



SO ORDERED,

Judge Katharine M. Samson  
United States Bankruptcy Judge  
Date Signed: March 29, 2024

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

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF MISSISSIPPI

IN RE: IKECHUKWU H. OKORIE

CASE NO. 19-50379-KMS

DEBTOR

CHAPTER 7

**ORDER DENYING MOTION FOR STAY PENDING APPEAL (DKT. # 1127)**

**THIS MATTER** is before the Court on the Motion for Stay Pending Appeal by pro se Debtor Ikechukwu Hyginus Okorie, ECF No. 1127; the Chapter 7 Trustee's Response, ECF No. 1191; and Debtor's Reply, ECF No. 1205. Debtor seeks a stay of the Order Approving Butler Snow's First Application for Compensation for Attorney for the Trustee entered on February 27, 2024, ECF No. 1121, on which Debtor filed a Notice of Appeal, ECF No. 1126.

A party seeking a stay pending appeal must move first in the bankruptcy court. Fed. R. Bankr. P. 8007(a)(1)(A). Neither the Bankruptcy Code nor the Federal Rules of Bankruptcy Procedure appear to require hearing on a motion for stay pending appeal. *In re R.J. Dooley Realty, Inc.*, No. 09-36777, 2010 WL 2076959, at \*4 (Bankr. S.D.N.Y. May 21, 2010) (citing Fed. R. Bankr. P. 8005, now 8007.) "[Even i]f a hearing were required, the [c]ourt would be permitted to dispense with the hearing pursuant to 11 U.S.C. § 102(1), which provides that the phrase 'after notice and a hearing' means such notice and an *opportunity* for a hearing as is appropriate in the particular circumstances." *Id.* Here, no hearing is necessary.

“[A] stay pending appeal is considered an ‘extraordinary remedy.’” *In re VCR I, LLC*, No. 1202009, 2018 WL 2094301, at \*3 (Bankr. S.D. Miss. May 4, 2018). “A stay is not a matter of right, even if irreparable injury might otherwise result. It is instead an exercise of judicial discretion, and the propriety of its issue is dependent upon the circumstances of the particular case.” *Nken v. Holder*, 556 U.S. 418, 433 (2009) (cleaned up). “The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion.” *Id.* at 433-34.

“A motion for stay pending appeal is evaluated under the traditional stay factors . . . .” *Okorie v. Citizens Fin. Grp., Inc.*, No. 2:23-cv-100, 2023 WL 6214032, at \*1 (S.D. Miss. July 20, 2023), *appeal dismissed sub nom. Okorie v. Citizens Fin. Grp., Inc., (In re Okorie)*, No. 23-60505, 2023 WL 10416030 (5th Cir. Nov. 15, 2023). Four factors are considered:

(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

*Id.* (quoting *Nken v. Holder*, 556 U.S. at 426). The first two factors are the most critical. 556 U.S. at 434. “It is not enough that the chance of success on the merits be ‘better than negligible’” or that there is only “some ‘possibility of irreparable injury.’” *Id.* Neither must the movant 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.” *Plaquemines Par. v. Chevron USA, Inc.*, 84 F.4th 362, 373 (5th Cir. 2023) (quoting *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir. Unit A June 1981)).

Assessing the likelihood of success on the merits requires analyzing the standards of the substantive law. *In re Dernick*, No. 18-32417, 2019 WL 236999, at \* 2 (Bankr. S.D. Tex. Jan. 16, 2019) (citing *Roho, Inc. v. Marquis*, 902 F.2d 356, 358 (5th Cir. 1990)). Determination of reasonable attorney’s fees in bankruptcy cases requires assessment of the lodestar, “calculated by

multiplying the number of hours an attorney reasonably spent on the case by an appropriate hourly rate, which is the market rate in the community for this work.” *In re Cmty. Home Fin. Servs., Inc.*, No. 1201703, 2015 WL 8113699, at \*5 (Bankr. S.D. Miss. Dec. 7, 2015). The court may adjust the amount based on 11 U.S.C. § 330 (compensation for attorneys) and factors in *Johnson*.<sup>1</sup> *Id.* at \*6. An award of attorney’s fees is reviewed for abuse of discretion. *In re Cahill*, 428 F.3d 536, 539 (5th Cir. 2005).

Butler Snow submitted its first fee application for services rendered as counsel for the Chapter 7 Trustee from July 10, 2023, through October 31, 2023, with a detailed twelve-page fee itemization. ECF No. 964-1. After a hearing and review of the request for compensation, the Court granted the fees, determining the services to be reasonable and necessary, and finding the hourly rate reasonable. ECF Nos. 1162 at 90-92, 1121. The Court specifically noted that the fees are the *direct* result of Debtor’s numerous frivolous attacks on the Trustee. ECF No. 1162 at 90.

Debtor asserts that his appeal “raises substantial question of law and fact regarding the reasonableness of the compensation awarded and its alignment with the benefits rendered to the estate.” ECF No. 1127 at 2. He identifies five grounds for appeal: the compensation is excessive, the fees were not sufficiently scrutinized (presumably by the Court), the fees do not benefit the

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<sup>1</sup> The *Johnson* factors are:

(1) The time and labor required; (2) The novelty and difficulty of the questions; (3) The skill requisite to perform the legal service properly; (4) The preclusion of other employment by the attorney due to acceptance of the case; (5) The customary fee; (6) Whether the fee is fixed or contingent; (7) Time limitations imposed by the client or other circumstances; (8) The amount involved and the results obtained; (9) The experience, reputation, and ability of the attorneys; (10) The “undesirability” of the case; (11) The nature and length of the professional relationship with the client; (12) Awards in similar cases. *In re First Colonial Corp. of Am.*, 544 F.2d 1291, 1298–99 (5th Cir. 1977) (quoting *Johnson Ga. Highway Express, Inc.* 488 F.2d 714, 717–19 (5th Cir. 1974)).

*In re Cmty. Home Fin. Servs., Inc.*, 2015 WL 8113699, at \*6 (quoting *CRG Partners Grp., LLC v. Neary (In re Pilgrim's Pride Corp.)*, 690 F.3d 650, 654 (5th Cir. 2012)).

estate, the motion was not properly noticed, and the fees contravene the Bankruptcy Code. ECF No. 1126 at 3-4.

On the first factor considered for a stay, Debtor cannot establish that he is likely to succeed on the merits of his claims on appeal. His arguments lack support in both the record and the law.

On the second factor, Debtor has not shown that he will be irreparably harmed absent a stay. Debtor has no pecuniary interest in the case, as this Court has already ruled. *See* ECF No. 932 at 18-21 (concluding that because estate has no surplus over creditor's claims, Debtor had no standing to object to claims).<sup>2</sup> And if the fee award is reversed, Butler Snow can be ordered to reimburse the estate. *See Dernick*, 2019 WL 236999, at \*4.

On the third factor, there is no indication that issuance of the stay would substantially injure any party, especially since none of the creditors, *the actual parties in interest*, objected to the fees.

On the fourth factor, the Court does not disagree that “[e]nsuring that compensation from the bankruptcy estate is awarded fairly and reasonably” implicates the integrity of the bankruptcy system. ECF No. 1127 at 3. But Debtor has neither established that a stay is necessary to protect that concern nor has he legitimately raised that concern on appeal.

Debtor has not established the factors required for a stay pending appeal. The Motion for Stay Pending Appeal will be denied and removed from the March 28 hearing docket.

**IT IS THEREFORE ORDERED AND ADJUDGED** that Debtor's Motion for Stay Pending Appeal is **DENIED**.

*##END OF ORDER##*

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<sup>2</sup> This order is one of many that Debtor has appealed; the standing issue is currently pending in the district court. *See In re Okorie*, No. 19-50379, 2023 WL 7311173 (Bankr. S.D. Miss. Nov. 6, 2023), *appeal docketed*, No. 2:23-cv-00173-HSO-RPM (S.D. Miss. Nov. 9, 2023).