

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

SECURITIES AND EXCHANGE)	CASE NO.: 2:07-cv-00919-DCN
COMMISSION,)	
)	
Plaintiff,)	
)	MEMORANDUM OF LEONARD
v.)	E. FORREST, M.D. IN RESPONSE
)	TO MOTION TO ENFORCE
ALBERT E. PARISH, JR., PARISH)	JUDGMENT AND IMMEDIATELY
ECONOMICS, LLC, and SUMMERVILLE)	DISTRIBUTE PROCEEDS OR IN
HARD ASSETS, LLC,)	THE ALTERNATIVE TO REQUIRE
)	APPELLANT FORREST TO POST
Defendants.)	A BOND
)	

Leonard E. Forrest, M.D. submits the following memorandum in response to the Motion to Enforce Judgment and Immediately Distribute Proceeds or in the Alternative to Require Appellant Forrest to Post a Bond in an Amount Sufficient to Satisfy the Distribution.

BACKGROUND

In 1996 and 1997 Dr. Forrest invested a total of \$3,000,000 with Parish Economics, LLC through its owner, Albert E. Parish. In the years that followed, Mr. Parish reported to Dr. Forrest that his investment had earned outstanding returns, often exceeding thirty percent (30%) annually. Regrettably, in March, 2007, Dr. Forrest and many others in the Charleston community that Mr. Parish was operating a Ponzi scheme and that the money that he had invested was lost.

The Securities and Exchange Commission filed a civil fraud action against Mr. Parish and his companies on April 7, 2007. Gregory Hays was appointed by the United States District Court as the Receiver in that action. On April 30, 2009, the Receiver filed a Motion to Approve Plan for Claims Administration and Distribution of Proceeds. On June 1, 2009, Dr. Leonard E. Forrest the

Receiver's proposal for claims administration, but withheld a ruling on the Receiver's proposed method of distribution. Thereafter, on December, 9, 2009, the Receiver filed a Motion to Approve Schedules of Allowed Claims and Authorize Distribution of Proceeds. Following a hearing on January 15, 2010, the District Court overruled Dr. Forrest's objections and approved the distribution method proposed by the Receiver. Thereafter, Dr. Forrest filed a notice of his intent to appeal that decision. On March 26, 2010 counsel for a number of investors including Kalpana Patel, M.D. filed a motion to compel the Receiver to make an immediate distribution of the assets collected during the receivership, or in the alternative, to require Dr. Forrest to post a bond. For the reasons discussed below, that motion should be denied as to the claims against Dr. Forrest.

ANALYSIS

A SUPERSEDEAS BOND NOT NECESSARY

The purpose of a supersedeas bond is to preserve the status quo and to protect the rights of the non-appealing party pending appeal. Beatrice Foods Co. v. New England Printing and Lithographing Co., 930 F.2d 1572 (Fed. Cir.1991). Rule 62 does not preclude the issuance of a stay based upon a bond in amount less than the full amount of the judgment, or based upon no bond at all.¹ Alexander v. Chesapeake, Potomac and Tidewater Books, Inc., 190 FRD 190 (ED. Va 1999). Citing case law from the Fifth Circuit, the court in Alexander noted that courts have required less than a full bond in two circumstances: when the judgment debtor's ability to pay is beyond dispute; or when the judgment debtor has no ability to post a bond. Id. at 193. Dr. Forrest is not the judgment debtor in this instance, but the reasoning set forth in the Alexander opinion is equally applicable to this situation. Here, no supersedeas bond is necessary or

¹ For purposes of this argument, Dr. Forrest assumes, but does not concede, that the movants have the standing to file this motion and that the rules of procedure permit them to seek an adjudication.

appropriate because the Court is already in possession of the full amount to which the movants claim that they are entitled. Movants would be no more secure if Dr. Forrest is required to post a bond. Thus, the Court should exercise its discretion to deny movant's request to impose that unnecessary and burdensome expense on Dr. Forrest.

FRCP 62 AND FRAP 8 DO NOT APPLY TO MOVANTS

Additionally, the motion should be denied because neither of the rules cited by movants apply in this instance. In support of their request for a supersedeas bond, movants first cite to Rule 8(a)(2)(e) of the Federal Rules of Appellate Procedure. By its specific terms, that rule applies to one of several motions filed in the court of appeals. As this motion is pending in the District Court, the Federal Rules of Appellate Procedure may not serve as a basis for the relief requested.

Likewise, movants' attempt to rely upon Rule 62 of the Federal Rules of Civil Procedure is misplaced. Rule 62(d) states in part that "[i]f an appeal is taken, the appellant may obtain a stay by supersedeas bond . . . ". Further, rule 62(d) requires that the bond be approved by the court. Nothing in that rule permits or contemplates the involvement of anyone other than the appellant and the court in that process.

THE MOVANTS LACK STANDING AS TO THE CLAIMS AGAINST DR. FORREST

The standing doctrine has both constitutional and prudential components. Bishop v. Bartlett, 575 F.3d 419 (4th Cir. 2009), citing Allen v. Wright, 468 U.S. 737, 751, 104 S.Ct. 3315 (1984). In order to satisfy the constitutional component of standing, the movants must show that : (1) they have suffered an "injury in fact" that is concrete and actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action; and (3) it is likely that the injury will be redressed by a favorable decision. Id., citing Friends of the Earth, Inc. v. Laidlaw

Envtl. Servs. (TOC), Inc., 528 U.S. 167, 180-81, 120 S.Ct. 693, 145 L.Ed.2d 610 (2000). As for the prudential component of standing, courts generally recognize several self-imposed constraints including that “the plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties.” Warth v. Seldin, 422 U.S. 490, 499, 95 S.Ct. 2197, 2205 (1975).

As to the claims against Dr. Forrest, the motion before the court fails to meet the constitutional standing requirements set forth above. First, movants have not demonstrated any concrete, immediate injury. Instead, they seek relief because of an expectation that those who expect to receive a distribution from the Receiver may have to wait until the issues on appeal have been decided. The claim of delay is not a concrete, immediate injury which confers standing on movants to force Dr. Forrest to post a bond when considered in the overall context of this case. Additionally, the challenged action is the Receiver’s decision not to distribute assets, not Dr. Forrest’s appeal so the alleged injury is unlikely to be redressed by movants’ request for a bond.

Finally, the movants lack the necessary standing because they appear to base their claim for relief in large part of the legal rights of third parties. Movants candidly acknowledge in their memorandum that “[u]nder the same rising tide method, 162 investors, including many of the Patel investors will receive no distribution at all.” Beyond such general characterizations, movants made no attempt to explain or quantify the expected losses of those Patel investors who are due to receive a distribution under the rising tide method. It is unclear whether the movants expect to receive a significant portion of the assets to be distributed or a fraction of those assets. Nevertheless, it appears that movants seek a bond equal to 125% to 150% of all assets collected by the Receiver which would easily exceed ten million dollars. If that is their intent, the Court

should reject that claim because the movants do not have standing to request a bond based on alleged damages by other claimants.

CONCLUSION

Accordingly, based upon the foregoing, Dr. Forrest respectfully requests that the Court deny all relief requested against him.

/s/ John A. Massalon
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CHARLESTON, SC

April 12, 2010