

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of :
PESTER REFINING COMPANY, : Case No. 85-340-C H
Debtor. : Chapter 11
----- :
ETHYL CORPORATION, : Adversary No. 85-0192
Plaintiff, :
v. :
PESTER REFINING COMPANY, :
Defendant, :
THE UNOFFICIAL UNSECURED :
CREDITORS COMMITTEE, :
Intervenor. :

ORDER--MOTION FOR STAY PENDING APPEAL

This proceeding pends upon Pester Refining Company's ("PRC") Motion for Stay Pending Appeal and Request for Argument. This motion was heard on November 5, 1990, Defendant/Appellant PRC appearing by John G. Fletcher and September Wethington-Smith, Brown, Winick, Graves, Donnelly, Baskerville and Schoenebaum, Attorneys at Law, and the Plaintiff Appellee Ethyl Corporation ("Ethyl") appearing by James M. Holcomb and Robert A. Simms, Bradshaw, Fowler, Procter and Fairgrave, Attorneys at Law.

This Court has jurisdiction over this matter pursuant to Fed.R.Bankr.P. 8005.

FINDINGS OF FACT

1. PRC filed a voluntary petition under Chapter 11 of the Bankruptcy Code on February 25, 1985. Pester Corporation, Pester Marketing, and Petroleum Special, Inc. of Iowa, also filed petitions under Chapter 11 on February 25, 1985. These four cases were never substantively consolidated.

2. The complaint herein was filed on May 29, 1985, and the answer was filed on June 7, 1988.

3. PRC filed a First Amended Joint Disclosure Statement, and on March 21, 1986, the First Amended Joint Plans of Reorganization were approved and confirmed by this Court.

4. The complaint herein was filed on May 29, 1985. The complaint prayed for the reclamation of goods sold by the Plaintiff/Creditor to the Defendant/Debtor, pursuant to 11 U.S.C. §546(c). The answer was filed on June 7, 1988.

5. By agreement of the parties, this adversary proceeding was bifurcated into separate trials. In the first trial the Court determined whether Ethyl had a valid and enforceable right of reclamation of the goods.

6. By order and judgment filed on September 28, 1989, ("1st Judgment"), the Court determined, inter alia, that Ethyl had a valid and enforceable right of reclamation and set the date for valuation of Ethyl's reclamation claim.

7. Defendant/Debtor appealed the 1st Judgment which was

affirmed by the United States District Court, Southern District of Iowa, Central Division, Case No. 89-774-B, on February 16, 1990.

8. The 1st Judgment was thereafter appealed to the 8th Circuit Court of Appeals, where it is now pending.

9. By order of April 6, 1990, the Official Unsecured Creditors Committee was permitted to join in this proceeding as a defendant, and the Intervenor's answer was deemed filed.

10. By order and judgment filed on September 19, 1990, ("2nd Judgment"), this Court determined that Ethyl was entitled to be paid \$126,995.44; that Ethyl was not entitled to interest and costs; and that this Court need not specify the source of funds to pay Ethyl's reclamation claim.

11. PRC filed its notice of appeal of the 2nd Judgment on September 28, 1990, and Ethyl filed its notice of cross-appeal on October 5, 1990.

12. PRC filed its motion for stay pending appeal on September 28, 1990. PRC prays that this Court enter an order staying judgment pending appeal without posting a supersedeas bond.

13. Notwithstanding the fact that the cases of Pester Corporation, Pester Refining Company, Pester Marketing Company, and Petroleum Special, Inc. of Iowa, were never substantively consolidated, administrative expenses of PRC, to-wit: attorney's fees and costs, are routinely paid by

Pester Marketing Company.

DISCUSSION

The court's authority to grant a stay of judgment is governed by Fed.R.Bankr.P. 7062 and Fed.R.Bankr.P. 8005. The former provision enables a party to automatically obtain a stay upon the posting and approval of a supersedeas bond. The latter rule grants the court discretionary authority to grant a stay on such terms as the court determines will protect the rights of all parties in interest.

Much of Fed.R.Bankr. 8005 is an adaption of Fed.R.App.P. 8(a) and (b). Rule 8005 is by design a flexible tool which permits a bankruptcy court to uniquely tailor relief to the circumstances of a case so that the appellate process will neither undo nor overwhelm the administration of the bankruptcy case. In re Gleasman, 111 B.R. 595, 599 (Bankr. W.D. Tex. 1990).

PRC seeks an order staying judgment pending appeal without the posting of a supersedeas bond. The term "supersedeas bond" traditionally describes a bond designed to secure the value of a judgment. In re Smoldt, 68 B.R. 533, 536 (Bankr. N.D. Iowa 1986). The purpose of a supersedeas bond is to indemnify the party who was successful in the bankruptcy court against loss caused by the attempt to gain a reversal in

the appellate tribunal. Norton Bankruptcy Rules, Rule 8005 Editor's Comment (1989-90 ed.). There is in general a strong policy against granting stays without providing some security to the adverse party. Gleasant, 111 B.R. at 602.

The standards for reviewing a discretionary stay pending appeal are:

1. the likelihood of success on the merits of the appeal;
2. the injury suffered by the appellant in denying a stay;
3. the injury to the appellee by granting a stay;
4. the harm to the public interest.

Smoldt, 68 B.R. at 535; see also James River Flood Control Ass'n v. Watt, 680 F.2d 543, 544 (8th Cir. 1982) (application of similar standards in motion for stay pursuant to Fed.R.App.P. 8(a)). The appellant must show satisfactory evidence on all four standards, though they need not be given equal weight. Smoldt, 68 B.R. at 535.

The Court has reviewed the record and concludes PRC has not established the need for a stay of judgment in this matter. This Court's order determining Ethyl had a valid and enforceable reclamation right has been affirmed by the district court and the likelihood of success for PRC on further appeal is questionable. The court sees no harm to the public interest in denying a stay and granting a stay would

harm Ethyl as its judgment contains no provision for interest and delay in enforcing its judgment will decrease the present value of any amounts ultimately recovered from PRC. Granting PRC's request of a stay without a supersedeas bond would further injure Ethyl by denying it any security while the judgment is appealed.

IT IS ACCORDINGLY ORDERED that PRC's request for stay of judgment without a supersedeas bond is denied.

Dated this 10th day of December, 1990.

RUSSELL J. HILL
United States Bankruptcy Judge