

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

STATE OF FLORIDA, :
 :
 Appellant, :
 :
 Vs. : CASE NO. 2005 MM 002364 SC
 :
 KENNETH ARNOLD BAKER, :
 ET. AL :
 :
 Appellee. :
 _____/

ORDER DENYING REQUEST FOR STAY

THIS CAUSE having come before the Court on the Motion of CMI Inc of Kentucky's (hereinafter CMI) Emergency Motion for Order to Stay Fines, and the Court being fully advised herein, finds as follows:

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). This Court was provided with the Order of Stay Pending Appeal and Order on Emergency Motion for Stay of Civil Contempt in *State v. Fabian*, Case No. 2006 CT 9733 NC. Counsel for CMI argues that the decision in *Fabian* is controlling on this Court. Counsel for Baker argued that the *Fabian* Order of Stay Pending Appeal, which found that CMI had satisfied the first prong of the test due to the conflicting

opinions as to the underlying discovery issues, was entered with neither a hearing nor input from Mr. Fabian on the issue of the likelihood of success. This Court finds the arguments of Baker persuasive, and for the reasons set forth below, this Court finds that CMI has failed to meet the first prong, namely that there is a likelihood of success in this appeal.

CMI suggests there are two basic issues for the appeal: first, the Court erred in finding the source code was material evidence, and second, the Court did not have jurisdiction over CMI. This Court agrees with the assertion in *Fabian* that courts of different jurisdictions, including Florida, have issued conflicting opinions as to the underlying discovery issue. While the State of Florida had the right to appeal the decision to grant discovery in this matter, no such appeal was taken. CMI, a non-party, cannot contend that materials sought are not relevant to the underlying action. *Dade County Med. Ass'n v. Hlis*, 372 So.2d 117 (Fla. 3rd DCA 1979). CMI failed to show a likelihood of success of prevailing on the first issue, for CMI does not have standing to make this claim.

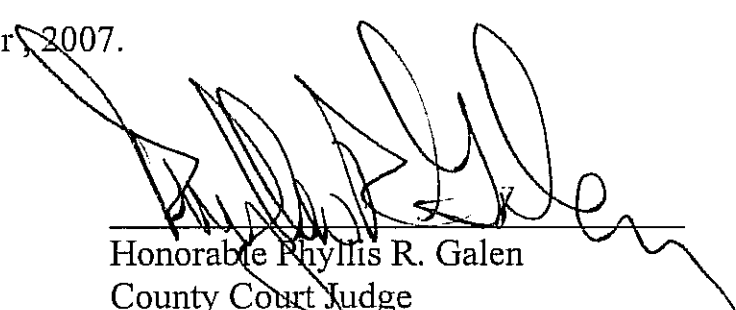
The Second Issue, jurisdiction of this Court, is also problematic for CMI. This Court was bound by the decision of *General Motors Corp. v. State*, 357 So.2d 1045 (Fla. 3rd DCA 1978) in asserting jurisdiction over CMI. CMI's appeal is to the Circuit Court, which is also bound by the

General Motors decision. CMI failed to show a likelihood of success of prevailing on the issue of jurisdiction.

This Court does not need to address the appropriateness of requiring CMI to post a supersedeas bond as a condition of a stay, for CMI failed to meet the first prong, to wit: a likelihood of success in this appeal.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the Emergency Motion for Order to Stay Fines is denied.

DONE AND ORDERED in chambers in Sarasota County, Florida,
this 24 day of December, 2007.



Honorable Phyllis R. Galen
County Court Judge

cc: Robert N. Harrison, Esquire
Michael S. Taaffe, Esquire

*Kenneth Arnold Baker,	2005 MM 002364 SC
Christopher Forrester,	2004 CT 11276 SC
Cathy Gange,	2003 CT 018650 SC
Kevin F. Gaul,	2005 MM 010208 SC
Jay Groepel	2003 CT 1756 SC (active BW)
Kristin Carla Havlin,	2004 CT 017591 SC
Georges Hilaire	2005 CT 011530 SC
James Joyce	2005 CT 007664 SC (active BW)
Jon Barton Keenan,	2005 CT 012195 SC
Bernard Killion,	2005 CT 003999 SC
Perry A. Lytle,	2004 CT 000450 SC
Kevin E. Mooney,	2005 CT 003776 SC
Mary D. O'Keeffe,	2004 CT 012679 SC
Scott Pickering,	2005 CT 017384 SC
Robert I. Pillsbury,	2005 CT 004833 SC
Brandy Lynn Pusateri,	2005 CT 006732 SC
Steven Rosado	2005 MM 11846 SC (active BW)
Steven Stinson,	2004 CT 016192 SC
James E. Taylor,	2005 CT 010276 SC
Alfred Tesch,	2005 CT 014594 SC
Gary Thome,	2005 CT 017075 SC
James Traywick,	2004 CT 005463 SC
John R. Van Arnam,	2004 CT 017504 SC
Glen Wedmore,	2004 CT 011521 SC (active BW)
Jaimee Welch,	2003 CT 015180 SC
Anthony Wolf	2005 CT 8885 SC (active BW)

Cc:

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