

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Augusta Division

IN RE:)	Chapter 13 Case
)	Number <u>89-10496</u>
JOHNNY HOLLAND GRISSOM)	
JEANNETTE HOLLAND GRISSOM)	
)	
Debtors)	FILED
)	at 2 O'clock & 32 min. P.M.
JOHNNY GRISSOM)	Date: 3-8-90
JEANNETTE HOLLAND GRISSOM)	
)	
Plaintiffs)	
)	
vs.)	Adversary Proceeding
)	Number <u>89-1017</u>
C & S NATIONAL BANK,)	
BIRNET L JOHNSON AND)	
LESLIE R. JOHNSON)	
)	
Defendants)	

ORDER

C & S National Bank (C & S), a defendant in the above styled adversary proceeding seeks a stay of the judgment against it pending appeal. Plaintiffs oppose the stay. C & S seeks the stay pursuant to Bankruptcy Rule 8005 which "regulates the matter of stays pending appeal." 9 Collier on Bankruptcy ¶8005.03 (L. King 15th ed. 1989). Bankruptcy Rule 8005, however, must be considered with Bankruptcy Rule 7062 which regulates the authority of the bankruptcy court to grant a stay. Id. Rule 8005 requires that the motion seeking a stay pending appeal must be submitted to the

bankruptcy court first, and Rule 7062 determines whether the motion will be granted by the bankruptcy judge. If the bankruptcy judge denies the motion or fails to grant it on terms acceptable to the appellant, Rule 8005 directs the procedure to be followed in the district court.

Under the provisions of Rule 7062, which makes Federal Rule of Civil

Procedure 62, applicable to adversary proceedings, an appellant may obtain a stay of a judgment pending appeal by filing a supersedeas bond in a sum adequate to protect an appellee. Bankruptcy Rule 7062; Fed. R. Civ. P. 62. In most cases, a stay is available as of right, subject only to the condition that a satisfactory bond be filed. Farmer v. Crocker National Bank (In re: Swift Aire Lines, Inc.), 21 B.R. 12 (Bankr. 9th Cir. 1982). Rule 7062, however, sets out certain exceptions to the stay as a matter of right.

A stay is not available as a matter of right pending an appeal from:

- (1) an interlocutory or final judgment in an action for an injunction;
- (2) an interlocutory or final judgment in a receivership action;
- (3) a judgment or order directing an accounting in an action for infringement of letters patent;
- (4) an order granting relief from the automatic stay provided by sections 362, 922, or 1301 of the Bankruptcy Code;
- (5) an order authorizing or prohibiting the use of cash collateral or property of the estate under section 363; and
- (6) an order authorizing the trustee to obtain credit pursuant to section 364.

Bankruptcy Rule 7062; Fed. R. Civ. P. 62(a). 2

Stays ending appeal from orders which fall into any of the above categories are discretionary with the court. 9 Collier on Bankruptcy, supra. The Bankruptcy Court may order a stay of an appeal of a judgment or order of the kind specified above if such a stay is determined to be warranted by the court. Bankruptcy Rule 8005; Fed. R. Civ. P. 62(c). Therefore, when Rule 8005 and Rule 7062 are considered together, the procedure required in order to obtain a stay pending appeal is as follows:

- (1) an appellant who desires the stay of a money judgment or of one determining an interest in property should present to the bankruptcy court a supersedeas bond in an amount adequate for the protection of the appellee; and
- (2) an appellant who desires the stay of a judgment [which falls within the exceptions set forth in Rule 7062] should present to the bankruptcy court an application for a stay stating reasons why the court should exercise its discretion to grant the stay.

9 Collier on Bankruptcy, supra.

The judgment which the appellant, C & S, seeks to stay is a money judgment and does not fall within the exceptions set out in Rule 7062. C & S would be entitled to a stay pending appeal as a matter of right if a supersedeas bond were filed in an amount sufficient to protect the appellees. See Bankruptcy Rule 7062; Fed. R. Civ. P. 62(d). C & S, while only referencing Rule 8005 in their motion for the stay pending appeal would still be entitled to the stay as a matter of right under Rule 7062 as the authority of the court to enter a stay under Rule 8005 is controlled by Rule 7062.

Therefore, it is hereby ORDERED that the motion of C & S for a stay of the judgment pending appeal is granted provided that C & S file with this court within ten (10) days after the date of this order a supersedeas bond in an amount sufficient to satisfy the judgment entered against it. Upon the failure of C & S to file the necessary bond within the time required the stay provided by this order is vacated without further notice.

JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia
this 8th day of March, 1990.