

just reason for delay of either enforcement or appeal of the Trial Court's Order. (C234-251).¹

2. On July 16, 2020, Appellant filed a Motion for Stay Pending Appeal in the Trial Court (C253-254), citing the need for a stay because it will:

- a. "Reduce the uncertainty of Defendant's [Appellant'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 Appellant,
 - ii. Interference with Appellant's contractual obligations,
 - iii. Risk to the safety of the public water supply, and
 - iv. Disruption to Appellant's water customers while the appeal is pending.

3. The Motion for Stay Appellant filed with the Trial Court did not have any exhibits attached to it, nor did the Motion for Stay provide any additional information to flesh out the reasons why a stay is necessary under the circumstances (C252-255).

4. After a contested hearing on the merits, on August 3, 2020 the Trial Court entered an Order finding that Appellant improperly attempted to offer evidence of contractual relationships that might be disrupted if a stay were not granted after stating at hearing on the order granting summary judgment that no contracts existed, that the proposed water company is not actually providing potable water to anyone, that Appellant was free to pursue other, legal methods of solving its water problems, and therefore denying Appellant's Motion for Stay (C265-267).

¹ Reference numbers correspond to the Bates Stamp Numbers in the Supporting Record provided by Appellant with its Motion for Stay herein.

5. On Monday, August 17, 2020, Appellants filed a pleading entitled “Defendant’s Motion to Stay in the Reviewing Court Pending Appeal” (“Motion for Stay”), which essentially alleges the same issues Appellant raised at the Trial Court; albeit with more explanation as to what “harm” Appellant alleges might be caused if no stay were granted.

I. Illinois Supreme Court Rule 305(d)

6. Illinois Supreme Court Rule 305(d) provides that:

. . . [A]pplication for a stay ordinarily must be made in the first instance to the circuit court. A motion for a stay may be made to the reviewing court, or to a judge thereof, but such a motion must show that application to the circuit court is not practical, or that the circuit court has denied an application or has failed to afford the relief that the applicant has requested, and must be accompanied by suggestions in support of the motion and a supporting record . . .

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

7. In making a determination on a stay pursuant to Rule 305, 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).

8. 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.

9. 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.

10. 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.

II. Argument

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

12. Appellant'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.

A. The Court's Inquiry is not Whether or Not a Stay is "Reasonable"

13. Defendant's first argument for a stay is that a stay is "reasonable," and will "preserve the "status quo" (Motion for Stay, p. 7, ¶ 31-32).

14. Preserving the status quo and "reasonableness" are not factors in weighing whether or not to grant a stay pending appeal, and Appellant has provided no case law or other authority to support such a claim.

B. Disruption to Appellant's "Financial Position" is Not a Valid Basis for a Stay

15. Appellant argues in p. 8, ¶ 38 of its Motion for Stay that the Trial Court's Order will disrupt its financial position, including its ongoing efforts to assist Illinois Alluvial.

16. Appellant should rightly have some concerns uncertainty regarding its expenditures on behalf of Illinois Alluvial and its ability to participate in Alluvial, seeing that the Trial Court found that Appellant could not participate in Alluvial and that Alluvial is a void corporation.

17. However, Appellant'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*.

C. Appellant Attempts to Use Contracts and Obligations It Entered Into During the Pendency of these Proceedings as Justification for a Stay

18. Defendant's other attempt to justify a stay is that a stay will protect third party interests.

19. The Trial Court was unpersuaded by Appellant's argument, noting that Alluvial is not actually providing potable water to Appellant or anyone else (C267), and that Appellant voluntarily undertook obtaining the loan during the pendency of these proceedings as well as the other actions Appellant now attempts to use as justification for the necessity of a stay.

20. At all relevant times, Appellant knew of the pendency of these proceedings and that Appellees were seeking to invalidate Appellant's participation in the creation of Illinois Alluvial.

21. Any "harm" to third parties was knowingly taken by Appellant when, during the pendency of the proceedings at the Trial Court, Appellant voluntarily decided to take out loans and enter into contracts with third parties knowing full well the risk that the Court might rule against Appellant.

22. It would set a dangerous precedent for the Court to allow parties to undertake voluntary actions with third parties during the pendency of legal proceedings and then use those voluntary actions as the basis for a stay of proceedings.

III. Conclusion

23. Granting a stay in these proceedings would most likely cause real harm to the position of Appellees.

24. As was stated above, one of the factors the Court must weigh is whether or not a stay will "secure the fruits of the appeal" for the movant. *Stacke*, at 305-09, 149 Ill.Dec. 728, 562 N.E.2d 192.

25. Appellant is asking to continue down a course which has been ruled by the Trial Court to be unconstitutional.

26. Appellant has made no showing that it will have any likelihood of success on the merits, besides the vague assertion that it will demonstrate that the Trial Court's ruling was "erroneous" (Motion for Stay, p. 12, ¶ 49).

27. It is important to note that Appellant is only precluded from taking one, very specific course of action to solve its water problem needs.

28. As was cited several times by appellees at the Trial Court level (for example see the Second Amended Complaint, ¶ 10, C3), Appellant continues to have multiple, statutory avenues available to it to solve its water needs.

29. Furthermore, it is uncontroverted that Appellant is not and has never actually even received any potable water from Illinois Alluvial, and that the entire endeavor is still non-operational and will require extensive, expensive improvements to be so.

30. If the Court were to allow Appellant to continue barreling down a course and continuing to expend money on in a manner the Trial Court deemed unconstitutional it would cause further damage and further loss to the position Appellees are seeking to protect.

31. Denial of a stay would secure the fruits of the appeal for Appellees and is appropriate given the circumstances where Appellant has made no showing of a likelihood of success on the merits.

32. Further, the Court should disregard the voluntary actions Appellant took during the proceedings at Trial Court as a basis for a stay, as any "irreparable harm" that would be caused would be entirely attributable to Appellant's knowing, voluntary decisions to enter into

agreements and loan obligations when it knew the possibility the Trial Court could rule against Appellant.

WHEREFORE, Plaintiffs-Appellees, CAMILLE MAYFIELD COOPER BROTZE and WAYNE BROTZE, Husband and Wife, Appellees pray that the Court enter an Order denying Defendant's Motion to Stay in the Reviewing Court Pending Appeal, and for any such further relief the Court deems equitable and just under the circumstances.

Dated this 20th day of July, 2020.

CAMILLE MAYFIELD COOPER BROTZE and
WAYNE BROZE, Plaintiffs,

By: /s/ Jacob N. Smallhorn
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CERTIFICATE OF SERVICE

The undersigned, being first duly sworn on oath, deposes and says that he electronically filed with the Clerk at <https://illinois.tylerhost.net/ofsw eb> e-filing system and attached true copies and forwarded via email to all parties, or their attorneys, to the following addresses, on the 20th day of August, 2020.

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STATE OF ILLINOIS

FOURTH DISTRICT APPELLATE COURT

CAMILLE MAYFIELD COOPER BROTZE)	
and WAYNE BROTZE, Husband and Wife,)	Appeal from Seventh Judicial
)	Circuit Court, Macoupin County,
)	Illinois Case No, 2019-MR-92
Plaintiffs-Appellees,)	
v.)	
)	Honorable April G. Troemper
CITY OF CARLINVILLE, ILLINOIS,)	Presiding Judge
a Municipal Corporation,)	
)	
Defendant-Appellant.)	

ORDER

THIS CAUSE coming before the Court for hearing on Defendant’s Motion to Stay in the Reviewing Court Pending Appeal, due notice having been given, and the Court being advised of the premises:

IT IS HEREBY ORDERED that Appellant’s “Defendant’s Motion to Stay in the Reviewing Court Pending Appeal” is ALLOWED/DENIED.

DATE: _____

ENTER: _____