

IN THE CIRCUIT COURT
FOR THE SEVENTH JUDICIAL CIRCUIT OF ILLINOIS
MACOUPIN COUNTY, CARLINVILLE, ILLINOIS

CAMILLE MAYFIELD COOPER BROTZE,)	
and WAYNE BROTZE, husband and wife,)	
)	
Plaintiffs,)	
)	
v.)	No. 2019-MR-92
)	
CITY OF CARLINVILLE, ILLINOIS, a)	
Municipal Corporation,)	
)	
Defendant.)	

RESPONSE TO DEFENDANT’S MOTION FOR STAY PENDING APPEAL

NOW COME Petitioners, CAMILLE MAYFIELD COOPER BROTZE and WAYNE BROTZE, husband and wife, by and through their attorney, Jacob N. Smallhorn of Smallhorn Law LLC, and in support of their response to Defendant’s Motion for Stay Pending Appeal, state as follows:

I. Introduction

1. On July 7, 2020, the Court entered an Order (the “Order”) denying Defendant’s Motion for Summary Judgment, granting Plaintiff’s Motion for Summary Judgment, issuing a Writ of Mandamus against Carlinville to comply with State law, finding that “based on the City of Carlinville’s unauthorized actions, Illinois Alluvial was created in violation of the law and is a void corporation,” and finding that pursuant to Illinois Supreme Court Rule 304(a), there is no just reason for delay of either enforcement or appeal of the Court’s Order.

2. On July 16, 2020, Defendant filed Defendant’s Motion for Stay Pending Appeal (“Motion for Stay”), citing the need for a stay because it will:

a. “Reduce the uncertainty of Defendant’s ability to participate in Alluvial;”

- b. “Allow Alluvial to continue as a valid Illinois Corporation;” and
- c. “Avoid and prevent unnecessary and unfortunate:
 - i. Disruption to the financial position of Defendant,
 - ii. Interference with Defendant’s contractual obligations,
 - iii. Risk to the safety of the public water supply, and
 - iv. Disruption to Defendant’s two-thousand nine-hundred and twenty-six (2,926) customers while the appeal is pending.”

Motion for Stay, Par. 8.

3. Defendant’s Motion for Stay does not have any exhibits attached to it, nor does the Motion for Stay provide any additional information to flesh out the reasons why a stay is necessary under the circumstances.

II. Illinois Supreme Court Rule 305(b)

4. Illinois Supreme Court Rule 305(b) provides that:

. . . [O]n notice and motion, and an opportunity for opposing parties to be heard, the court may also stay the enforcement of any judgment, other than a judgment, or portion of a judgment, for money, or the enforcement, force and effect of appealable interlocutory orders or any other appealable judicial or administrative order. The stay shall be conditioned upon such terms as are just. A bond or other form of security may be required in any case, and shall be required to protect an appellee’s interest in property.

Illinois Supreme Court Rule 305(b) (West 2020).

5. In making a determination on a stay pursuant to Rule 305(b), there is no specific set of factors that a court must consider. *Tirio v. Dalton*, 144 N.E. 3d 1261, 37 Ill.Dec 671 (2nd Dist. 2019), citing *Stacke v. Bates*, 138 Ill. 2d 295, 304-05, 149 Ill.Dec. 728, 562 N.E.2d 192 (1990).

6. Nevertheless, the Illinois Supreme Court has stated that to prevail on a motion for a stay, the movant must “present a substantial case on the merits and show that the balance of the equitable factors weighs in favor of granting the stay.” *Id.* at 309, 149 Ill.Dec. 728, 562 N.E.2d 192.

7. The equitable factors to consider include “whether a stay is necessary to secure the fruits of the appeal in the event the movant is successful” and whether hardship on other parties would be imposed. *Id.* at 305-09, 149 Ill.Dec. 728, 562 N.E.2d 192.

8. If the balance of the equitable factors does not strongly favor the movant, then there must be a more substantial showing of a likelihood of success on the merits. *Id.* at 309, 149 Ill.Dec. 728, 562 N.E.2d 192.

9. Nowhere in its Motion for Stay has Defendant made any allegation that it has a likelihood of success on appeal.

10. Defendant’s Motion for Stay is premised entirely on the Court’s balancing of equitable factors; i.e. whether the stay is necessary to secure the fruits of the appeal in the event the movant is successful and whether hardship on other parties will result if a stay is not granted.

11. Defendant’s Motion for Stay provides the Court with absolutely no information helpful to the Court in determining whether or not a hardship will result to third parties if a stay is not granted.

III. Reduction of Defendant’s Uncertainty in its Ability to Participate in Alluvial is Not a Valid Basis for a Stay Pending Appeal

12. Defendant’s first argument for a stay is that it will “reduce the uncertainty of Defendant’s ability to participate in Alluvial.”

13. Defendant should have some uncertainty regarding its ability to participate in Alluvial, seeing that the Court found that Carlinville could not participate in Alluvial and that Alluvial is a void corporation.

14. However, Defendant's uncertainty is not a factor the Court should consider when deciding whether or not to grant a stay, as it does not in any way relate to the two equitable factors described by the Illinois Supreme Court in *Stacke*.

IV. Alluvial's Continued Operation as a Corporation is Not a Concern of the Court

15. The second basis Defendant provides as its justification for a stay is that it will "allow Alluvial to continue as a valid corporation."

16. Defendant provides no explanation regarding how the Court's Order would affect Alluvial's ability to continue its operations.

17. One can only assume by the pleadings which have been filed in this case that the underlying problem is Alluvial's ability to continue spending Defendant's grant money to continue its operations.

18. This is exactly the type of harm the Court's Order is intended to prevent, the waste of taxpayer funds on a void entity that was illegally created.

19. A stay would provide a benefit to Alluvial in its continued expenditure of money from Defendant's grants, and at the expense of the public who should not be subjected to the continued expense of taxpayer funds on a void corporation.

20. If the Court grants a stay, it would likely work a hardship on the Plaintiffs and other similarly situated members of the public.

V. Defendant has Not Provided the Court with Any Facts to Support Its Claim that the Order Will Create an Interference and Disruption to Its Water Supply, Contracts, or Customers.

21. Defendant's third basis for a stay is essentially that a stay will protect third party interests.

22. The problem with Defendant's third basis for a stay is that Defendant has not provided the Court with any facts to support its claim, and in certain instances its claims appear to be directly contradicted by the facts in evidence herein.

A. Defendant Provided No Information to Explain How a Stay will Prevent Financial Disruption to the Position of Defendant.

23. Defendant argues that it will suffer financial disruption if a stay is not granted.

24. For the reasons described above, harm to the financial position of Defendant is not a basis for a stay during an appeal.

25. The only logical way that not granting a stay appears to cause a further financial hardship to Defendant is if Defendant continues to spend money in violation of Illinois law.

26. Defendant should not be allowed to continue spending funds when the Court determined that it was doing so in violation of Illinois law.

B. Defendant's Argument about Interference with Contractual Obligations is Perplexing

27. Defendant's second "interference" argument is that proceeding without a stay will cause interference with its contractual obligations.

28. Noticeably silent in Defendant's argument is what "contractual obligations" Defendant is talking about.

29. Defendant admitted at hearing that it did not have any contract or other agreement with Alluvial or any of the members of Illinois Alluvial.

30. It is Plaintiffs' understanding that Alluvial is not actually providing any customers with water, as it is still an entity in the planning stages.

31. If Defendant is talking about its contractual obligations regarding its grants with the USDA, and or other entities it has entered into grant agreements with, Defendant can protect itself by ceasing any further expenditures on behalf of Alluvial until this litigation is finished. Defendant has the power to protect itself by not spending any more money.

32. Defendant's contractual obligations should not serve as a basis for enacting a stay.

C. Defendant Cannot Explain How the Order Would Impose a Risk to the Water Supply

33. Defendant's next basis for a stay is that if the Order were allowed to take effect it would cause a "risk to the water supply."

34. Again, it is Plaintiffs' understanding that Carlinville is currently providing water to its citizens, and Alluvial is not providing water to anyone.

35. Defendant has not provided any facts, or even conjecture, as to how the Court's Order, if imposed, might cause harm to the Carlinville water supply.

36. The Court's Order compels Carlinville to follow the law regarding how it will solve its water supply problems.

37. Nothing prevents Carlinville from continuing to work on fixing its water supply issues by any of the statutorily authorized methods.

D. The Court's Order Has No Effect on Carlinville's Current Water Customers.

38. The last basis Defendant provides for a stay is that the Order will disrupt Carlinville's water customers.

39. Again, Defendant provides no information on how the Order will provide such a disruption.

40. The Order has absolutely no effect on Carlinville's current water supply; it merely has an effect on the project Carlinville illegally undertook to fix its future water supply problems.

41. The Court should disregard this basis for a stay.

VI. Conclusion

42. Defendant has neglected to provide any facts upon which the Court can use as a basis for determining whether or not a stay is appropriate under the circumstances, and for that reason alone, Defendant's Motion for Stay should be denied.

43. Defendant has not provided the Court with any basis to find that it will have a high likelihood of success on appeal.

44. Furthermore, the balancing of the equities demonstrates that if the Court were to grant a stay, Carlinville would likely continue to spend funds on a project this Court has already deemed contrary to the laws of the State of Illinois.

45. To the extent the Court considers granting a stay for Defendant, the Court should impose a bond in the amount of any further expenditures Defendant makes on behalf of Alluvial.

WHEREFORE, Plaintiffs pray that the Court enter an Order denying Defendant's Motion for Stay, or alternatively, if the Court determines that a stay pending appeal is appropriate, that the Court impose a bond on Defendant equal to any further amounts Defendant expends from any funds available to it on behalf of Alluvial.

Dated this 20th day of July, 2020.

CAMILLE MAYFIELD COOPER BROTZE and
WAYNE BROZE, Plaintiffs,

By: /s/ Jacob N. Smallhorn
Jacob N. Smallhorn
Their Attorney

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CERTIFICATE OF SERVICE

The undersigned, being first duly sworn on oath, deposes and says that he electronically filed the above document with the Clerk at the <https://illinois.tylerhost.net/ofsw eb> e-filing system and sent true copies thereof via email, on the 20th day of July, 2020.

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