

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

BB LAND, LLC, a West Virginia Company,  
and JB EXPLORATION 1, LLC, a  
West Virginia Company,

Plaintiffs,

vs.

Civil Action No.: 18-C-2  
Presiding: Judge Lorensen  
Resolution: Judge Wilkes

BLACKROCK ENTERPRISES, LLC,  
a West Virginia Company, and  
MICHAEL L. BENEDUM,

Defendants.

ORDER GRANTING IN PART DEFENDANT BLACKROCK ENTERPRISES, LLC'S  
MOTION TO STAY JUDGMENT PENDING APPEAL

Comes now the Court this 7<sup>th</sup> day of July 2022, upon *Defendant Blackrock Enterprises, LLC's Motion to Stay Judgment Pending Appeal*.

The Defendant, Blackrock Enterprises, LLC, by counsel, Brian R. Swiger, Esq., and Plaintiffs, BB Land LLC and JB Exploration I, LLC (hereinafter "Jay-Bee"), by counsel, Geoffrey H. Bracken, Esq., 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

1. This matter came before Court in a jury trial which took place on March 2-12, 2021 (“Phase 1”) and again for a bench trial which took place on September 22-23, 2021 (“Phase 2”).

2. On April 25, 2022, the Court entered the Final Judgment Order, finding that RUPA controls the parties’ relationship with respect to the lease interests that have been developed, and that the disposition of jointly owned undeveloped lease interests shall be controlled by West Virginia Code Chapter 37. *See* Ord., 4/25/22, ¶66.

3. On May 23, 2022, Defendant filed Defendant Blackrock Enterprises, LLC’s Motion to Stay Judgment Pending Appeal, seeking “that the portions of its Order requiring Blackrock to quitclaim its interests in and to all properties subject to the LAA and de facto mining partnership’ to BB Land, LLC and JB Exploration 1, LLC...and ordering partition of the undeveloped leases be stayed”. *See* Def’s Mot., p. 1.

4. On May 31, 2022, Plaintiff filed Jay-Bee’s Response to Blackrock’s Motion to Stay Judgment Pending Appeal, arguing the instant motion should be denied because “it has not and cannot establish that: (1) its appeal has a likelihood of success on the merits; or (2) it will suffer irreparable harm if the stay is denied” and if the stay is granted, Plaintiff will be the party that suffers irreparable harm, not Defendant. *See* Pl’s Resp., p. 1. Further, if the request for a stay were to be granted, Plaintiff argues a bond should be required “in an amount that would adequately protect Jay-Bee’s monetary and property interests recovered under the Final Judgment”. *Id.* Additionally, if the request for stay were to be granted, Plaintiff requests that Blackrock and Benedum (or any third party acting on either of their behalf) must be enjoined from transferring, conveying, or alienating any of the relevant property interests addressed in the Court’s Final Judgment during the pendency of Blackrock’s appeal. *Id.*

1. On July 6, 2022, Defendant filed its Defendant Blackrock Enterprises, LLC’s Reply in Support of its Motion to Stay Judgment Pending Appeal, reiterating its contention that it would

be the harmed party if a stay were not granted, and arguing Jay-Bee would not be harmed by a stay of judgment pending resolution of the appeal. *See* Reply, p. 1, 3-4. Blackrock also averred it should be granted a stay without “bail” or an appeal bond. *Id.* at 1, 4-6.

2. The Court now finds this issue ripe for adjudication.

### **CONCLUSIONS OF LAW**

3. 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).

4. 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).

5. Further, Rule 62(i) of the West Virginia Rules of Civil Procedure states that a “[d]efendant 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”. *See* W.Va. R. Civ. P. 62(i).

6. Here, Defendant moved for a stay of proceedings during the pendency of its appeal pursuant to Rule 62(i). *See* Def's Mot., p. 1. The Court, finding good cause has been shown, hereby grants Defendant's request that the proceedings to enforce or execute on the April 25, 2022 judgment in this matter are stayed pending the final resolution of the Defendant's appeal to the West Virginia Supreme Court of Appeals.

7. The Court addresses the issue of irreparable harm. Defendant argues it will suffer irreparable harm/injury if the stay is not granted. *See* Def's Mot., p. 2-3; *see also* Reply, p. 1, 3-4. On the other hand, Plaintiff avers it will be the party suffering irreparable injury if the stay is granted. *See* Pl's Resp., p. 1. The Court considers that the judgment relief in this matter is not mere economic damages. Instead, this specific litigation and this judgment involves numerous property interests to be conveyed, including developed leasehold interests, and undeveloped leasehold interests which require special commissioners to evaluate and partition. While the Court is sympathetic to Plaintiff's desire to achieve finality in what has been a long and complex litigation, the Court finds it would be most efficient for this case to proceed through the appellate process before the property interests are conveyed. The Court notes it has also been proffered that Jay-Bee has been able to recently drill wells in the jointly-owned acreage, despite properties not yet being conveyed by Blackrock and related entities to Jay-Bee. *See* Reply, p. 4; *see also* Pl's Resp., p. 8. The Court finds good cause has been shown, given the subject matter of this specific case and judgment, to allow the parties to fully resolve their property interests issues upon appeal before conveying properties and having independent commissioners value the land interests involved in the partition.

8. Next, the Court considers that Defendant moved the Court for a stay of proceedings for an appeal, but did not address the issue of a bond or security for Plaintiff. In Response, Plaintiff

requested a bond if the Court were to grant the stay. *See* Pl's Resp., p. 1. Additionally, if the request for stay were to be granted, Plaintiff requests that Blackrock and Benedum (or any third party acting on either of their behalf) must be enjoined from transferring, conveying, or alienating any of the relevant property interests addressed in the Court's Final Judgment during the pendency of Blackrock's appeal. *Id.* In Reply, Blackrock argued that an appeal bond should not be required. *See* Reply, p. 1, 4-6.

9. The Court finds that Plaintiff set forth good cause for the issuance of a bond. Further, the Court finds that is in its discretion to order a bond. Additionally, Defendant has proffered no other facts or argument persuasive to this Court to show that no bond should be required.

10. Therefore, good cause having been shown, for the protection of Plaintiff's interests, and for the reasons set forth in detail in Plaintiff's Response to Defendant's Motion to Stay Judgment Pending Appeal, Defendant's Motion is GRANTED IN PART insofar as a stay of proceedings is granted upon appeal, but the Court finds that an appeal bond is appropriate.

11. Accordingly, it is hereby ORDERED and ADJUDGED that Defendant's Motion is GRANTED IN PART and that proceedings to enforce or execute the April 25, 2022 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 amount of lease extension payments that Jay-Bee paid to continue the leases acquired and not previously assigned to Jay-Bee by Blackrock, which is \$483,178.50, within fifty (50) days of entry of this Order as a condition for Defendant's appeal to continue.

12. The Court, in its discretion, finds that an appropriate bond amount consists of the amount of lease extension payments that Jay-Bee paid to continue the leases acquired and not previously assigned to Jay-Bee by Blackrock, which is \$483,178.50. *See* Final Judgment Ord., 4/25/22, ¶61; *see also* Pl's Resp., p. 8. The Court finds that the amount paid for lease extension payments by Jay-Bee is adequate to protect Plaintiff's interests.

13. 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.

14. 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 and to the Clerk for the Supreme Court of Appeals of West Virginia.

IT IS SO ORDERED.

ENTERED this 7<sup>th</sup> day of July 2022.



---

JUDGE MICHAEL D. LORENSEN  
JUDGE OF THE WEST VIRGINIA  
BUSINESS COURT DIVISION