

IN THE COUNTY COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v.

Case No.: 2006 CT 9733 NC

JOHN C. FABIAN, et al.,

Defendant.

ORDER OF STAY PENDING APPEAL (AS TO ORDER OF CONTEMPT)

This matter came for consideration on the Motion for Stay Pending Appeal filed on September 21, 2007, by non-party CMI, Inc., d/b/a CMI, Inc. of Kentucky ("CMI"). The Court, having considered the Motion for Stay Pending Appeal, the record in this case and being otherwise advised in the premises, finds as follows.

The request for a stay pending appeal is governed by Fla. R. App. P. 9.310. See also Fla. R. App. P. 9.010 and 9.030(c)). In deciding whether a stay pending appeal is appropriate, courts consider the moving party's likelihood of success on the merits, and the likelihood of harm should a stay not be granted. State ex rel. Price v. McCord, 380 So.2d 1037 (Fla. 1980). The Court finds that CMI has met both of these prongs. Addressing the second prong first, CMI will continue to accrue substantial fines (\$3200 per day) while the appeal is pending. In addition, CMI has no control over the Circuit Court's docket. The first prong is satisfied in that courts of different jurisdictions, including Florida, have issued conflicting opinions as to the underlying discovery issue and CMI raises a jurisdictional issue as to the contempt order.¹

¹ The court notes that the moving party need *not* demonstrate a substantial likelihood of success on the merits in order to request a stay, and specifically notes that it does not grant this stay based upon any of the *post-facto* arguments raised by CMI as to the underlying discovery subpoena.



KAREN E. RYAN
CLERK OF CIRCUIT COURT
SARASOTA COUNTY, FL

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FILED FOR RECORDED

Fla. R. App. P. 9.130(a) provides that "a stay pending review may be conditioned upon the posting of a good and sufficient bond, other conditions, or both." Typically, the amount of the bond is determined by the facts of the particular case in light of the guiding principle that the setting of a supersedeas bond is to protect the party in whose favor judgment was entered by assuring its payment in the event it is affirmed on appeal. Pabian v. Pabian, 467 So. 2d 189 (Fla 4th DCA 1985).

The Court conditions the stay pending appeal upon the posting of a supersedeas bond based on the facts and circumstances in this case. These include the court's previous finding that CMI willfully disobeyed court orders and voluntarily elected not to appear before the Court at the Show Cause Hearing on July 18, 2007 and the substantial impact of CMI's noncompliance on the Court as well as the Defendants' right to material evidence.² The bond shall be in the amount of one hundred eight thousand, eight hundred dollars (\$108,800.00). This figure represents the amount of the per-day fine (\$3200) for each day from the date this Court required compliance with the subpoena (August 30, 2007), pursuant to the Order of Civil Contempt, through and until the entry of this Order, or thirty-four (34) days.

Accordingly, it is hereby **ORDERED** and **ADJUDGED** that:

1. The Motion for Stay Pending Appeal is **GRANTED CONDITIONED UPON** CMI posting a bond in the amount of \$108,800.00; and

2. This Court requests the Circuit Court to expedite the appeal stemming herefrom.

DONE and **ORDERED** in chambers in Sarasota County, Florida this 4th day of October, 2007.

² CMI failed to respond in any fashion to this court until after entry of the contempt order. Instead, it corresponded directly with the parties and indicated that it had no intention of appearing before this court.



Honorable Kimberly C. Bonner
County Court Judge

cc:

Robert N. Harrison, Esq. and all counsel of record

State Attorney's Office

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Tammy Lynch	06 CT 7860 NC	
Joseph Henry	06 CT 14247 NC	
Henry Gibson	06 CT 13373 NC	
Jay D. Koerner	06 CT 7791 NC	
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David Davenport	06 CT 17987 NC	case disposed 10-3-07
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The Honorable David L. Denkin

The Honorable Phyllis R. Galen