

In the Circuit Court of Tucker County, West Virginia

Kapitus Servicing Inc.,
Plaintiff,

v.

Case No. CC-47-2022-C-4
Judge Michael Lorensen

**c/O Martin Sheehan, ESQ. Timberline
Four Seasons Utilites, Inc.,
Receiver of Timberline Utilities
Canaan Valley Public Sercice
District,
Defendants**

Order Granting Joint Motion for Stay Pending Appeal

On January 23, 2023, came Plaintiff Kapitus Servicing, Inc. (“Kapitus”) and Defendant Canaan Valley Public Service District (“CVPSD”), by counsel, and moved this Court to enter an order staying all proceedings in this Court pending disposition of Plaintiff’s appeal of the Court’s Order granting in part, and denying in party, Defendants’ Motion to Dismiss. After reviewing the Motion, the record, and applicable law, and being otherwise fully advised, and after careful deliberation, the Court is of the opinion to, and does hereby, grant Kapitus’ and CVPSD’s motion and makes the following findings:

1. On January 19, 2023, Plaintiff filed its “Notice of Appeal” evidencing its intent to seek review and reversal of this Court’s Order granting Defendants’ Motion to Dismiss, in part.

2. Rule 28(a) of the West Virginia Rules of Appellate Procedure provides for a stay of proceedings pending disposition of an appeal, stating in pertinent part:

Any person desiring to present an appeal under Rule [of Appellate Procedure] 5 may make an application for a stay of proceedings to the circuit court in which the judgment or order desired to be appealed was entered. Such application must be made by notice in writing to the opposite party at any time after the entry of the judgment or order to be appealed . . . Such stay shall be effective:

(1) until the expiration of the time provided by law for presenting an appeal; and (2) any additional period after an appeal has been perfected pending final disposition of the appeal, unless sooner modified by such court or by the Supreme Court.

3. The Supreme Court of Appeals of West Virginia has long-recognized that “where it clearly appears that justice will be promoted by staying further proceedings in a cause until the decision of some other cause pending in the same or another court, and that such decision will settle the matter in controversy in the cause in which a stay is asked, such stay should be granted.” *State ex rel. Piper v. Sanders*, 228 W. Va. 792, 724 S.E.2d 763, 796 (2012) (quoting Syl. pt. 1, *Strother v. Morrison*, 100 W. Va. 5, 130 S.E. 255 (1925)).

4. The movants have represented to the Court that the appeal could eliminate many of the issues currently before this Court and could drastically reduce the time and costs of litigation and that the other party in the case, Defendant Timberline Four Seasons Utilities Inc, has no opposition to the motion. As such, a stay of this litigation during Plaintiff’s appeal is appropriate.

5. In view of the foregoing, the Court is of the opinion that parties Joint Motion to Stay Pending Appeal should be, and hereby is, **GRANTED**, and **ORDERS** that all proceedings in the above-captioned matter be **STAYED** pending final disposition of the appeal.

The Clerk of Court is directed to provide a certified copy of this Order to all counsel of record.

ENTERED this 23rd day of January, 2023.

/s/ Michael Lorensen
Circuit Court Judge
21st Judicial Circuit

Jointly submitted by counsel:

/s/ Colton C. Parsons

Sarah C. Ellis (WV Bar #10434)
Benjamin McFarland (WV Bar #9991)
Colton C. Parsons (WV Bar #13243)
Steptoe & Johnson PLLC
707 Virginia Street, East
P.O. Box 1588
Charleston, WV 25326-1588
Telephone: 304.353.8000
Counsel for Kapitus Servicing, Inc.

/s/ Jeffrey S. Zurbuch

Jeffrey Zurbuch, Esq.
Busch, Zurbuch & Thompson, PLLC
P.O. Box 1819
Elkins, West Virginia 26241
jzurbuch@bztlaw.com
Counsel for Defendant CVPSD

John W. Cooper, Esq.
Cooper & Preston, PLLC
P.O. Box 167
Davis, WV 26260
Counsel for Defendant CVPSD

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit www.courtswv.gov/e-file/ for more details.