



**IT IS ORDERED as set forth below:**

**Date: July 14, 2008**

**Paul W. Bonapfel  
U.S. Bankruptcy Court Judge**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION

IN RE:	:	
	:	Case Nos. 04-40656 through
SOUTHWEST RECREATIONAL	:	04-40658
INDUSTRIES, INC., et al.,	:	
	:	(Jointly administered under
Debtors.	:	Case No. 04-40656)
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RONALD L. GLASS AS CHAPTER 7 TRUSTEE	:	
OF SOUTHWEST RECREATIONAL	:	
INDUSTRIES, INC.,	:	
Plaintiff,	:	
vs.	:	Adversary No. 05-4066
	:	
ISOTEC INTERNATIONAL, INC.,	:	
	:	
Defendant.	:	
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**ORDER DENYING MOTION TO STAY POST-JUDGMENT  
DISCOVERY AND COLLECTION**

Isotec International, Inc. (“Isotec”), seeks a stay of post-judgment discovery and

collection in connection with the money judgment entered against it in favor of the Trustee on March 27, 2008, pending the appeal of the order and judgment before the District Court. Isotec contends that the stay of post-judgment discovery during the pendency of the appeal is warranted to protect sensitive customer and financial data and to prevent undue harassment of Isotec and its business relationships. The Trustee opposes a stay pending appeal but offers that, if the Court grants a stay, Isotec should be required to post a bond in the amount of \$125,000. For the reasons stated herein, Isotec's request for a stay pending appeal is denied.

Bankruptcy Rule 8005 provides that "a motion for a stay of the judgment, order, or decree of a bankruptcy judge, for approval of a supersedeas bond, or for other relief pending appeal must ordinarily be presented to the bankruptcy judge in the first instance. Notwithstanding Rule 7062 but subject to the power of the district court and the bankruptcy appellate panel reserved hereinafter, the bankruptcy judge may suspend or order the continuation of other proceedings in the case under the Code or make any other appropriate order during the pendency of an appeal on such terms as will protect the rights of all parties in interest."

A stay pending appeal is comparable to an injunction. Thus, courts considering the propriety of a stay pending appeal have adopted a similar standard to that used for the imposition of a preliminary injunction. Generally, courts consider four factors:

- (1) whether the movant is likely to prevail on the merits on appeal;
- (2) whether, absent a stay, the movant will suffer irreparable damage;
- (3) whether the adverse party will suffer substantial harm from the issuance of the stay;
- (4) whether the public interest will be served by issuing the stay.

*See, e.g., In re Davis*, 373 B.R. 207 (Bankr. N.D. Ga. 2007) (Drake, J.); *cf. Garcia-Mir v. Meese*, 781 F.2d 1450 (11<sup>th</sup> Cir. 1986) (employing same four factor test in consideration of stay pending appeal under Rule 8(a) of the Federal Rules of Appellate Procedure). The Court will examine each factor in turn.

Whether Isotec is likely to prevail on appeal

Isotec's arguments, while earnest, do not demonstrate that it is likely to prevail on appeal. Isotec repeats four arguments, all of which the Court has already considered. [Doc. 34, Order on Cross Motions for Summary Judgment; Doc. 53, Findings of Fact and Conclusions of Law; Doc. 69, Order Denying Motion to Alter or Amend]. Two arguments have no merit at all ((iii) and (iv), Doc. 77, Brief at 5-6). The other two ((i) and (ii)) have more appellate potential, from Isotec's point of view, but the Court after careful consideration has rejected them. Isotec has shown nothing new to persuade the Court that it erred as a matter of fact or law. Therefore, the Court cannot conclude Isotec is likely to prevail on the merits.

Whether Isotec will suffer irreparable damage

Isotec contends that information sought by the Trustee in his post-judgment interrogatories and request for production of documents will provide the Trustee with the means to "harass, leverage and harm [Isotec] and [Isotec's] customer, business, and financial relationships during pendency of appeal." [Brief at 8]. The information sought by the Trustee includes Isotec's assets, current customers, account statements, tax returns, accounts receivables information, and customer accounts receivables. Isotec's chief executive officer, Charles Knight, avers that such information contains highly confidential and proprietary information of customers and disclosure of such will cause irreparable harm to Isotec's customer and financial

relationships. Specifically, Knight states that Isotec is a “customer based product supply business reliant upon confidentiality and intellectual property and technology, with its survival also intimately tied to its relationships with its financial institutions to provide the means and lending to do business and extend credit to customer accounts.” [Doc. 77, Exh. C, Affidavit of Charles Knight, ¶ 9].

The party seeking a stay must demonstrate that irreparable harm is “imminent, not remote or speculative.” *In re City of Bridgeport*, 132 B.R. 81, 83 (Bankr. D.Conn. 1991). Thus, the harm to Isotec caused by post-judgment discovery must be not only likely, but immediate. The facts as set forth in Knight’s affidavit are not sufficient to show irreparable harm. They are, at best, speculative and hypothetical. Isotec has not shown that the disclosure of the information requested will, with a degree of likelihood, result in harassment and harm to Isotec’s business and customer relationships. Much of Isotec’s concern involves the proprietary nature of its work and its confidential customer based business. Confidentiality concerns are more appropriately addressed by means of a protective order as contemplated by Rule 26(c) of the Federal Rules of Civil Procedure (made applicable by Rule 7026 of the Federal Rules of Bankruptcy Procedure) and § 107 of the Bankruptcy Code. To the extent the parties cannot agree on terms of disclosure that will address Isotec’s concerns, Isotec may seek such a protective order.

Whether the Trustee will suffer harm from issuance of stay

Isotec contends that the Trustee will not suffer substantial harm if the Court stays post-judgment discovery and collection efforts because the bankruptcy case is largely completed with no other pending matters that would be affected by the grant of a stay. The Trustee counters that, although Isotec’s CEO indicates a willingness to pay the judgment in the event it does not prevail

on appeal, the harm to the Trustee is that he is being asked to wait to collect on the judgment without the posting of a bond.

The general federal rule with regard to a money judgment is that one who prevails in trial court may proceed to enforce its judgment. If it must await appellate review, risks of collection are increased. Indeed, this is a primary purpose of requiring an appellant to post a bond. *See Poplar Grove Planting and Refining Co., Inc. v. Bache Halsey Stuart, Inc.*, 600 F.2d 1189, 1191 (5<sup>th</sup> Cir. 1979) (“the bond [under Rule 62(d)] secures the prevailing party against any loss sustained as a result of being forced to forgo execution on a judgment during the course of an ineffectual appeal”). Isotec’s promise of voluntary payment in the event the appeal is not successful is not a bond or guarantee. Absent clear showing from Isotec that delay will not prejudice the Trustee in this regard, the Court cannot conclude that a stay will not harm the Trustee.

Whether the stay will serve public interest

Isotec contends that there is no public policy interest to contradict the granting of a stay of post-judgment discovery pending the appeal. This is partially true. There is no public policy interest, such as a matter of public health, welfare, or security implicated by this proceeding. However, there is a general public policy favoring the finality of judgments and a particular bankruptcy policy in seeing that a bankruptcy case is administered efficiently. *See In re Porter*, 54 B.R. 81, 82 (Bankr. N.D. Okla. 1985) (“The public interest, though difficult to measure in a case involving primarily private rights, is generally served by moving forward.”). Further, public policy is expressed in the general rule permitting a prevailing party to proceed to enforce a judgment unless a supersedeas bond is posted.

Based on the foregoing, the Court concludes that Isotec has failed to demonstrate a basis for staying post-judgment discovery and collection pending the appeal of the Court's Order and Judgment. The Court's denial of Isotec's motion is without prejudice to Isotec's rights to obtain a stay under Rule 62(d) of the Federal Rules of Civil Procedure (applicable under Rule 7062 of the Federal Rules of Bankruptcy Procedure) by giving a supersedeas bond. Accordingly, it is

ORDERED that Isotec's motion to stay post-judgment discovery and collection is denied.

End of Order

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