1) citations to docket entries in the Adversary are cited as “(Adv. Dkt. ___)”;

and (2) citations to docket entries in the Bankruptcy Case are cited as “(Bankr. Dkt. ___)”.

³ The Bankruptcy Case was commenced on May 5, 2000 by joint debtors, Stephanie Howard and Stacy Howard (collectively, the “Debtors”), but the Court refers only to Stephanie Howard as the “Debtor” because Stacy Howard is now deceased.

Tigrett Operating Company, Inc. in Reynolds Plaintiffs' Response in Opposition to Debtor's Motion to Stay Pending Appeal (Adv. Dkt. 200) filed by Moon-Hines-Tigrett Operating Company, Inc. ("Moon-Hines-Tigrett" or, together with the Reynolds Plaintiffs, Conquest, and Chevron/Shell, the "Plaintiffs") in the Adversary. At the Hearing, Jeffrey P. Reynolds ("Reynolds") argued on behalf of the Plaintiffs and Sean S. Cassidy ("Cassidy") argued on behalf of the Debtor. The Court, being fully advised in the premises, ruled from the bench denying the Motion to Stay Pending Appeal. This Order memorializes and supplements the Court's ruling.

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

1. In 1991, the Debtor's father, Gerald Donald ("Donald"), acquired real property located in Wayne County, Mississippi (the "Subject Property") from a bank that had foreclosed on the Subject Property.

2. In 1996 and 1998, Donald filed two (2) nearly-identical lawsuits⁴ against several parties, including the Plaintiffs, seeking damages related to the purported contamination of the Subject Property from the disposal of radioactive materials and other hazardous substances.

3. On May 5, 2000, the Debtors initiated the Bankruptcy Case by filing a petition for relief (Adv. Dkt. 45, Ex. 11) pursuant to chapter 13 of the Bankruptcy Code. On August 7, 2000, the Debtors filed statements and schedules regarding their income, expenses, and creditors (the “Statements and Schedules”) (Adv. Dkt. 45, Ex. 22). At that time, no information relating to the Subject Property, the Circuit Court Lawsuit, or the District Court Lawsuit appeared in the Statements or Schedules.

4. On November 6, 2000, the Court entered the Order Confirming Plan, Awarding Fees, and Adjudicating Related Matters (Adv. Dkt. 45, Ex. 15) confirming the Debtors’ chapter 13 plan.

5. Donald died on January 15, 2001. The Debtor was Donald’s sole heir and beneficiary. (Adv. Dkt. 45, Ex. 17 at 24-25).

6. On February 1, 2001, the Debtor filed the Petition for Probate of Will and Letters Testamentary (Adv. Dkt. 45, Ex. 17 at 8) in the Chancery Court for the Second Judicial District of Jones County, Mississippi (the “Chancery Court”) and was appointed the executrix of

⁴ The first lawsuit, now titled *Stephanie Howard, Executrix of the Estate of Gerald Donald v. Fina Oil and Chemical Company, et al.*, No. 5-97-55 (the “Circuit Court Lawsuit”), was filed on May 17, 1996 in the Circuit Court of Hinds County, Mississippi and subsequently was transferred to the Circuit Court of Wayne County, Mississippi (the “Circuit Court”). The second lawsuit, now titled *Stephanie Howard, Executrix of the Estate of Gerald Donald v. Marvin Lewis Davis et al.*, No. 2:98-CV-15-KS-MTP (the “District Court Lawsuit”), was filed on January 20, 1998 in the United States District Court for the Southern District of Mississippi (the “District Court”).

Donald's estate pursuant to the Chancery Court's Order Admitting Will to Probate and Granting Letters Testamentary. (*Id.* at 24-26).

7. The Debtor filed the Motion to Substitute Plaintiffs (Adv. Dkt. 1, Ex. 7) in the Circuit Court on March 29, 2001. On April 6, 2001, the Debtor, in her capacity as the executrix of Donald's estate, was substituted for Donald as the plaintiff in the Circuit Court Lawsuit. (Adv. Dkt. 1, Ex. 10).

8. On February 18, 2005, the Debtor, in her capacity as the executrix of Donald's estate, was substituted for Donald as the plaintiff in the District Court Lawsuit (Adv. Dkt. 1, Ex. 11).⁵

9. On August 10, 2005, J.C. Bell, the standing chapter 13 trustee (the "Trustee"), filed the Final Report and Account (Bankr. Dkt. 42). 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).

10. On December 12, 2005, the Circuit Court issued a Memorandum Opinion (Adv. Dkt. 1, Ex. 12) directing the Debtor either to exhaust her administrative clean-up remedies with the Mississippi Commission on Environmental Quality ("MCEQ"), which has the exclusive authority over such matters, or to proceed with the Circuit Court Lawsuit without being allowed to seek damages for the possible clean-up of the Subject Property. The Debtor then filed the

⁵ According to the Order substituting the Debtor as plaintiff in the District Court Lawsuit, the Debtor filed the motion to substitute in May 2004. (Adv. Dkt. 1, Ex. 11 at 1-2).

Petition and Request for Hearing (Adv. Dkt. 1, Ex. 5) with the MCEQ on January 9, 2006 (the “MCEQ Litigation”).⁶

11. On December 8, 2011, the Chancery Court entered the Order Baring [sic] Claims, Waiving First and Final Accounting, Distributing Assets, Discharging Executrix and Closing Estate (Adv. Dkt. 50, Ex. 9) closing Donald’s estate, discharging the Debtor as executrix of the estate, and distributing the estate’s assets.

12. The Plaintiffs discovered the existence of the Bankruptcy Case in July 2013. Soon thereafter, the Plaintiffs raised the defense of judicial estoppel in the Circuit Court Lawsuit, the District Court Lawsuit, and the MCEQ Litigation (collectively, the “Related Proceedings”). According to the Debtor and the Plaintiffs, all of the Related Proceedings are currently stayed.

13. On September 24, 2013, the Debtor filed the Motion to Vacate Final Decree and to Re-open Case to Amend Schedules and State [sic] of Financial Affairs (the “Motion to Reopen”) (Bankr. Dkt. 50) requesting the Court to reopen the Bankruptcy Case so that the Statements and Schedules could be amended “to disclose Mrs. Howard’s interest in civil actions (one in the Circuit Court of Wayne County, Mississippi and one in Federal District Court, Southern District of Mississippi) to recover damages resulting from property contamination.” On November 25, 2013, the Court entered the Order Vacating Final Decree and Re-Opening Proceeding (Bankr. Dkt. 61) granting the Motion to Reopen.

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

⁶ The Debtor subsequently filed an Amended Petition and Request for Hearing (Adv. Dkt. 1, Ex. 6) on March 24, 2011 adding the Plaintiffs as defendants.

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.

15. On May 1, 2014, the Reynolds Plaintiffs filed the Plaintiffs' Motion for Summary Judgment (the "Plaintiffs' Summary Judgment Motion") (Adv. Dkt. 45), and Conquest, Chevron/Shell, and Moon-Hines-Tigrett subsequently joined in the Plaintiffs' Summary Judgment Motion. (Adv. Dkts. 47, 48, & 52).

16. Also on May 1, 2014, the Debtor filed the Motion for Summary Judgment (the "Debtor's Summary Judgment Motion") (Adv. Dkt. 49).

17. The Plaintiffs' Summary Judgment Motion and the Debtor's Summary Judgment Motion came before the Court for hearing on September 3, 2014. The Court took the matter under advisement and then issued the Memorandum Opinion and Order: (1) Granting the Plaintiffs' Summary Judgment Motion and (2) Denying the Debtor's Summary Judgment Motion (Adv. Dkt. 81) and the Final Judgment on the Plaintiffs' Summary Judgment Motion and the Debtor's Summary Judgment Motion (Adv. Dkt. 82) (collectively, the "Court's Summary Judgment Opinion") on October 27, 2014. In the Court's Summary Judgment Opinion, the Court held that the Debtor is judicially estopped from pursuing her claims in the Related Proceedings. The Court, however, held that the Trustee is not judicially estopped from pursuing the Debtor's claims in the Related Proceedings for the benefit of the Debtor's creditors.

18. On November 10, 2014, the Debtor filed the Debtor's Motion to Alter or Amend Judgment or for New Trial (the "Motion to Alter or Amend") (Adv. Dkt. 85).

19. On January 5, 2015, the Reynolds Plaintiffs filed the Plaintiffs' Response in Opposition to Debtor's Motion to Alter or Amend Judgment or for New Trial (Adv. Dkt. 97), in

which Conquest, Chevron/Shell, and Moon-Hines-Tigrett subsequently joined. (Adv. Dkts. 100, 103, & 106).

20. 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 "Court's Opinion Denying the Motion to Alter or Amend") (Adv. Dkt. 117) denying the Motion to Alter or Amend.

21. On February 19, 2015, the Debtor filed the Notice of Appeal (the "Notice of Appeal") (Adv. Dkt. 121) appealing the Court's Opinion Denying the Motion to Alter or Amend.

22. On April 12, 2015, the Trustee filed the Notice of Proposed Abandonment of Real Property (the "Notice of Abandonment") (Bankr. Dkt. 124) providing notice of his intent to abandon the Subject Property under 11 U.S.C. § 554.⁷

23. On April 27, 2015, the Debtor filed the Objection to Notice of Proposed Abandonment of Real Property (the "Debtor's Objection to Abandonment of the Subject Property") (Bankr. Dkt. 135).

24. On May 8, 2015, the Reynolds Plaintiffs 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 Joint Motion to Settle") (Bankr. Dkt. 143). Chevron/Shell and Moon-Hines-Tigrett subsequently joined in the Reynolds Joint Motion to Settle. (Bankr. Dkts. 145 & 147).

⁷ Hereinafter, all code sections refer to the Code found at title 11 of the United States Code unless otherwise noted.

25. On May 15, 2015, Conquest and the Trustee filed the Joint Motion to Approve Compromise and Settlement (the “Conquest Joint Motion to Settle” or, together with the Reynolds Joint Motion to Settle, the “Joint Motions to Settle”) (Bankr. Dkt. 152).

26. On May 26, 2015, the Debtor filed the Motion to Stay Pending Appeal and the Brief in Support of Motion to Stay Pending Appeal.

27. On May 28, 2015, the Debtor filed the Debtor’s Memorandum in Opposition to Joint Motion to Settle and Compromise Disputed Claim (the “Debtor’s Response in Opposition to the Reynolds Joint Motion to Settle”) (Bankr. Dkt. 170) opposing the Reynolds Joint Motion to Settle.

28. On June 5, 2015, the Debtor filed the Debtor’s Memorandum in Opposition to Joint Motion to Settle and Compromise Disputed Claim (the “Debtor’s Response in Opposition to the Conquest Joint Motion to Settle”) (Bankr. Dkt. 172) opposing the Conquest Joint Motion to Settle.

29. On June 12, 2015, the Reynolds Plaintiffs filed the Response to the Motion to Stay Pending Appeal. Conquest, Chevron/Shell, and Moon-Hines-Tigrett then joined in the Response to the Motion to Stay Pending Appeal. (Adv. Dkts. 198, 199, & 200).

30. At the Hearing on June 16, 2015, the Court issued the bench ruling denying the Motion to Stay Pending Appeal. The Court also heard the issues related to the Notice of Abandonment, the Debtor’s Objection to Abandonment of the Subject Property, the Joint Motions to Settle, the Debtor’s Response in Opposition to the Reynolds Joint Motion to Settle, and the Debtor’s Response in Opposition to the Conquest Joint Motion to Settle. At the

conclusion of the Hearing, the Court announced that the abandonment and settlement issues would be taken under advisement.⁸

Discussion

In the Adversary, the Debtor has appealed the Court's Opinion Denying the Motion to Alter or Amend, in which the Court denied the Debtor's request to alter or amend the Court's Summary Judgment Opinion under Rule 59(e) of the Federal Rules of Civil Procedure.⁹ The Debtor, however, has not appealed the underlying Court's Summary Judgment Opinion, in which the Court held that the Debtor is judicially estopped from pursuing her claims in the Related Proceedings. In the Motion to Stay Pending Appeal, the Debtor requests the Court to stay the Court's Opinion Denying the Motion to Alter or Amend pending her appeal.

I. Standards for a Stay Pending Appeal

Under Rule 8007(a) of the Federal Rules of Bankruptcy Procedure, a party may file a motion for a stay pending 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

⁸ Although the Court announced that it would take the issues related to the Notice of Abandonment, the Debtor's Objection to Abandonment of the Subject Property, the Joint Motions to Settle, the Debtor's Response in Opposition to the Reynolds Joint Motion to Settle, and the Debtor's Response in Opposition to the Conquest Joint Motion to Settle under advisement at the Hearing, the Debtor filed the Debtor's Motion to Supplement List of Witnesses and Exhibits from June 16, 2015 Hearing (the "Debtor's Motion to Supplement") (Bankr. Dkt. 178) on June 18, 2015. Because other parties will be granted the opportunity to respond, the abandonment and settlement issues will not formally be taken under advisement until the Debtor's Motion to Supplement is resolved.

⁹ Rule 59(e) of the Federal Rules of Civil Procedure is made applicable to the Adversary by Rule 9023 of the Federal Rules of Bankruptcy Procedure. FED. R. BANKR. P. 9023.

motion to stay pending appeal under a prior version of FED. R. BANKR. P. 8005, the predecessor to FED. R. BANKR. P. 8007(a)). In determining whether to grant a motion to stay pending an appeal, the Court considers four factors: (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. *United States v. Transocean Deepwater Drilling Inc.*, No. H-11-3638, 2013 WL 3049299, at *2 (S.D. Tex. June 17, 2013); *see also Mounce*, 2008 WL 2714423, at *2. Failure of the movant to satisfy one of the four prongs defeats a motion to stay pending appeal. *Merchants & Farmers Bank v. Fryar*, No. 3:09-MC-37-SA, 2009 WL 3188241, at *1 (N.D. Miss. Oct. 1, 2009) (citations omitted) (analyzing motion to stay under a prior version of FED. R. BANKR. P. 8005); *see also Arnold*, 278 F.3d at 438-39.

The Fifth Circuit Court of Appeals has recognized that “the movant need not always show a ‘probability’ of success on the merits; instead, the movant need only present a substantial case on the merits when a serious legal question is involved and show that the balance of the equities weighs heavily in favor of granting the stay.” *Ruiz v. Estelle (Ruiz I)*, 650 F.2d 555, 565 (5th Cir. 1981) (per curiam) (citations omitted). The Fifth Circuit later clarified this concept by explaining:

Likelihood of success remains a prerequisite in the usual case even if it is not an invariable requirement. Only “if the balance of equities (i.e. consideration of the other three factors) is . . . heavily tilted in the movant's favor” will we issue a stay in its absence, and, even then, the issue must be one with patent substantial merit.

Ruiz v. Estelle (Ruiz II), 666 F.2d 854, 857 (5th Cir. 1982) (quoting *Ruiz I*, 650 F.2d at 565-66); see also *First S. Sav. Ass’n*, 820 F.2d at 709 n.10. With these standards in mind, the Court turns to the Motion to Stay Pending Appeal.

II. Debtor’s Motion to Stay Pending Appeal

In consideration of the four applicable factors, the Court determines that the Debtor has not satisfied her burden and the Motion to Stay Pending Appeal should be denied. As for the first factor (whether the Debtor has made a showing that there is a likelihood of success on the merits), the Debtor argues that she has “presented a substantial case on the merits of her appeal.” (Br. in Supp. of Mot. to Stay Pending Appeal at 3). As the Fifth Circuit stated in *Ruiz I*, the Debtor needs “only to present a substantial case on the merits when a serious legal question is involved and show that the balance of the equities weighs heavily in favor of granting the stay.” 650 F.2d at 565. Even assuming that the Debtor’s appeal involves a “serious legal question” and that the Debtor, as she argues, has presented a “substantial case on the merits,” the Court finds that the Debtor has not shown that the balance of the equities (i.e. the consideration of the other three (3) factors) “heavily tilt” in the Debtor’s favor. See *Ruiz II*, 666 F.2d at 857.

Regarding the second factor (whether the Debtor has made a showing of irreparable injury if the stay is not granted), the Debtor argued at the Hearing that she will suffer an irreparable injury if the stay is not granted because her pending claims in the Related Proceedings will “likely” be dismissed and she will be exposed to liability due to the Subject Property and its purported contamination. The Court finds that these arguments are speculative

and do not satisfy the Debtor's burden of showing an irreparable injury. *See Merchants & Farmers Bank*, 2009 WL 3188241, at *2 (citation omitted) (“[A party requesting a stay pending appeal] must allege specific facts; conclusory allegations of speculative harm will not suffice.”). At this juncture, it is not certain that the Debtor's claims in the Related Proceedings will be dismissed if a stay is not granted. In fact, Cassidy conceded at the Hearing that the Court's Opinion Denying the Motion to Alter or Amend does not require the dismissal of the Debtor's claims in the Related Proceedings. To the contrary, pursuant to the Court's Summary Judgment Opinion, the Trustee is currently able to pursue the Debtor's claims in the Related Proceedings for the benefit of the Debtor's creditors. Reynolds did state at the Hearing that in the event the Trustee successfully abandons the Subject Property and the Court approves the Reynolds Joint Motion to Settle, the Reynolds Plaintiffs would then seek the dismissal of the Debtor's claims in the Related Proceedings. The Debtor, however, filed the Debtor's Objection to Abandonment of the Subject Property, the Debtor's Response in Opposition to the Reynolds Joint Motion to Settle, and the Debtor's Response in Opposition to the Conquest Joint Motion to Settle and had the opportunity to be heard on whether the Court should allow the abandonment of the Subject Property or approve the Joint Motions to Settle at the Hearing. Moreover, in the event the Court overrules the Debtor's Objection to Abandonment of the Subject Property and approves the Joint Motions to Settle, the Debtor will be able to appeal those decisions and file accompanying motions to stay pending those appeals.

Further, even if this potential harm were certain to occur, the Debtor has not shown that the harm would be irreparable under the second factor. To the contrary, the Debtor's argument regarding the third and fourth factors, as further discussed below, assumes that any potential harm may be undone. Specifically, the Debtor argues that a stay of the Court's Opinion Denying

the Motion to Alter or Amend would prevent the parties from having to return to three different forums to “undo actions” and reinstate claims if she prevails on appeal. If, as the Debtor argues, her claims can be reinstated and actions can be undone, any potential harm is, by definition, “reparable.”

Regarding the third factor (whether the granting of the stay would substantially harm the other parties), the Debtor, as previously explained, argues that a stay would prevent the parties from having to return to three different forums to reinstate claims and proceedings if she prevails on appeal. The Plaintiffs contrarily argue that the litigation in the Related Proceedings is more than 19 years old and that a stay would only further delay the resolution of three separate actions pending in three separate forums. The Court agrees with the Plaintiffs and finds the Debtor’s argument disingenuous given that the Debtor waited nearly 100 days after she filed the Notice of Appeal to file the Motion to Stay Pending Appeal. In the interim, the Trustee and the Plaintiffs spent a considerable amount of time and resources settling the Debtor’s claims in the Related Proceedings, subject to the Court approval, as if there was no stay in effect. As a result of the Debtor’s delay, the Joint Motions to Settle and the Notice of Abandonment were heard at the Hearing. In fact, there has now been a further delay as the Court will not take the abandonment and settlement issues under advisement until the Debtor’s Motion to Supplement is resolved. The Court does not find that the Debtor has met her burden in showing that the third factor is “heavily tilted” in her favor.

The Debtor makes a similar argument regarding the fourth factor (whether the granting of the stay would serve the public interest). The Debtor argues that the public interest and judicial economy will be served by preventing actions and expenses from occurring that may need to be undone if the Debtor prevails on appeal. Again, the Court finds this position disingenuous as the

Debtor's delay in filing the Motion to Stay Pending Appeal has caused several parties to take several actions and incur many expenses under the belief that no stay would be imposed pending the Debtor's appeal of the Court's Opinion Denying the Motion to Alter or Amend. The Plaintiffs argue that granting a stay in this situation disserves the public interest that litigation end within a reasonable amount of time. The Court finds the Plaintiffs' argument more persuasive. The Court also finds that granting the stay would disserve the public interest in an efficient and timely administration of a bankruptcy estate. For these reasons, 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 satisfied her burden of showing that the balance of equities (i.e. consideration of the final three (3) factors) is "heavily tilted" in her favor, and, therefore, the Court declines to exercise its discretion to issue a stay pending appeal of the Court's Opinion Denying the Motion to Alter or Amend. Consequently, even after assuming the Debtor's appeal involves a "serious legal question" and the Debtor has presented a "substantial case on the merits," 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##