

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION

RILEY NATURAL GAS COMPANY,

Plaintiff,

v.

Civil Action No. 15-C-405-3

Presiding Judge: Hon. Paul T. Farrell

Resolution Judge: Hon. H. Charles Carl, III

NORTHSTAR ENERGY CORPORATION,

Defendant.

**ORDER GRANTING PLAINTIFF'S MOTION
TO REQUIRE DEFENDANT TO POST AN APPEAL BOND**

Comes now the Court this 16th day of July, 2019 upon *Plaintiff's Motion to Require Defendant to Post and Appeal Bond* and Defendant's Response to Plaintiff's Motion Seeking to Require Defendant to Post an Appeal Bond.

The Plaintiff, Riley Natural Gas Company, by counsel, and Defendant, Northstar Energy Corporation, by counsel, have fully briefed the issues necessary. The Court dispenses with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process. So, upon the full consideration of the issues, the record, and the pertinent legal authorities, the Court rules as follows.

FINDINGS OF FACT

On May 10, 2019, the Court granted *Plaintiff's Motion for Summary Judgment*. On June 21, 2019, the Court ordered, based upon agreement of the parties, that the amount of damages owed by Defendant to Plaintiff is Five Million Five Hundred Thirty-Eight Thousand Three

Hundred Fifty-One Dollars and Thirty-Seven Cents (\$5,538,351.37) (representing actual damages resulting from breach of the terms of the parties' contract, pre-judgment interest, and costs), plus post-judgment interest accruing after May 10, 2019. On June 7, 2019, Defendant filed an appeal of the May 10, 2019 Order granting *Plaintiff's Motion for Summary Judgment*. On June 19, 2019, Plaintiff submitted *Plaintiff's Motion to Require Defendant to Post an Appeal Bond*. Thereafter, Defendant submitted Defendant's Response to Plaintiff's Motion Seeking to Require Defendant to Post an Appeal Bond. The Court now finds this issue ripe for adjudication.

CONCLUSIONS OF LAW

As an initial matter, Rule 62 of the West Virginia Rules of Civil Procedure governs a stay of proceedings to enforce a judgment. Of particular importance to the instant motion, Rule 62(i) governs a stay of judgment pending an application for appeal. Rule 62(i) provides that “[o]n motion and on such conditions for the security of the adverse party as are proper, the court may stay the issuance of execution upon a judgment and any other proceedings for its enforcement for such reasonable time, to be specified by the court in the stay order, as will enable the moving party to present to an appellate court a petition for appeal from the judgment.” W. Va. R. Civ. P. 62(i).

Further, Rule 28 of the West Virginia Rules of Appellate Procedure governs stays. Under Rule 28(c) of the West Virginia Rules of Appellate Procedure, relief of stay to proceedings of the circuit court in conjunction with an appeal “may be conditioned upon the filing of a bond or other appropriate security in the circuit court, in such amount and upon such conditions as the court granting the stay feels is proper for the protection of the adverse party.” W. Va. R. App. P. 28(c). Also, West Virginia Code § 58-5-14 specifically authorizes the posting of an appeal bond not to exceed the amount of the total judgment, plus costs, interest, and fees. W. VA. CODE § 58-5-14(b).

Here, as an initial matter, the Court finds Plaintiff's discussion of the issue of a stay confusing. Plaintiff cites and discusses Rule 62(a) of the West Virginia Rules of Civil Procedure, which governs an automatic stay. W. Va. R. Civ. P. 62(a); *see also* Pl's Mot., p. 3. Rule 62(a) of the West Virginia Rules of Civil Procedure states that:

"no writ of execution shall issue upon a judgment nor shall other proceedings be taken for its enforcement until the expiration of 10 days after its entry...nor after that time pending the disposition of a motion for judgment as a matter of law made pursuant to Rule 50 or of a motion for new trial made pursuant to Rule 59(a). Pending disposition of such motions and for good cause shown, the court may prescribe such conditions as are necessary to secure the benefit of the judgment to the party in whose favor it is entered."

W. Va. R. Civ. P. 62(a).

Plaintiff further cites and discusses Rule 62(b) of the West Virginia Rules of Civil Procedure, which governs a discretionary stay. W. Va. R. Civ. P. 62(b); *see also* Pl's Mot., p. 3. Rule 62(b) of the West Virginia Rules of Civil Procedure states:

"In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion to alter or amend a judgment made pursuant to Rule 59(e), or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b)."

W. Va. R. Civ. P. 62(b).

Here, there are no pending motions to alter or amend a judgment made pursuant to Rule 59(e), motions for relief from judgment or order made pursuant to Rule 60, or motions for amendment to the findings or for additional findings made pursuant to Rule 52(b). Instead, relief from the Court's final order has been sought by Defendant via an application for appeal to the West Virginia Supreme Court of Appeals. The Court finds Plaintiff's seeking of a stay pursuant Rule 62(a) and (b) misplaced.

Therefore, the Court will construe Plaintiff's request as a motion of Plaintiff, pursuant to W. Va. R. Civ. P. 62(i), for a stay of proceedings to enforce or execute on the judgment in this action until a final adjudication of Defendant's proposed appeal to the West Virginia Supreme Court. *See* W. Va. R. Civ. P. 62(i) (Defendant may request a stay to permit an appeal to the Supreme Court of Appeals of West Virginia conditioned on the posting of an appeal bond...).

Good cause having been shown, for the protection of Plaintiff's interests, and for the reasons set forth in detail in *Plaintiff's Motion to Require Defendant to Post an Appeal Bond*, Plaintiff's Motion is GRANTED.

Accordingly, it is hereby ORDERED and ADJUDGED that Plaintiff's Motion is GRANTED and that proceedings to enforce or execute the June 21, 2019 judgment in this matter are stayed pending final resolution of the Defendant's appeal to the West Virginia Supreme Court of Appeals. This stay is conditioned on Defendant posting an appeal bond. Defendant is required to post an appeal bond sufficient to satisfy the judgment in the amount of Five Million Five Hundred Thirty-Eight Thousand Three Hundred Fifty-One Dollars and Thirty-Seven Cents (\$5,538,351.37) within fifty (50) days of entry of this Order as a condition for Defendant's appeal to continue.

If Defendant does not post the bond within fifty (50) days of entry of this Order, Defendant's appeal shall be dismissed from the docket of the Supreme Court of Appeals of West Virginia pursuant to West Virginia Rule of Appellate Procedure 28(c). Defendant's objections to this Order are noted and preserved.

The Clerk is directed to provide a copy of this Order to counsel of record; to the West Virginia Business Court Division, Berkeley County Judicial Center, 380 W. South Street, Suite

2100, Martinsburg, WV 25401; to the Resolution Judge, Hon. H. Charles Carl, III; and to the Clerk for the Supreme Court of Appeals of West Virginia.

IT IS SO ORDERED.

Entered this 16 day of July 2019:

A handwritten signature in black ink, appearing to read "Paul T. Farrell", written over a horizontal line.

Honorable Paul T. Farrell, Circuit Judge