

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

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U.S. COURT OF APPEALS
10TH CIRCUIT
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U.S. COMMODITY FUTURES)
TRADING COMMISSION and)
OKLAHOMA DEPARTMENT OF)
SECURITIES ex rel. IRVING . L)
FAUGHT,)

Plaintiffs,)

v.)

PRESTIGE VENTURES CORP., a)
Panamanian corporation, FEDERATED)
MANAGEMENT GROUP, INC. A Texas)
corporation, KENNETH WAYNE LEE an)
individual, and SIMON YANG (a/k/a)
XIAO YANG a/k/a SIMON CHEN), an)
individual,)

Defendants, and)

SHEILA M. LEE, an individual, DAVID A.)
LEE, an individual, and DARREN A. LEE,)
an individual,)

Relief Defendants,)

No. 10-6276,CFTC, et al v. Lee, et al

Joint Motion for Reconsideration of
Denial of Motion to Stay Judgment
and Receivership . . .

Motion for Reconsideration of Denial of Motion to Stay Judgment and Receivership . . .

INTRODUCTION

The Appeal Court's denial of Defendant Kenneth Lee and Relief Defendant's Motion to Stay Judgment and Receivership raises substantial issues for the Court of Appeals to resolve. A stay Pending appeal is necessary to preserve the *status quo*, which would otherwise be irreparably

altered. Moreover, a stay pending appeal would prevent irreparable injury to Defendant and Relief Defendants. The Plaintiffs, nor Public Interest, would suffer any harm if a stay were to be granted by the respected Circuit Court. The Court of Appeals stated in the denial of the Motion to Stay, "In determining whether to grant a stay pending appeal, the moving party must address four factors: "(1) the likelihood of success on appeal; (2) the threat of irreparable harm if the stay or injunction is not granted; (3) the absence of harm to opposing parties if the stay or injunction is granted; and (4) any risk of harm to the public interest." *FTC v. Mainstream Mktg. Servs., Inc.*, 345 F.3d 850, 852 (10th Cir. 2003) (per curiam); *see also* 10th Cir. R. 8.1." The aforementioned factors will be addressed below.

ARGUMENT

I. THE LIKELIHOOD OF SUCCESS ON APPEAL

Although the Court of Appeals, ultimately, found in favor of the Plaintiffs by denying the appellant's Motion for a Stay, there can be little question that this case raises substantial civil rights issues. For example, there are questions as to whether: the rights of due process were denied by the Plaintiffs and District Court by freezing all assets before notification of Complaint; it was a violation of Defendant and Relief Defendant's procedural due process rights of notice and opportunity to be heard; the Plaintiffs ignored all evidence that showed investments from the Lee family members. The Plaintiffs failed to, legitimately, comply with Defendant and Relief Defendants discovery requests. Defendant and Relief Defendant's accounts statements were never taken into consideration. The Receiver ignored evidence submitted by Defendant and Relief Defendants that informed Receiver of approximately \$1,000,000 in Defendant Kenneth Lee and Relief Defendant's accounts in 2004. The Plaintiffs cannot dispute, nor can account for

\$1,300,000 and will not acknowledge that all, or even a part of it, could belong to Defendant Kenneth Lee and Relief Defendants. The Receiver was to be unbiased in his analysis of the accounts. The Receiver did not follow that protocol. The Receiver discriminated against Relief Defendants and Defendant Kenneth Lee from the first day. The Receiver stated in the April 21st, 2010 hearing (P. 15 lines 14-18), "Unfortunately, a number of the investments were made by wire transfer and the incoming wires are identified on the bank statement, but there isn't necessarily a name attached to the incoming wire, so it would appear to be investor funds, but it's impossible to know which investor's funds they are." None of the wire transfers were taken into consideration by the Receiver after showing the Receiver the transfers that matched up with Defendant and Relief Defendants statements from the Panamanian account records. Kenneth Lee submitted to the CFTC and Receiver, in June of 2010, a breakdown of the money that Defendant Kenneth Lee and Relief Defendant Sheila Lee accumulated since 1983 (Exhibit 1). That amount was over \$790,000 and did not include the amount of approximately \$300,000 that was wired into Prestige Ventures. None of those funds that were submitted as evidence, to the Receiver, were ever credited by the Receiver, or Plaintiffs. The Receiver and Plaintiffs claim that, "not one shred of evidence" was submitted to show that Defendant Kenneth Lee and Relief Defendants had the funds to purchase the residences, boat, and bank accounts from 2002-2009. The Plaintiffs placed that large amount of money on the investors side, and they denied that the money was Defendant Kenneth Lee and Relief Defendant Sheila Lee's. Without the Plaintiffs or Receiver acknowledging the amount of money that was invested in Prestige Ventures by Defendant and Relief Defendants, the Plaintiffs and Receiver would, essentially, be illegally confiscating the homes and other assets from Defendant Kenneth Lee and Relief Defendants.

The Receiver denied Defendant and Relief Defendants discovery request for the final full accounting of company transactions and a list of the alleged 140 customers that the Receiver cannot account for. The CFTC denied the Defendant and Relief Defendants their rights to full discovery. The Plaintiffs failed to turn over any of the requested documents before the Motion for Summary Judgment was granted in the District Court. The District Court abused its discretion by not giving the Defendants and Relief Defendants time to respond to the Motion for Summary Judgment because Defendants and Relief Defendants represented themselves *Pro Se* without the benefit of co-operative discoverable information from the Plaintiffs. With all Defendant and Relief Defendants' bank accounts frozen, it was extremely difficult to even afford postage to answer Plaintiffs motions, much less order documents from across the country as they stated we had to do.

The material facts made by the Plaintiffs in the Motion for Summary Judgment were always disputed throughout the entire process of every motion and answer pertaining to this case. The Plaintiffs had submitted nothing that was not already a material fact in dispute.

The District Court knew that Plaintiffs had refused to turn over the document requests requested in the timely fashion of the discovery process. Evidence and documents that were shown in the second depositions of Darren Lee and Kenneth Lee, nor the transcripts of the depositions themselves, were ever turned over to the Defendants or Relief Defendants, when told by the Plaintiffs that those documents would take a week to be received from the CFTC and ODS. The CFTC returned their objections of the Admissions, Interrogatories, and Document requests after the Motion of Summary Judgment was due. The CFTC refused to comply with answering them after they claimed the discovery phase was over when, in all actuality, there was 30 days

remaining in the discovery phase. Darren Lee notified the District Court of the Plaintiffs objections to discovery on September 13th and requested patience. The difficulties in successfully representing yourself *Pro Se*, with little legal knowledge, is virtually impossible without cooperation from the District Court and the Plaintiffs. With the facts that Defendant and Relief Defendants were denied their rights to procedural due process, the District Court failed to uphold its obligation of ensuring that the interests of justice were upheld. The merits of appeal are clearly identified in the violations of the Plaintiffs and District Court stated above.

Also, (“where the denial of a stay will utterly destroy the status quo, irreparably harming appellants, but the grant of a stay will cause relatively slight harm to appellee, appellants need not show an absolute probability of success in order to be entitled to a stay”); *Thiry v. Carlson*, 891 F. Supp. 563, 566 (D. Kan. 1995) (same).

With the information and facts stated above, the merits of appeal are strongly in favor of Defendant and Relief Defendants.

II. THE THREAT OF IRREPARABLE HARM IF THE STAY OR INJUNCTION IS NOT GRANTED.

Where the “harm” factors tip strongly in Defendant and Relief Defendant’s favor of a stay, the movant need only demonstrate it has raised “questions going to the merits so serious, substantial, difficult, and doubtful as make the issue ripe for litigation and deserving of more deliberate investigation,” and not that its success on appeal is more probable than not. *Id.*, quoting *Prairie Band of Potawatomi Indians v. Pierce*, 252 F.3d 1234, 1246-57 (10th Cir. 2001). See also *AARP v. EEOC*, 390 F. Supp. 2d 437, 462-63 (E.D. Pa. 2005)

The denial of a stay pending Appeal will destroy 2 of the appellants, elderly individuals in

their 70's, before the Court of Appeals considers anything in the appeal before them. Defendant and Relief Defendants have no monies to move from their dwellings, and no monies for a place to stay in these hard economic times. If this stay is denied, the Receiver will be free to consummate the Order and Judgment immediately, liquidating all assets, therefore, making it impossible to recover. Defendant and Relief Defendants will then be effectively foreclosed from obtaining adequate compensation and relief if the judgment is overturned in the Court of Appeals. This outcome of being homeless with no home, or bank accounts, would irreparably harm Defendant Kenneth Lee and Relief Defendants if the motion to stay is not granted.

III. THE ABSENCE OF HARM TO OPPOSING PARTIES IF THE STAY OR INJUNCTION IS GRANTED

The Receiver and Plaintiffs have already frozen the assets of Defendant and Relief Defendant in litigation, there is no threat of absconding, or disposing of assets by Defendant and Relief Defendants. There will be no harm inflicted upon the Plaintiffs if a stay is granted because all assets are already frozen in their possession until the Court of Appeals overturns the District Courts Order and Judgment. A stay would actually benefit the Plaintiffs if the Court of Appeals denies the overturning of the Judgment and Order on the grounds that the housing market is picking up. The stay could greatly increase the amount returned to investors if the Court of Appeals rules in the Plaintiffs favor of the Judgment and Order.

IV. ANY RISK OF HARM TO THE PUBLIC INTEREST

With the receiver in place, there is no danger of losing any of the Defendants and Relief Defendants' assets frozen in litigation that would threaten public interest. Granting the motion to stay would not inflict any harm to the public. Both Prestige Ventures and Federated Management,

having been frozen in litigation, can inflict no harm on the public. Conversely, granting the motion to stay would allow Defendant and Relief Defendants to stay in their homes during the pendency of the appeal, inflicting no harm to the public. There is no risk involving the harming of public interest.

CONCLUSION

For the reasons identified above and the reasons stated in the Motion to Stay Judgment and Receivership Pending the Court of Appeals' Resolution of Defendants' Motion Pursuant to Federal Rule of Appellate Procedure 8(a)(2), Defendant Kenneth Lee and Relief Defendants request that the Court of Appeals grant a stay pending appeal of the District Court's Order and Judgment. Defendant Kenneth Lee and Relief Defendants also request an emergency stay pending appeal before the Receiver removes Defendant and Relief Defendants from their residences on February 7th, 2011, which would therefore, make this a fruitless victory when the Court of Appeals overturns the Judgment and Order. Liquidating the assets before the Defendant and Relief Defendants have a voice in the appellate court would be another denial of the procedural due process rights of notice and the opportunity to be heard.

Dated: February 2, 2011

Respectfully submitted,

Digitally Signed

/s/ Darren Alexander Lee

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/s/ Kenneth Wayne Lee

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CERTIFICATE OF SERVICE

I hereby certify that, on February 02, 2011, I caused one copy of **Motion for Reconsideration of Denial of Motion to Stay Judgment and Receivership . . .** to be served by U.S. Mail on the following:

Katherine S. Driscoll
1155 21st Street NW
Washington, DC 20581

Terra Shamas Bonnell
Oklahoma Department of Securities
120 North Robinson Avenue, Suite 860
Oklahoma City, OK 73102

Stephen Moriarty
Receiver
100 North Broadway, Suite 1700
Oklahoma City, Oklahoma 73102-8820

/s/ Darren Alexander Lee
Darren Alexander Lee

Exhibit 1

Other Funds:

House	3400 Montecito Road Denton, TX	\$ 283,000.00 1987
House	Williamstown Dallas, TX	\$ 145,000.00 1988
House	3100 Montecito Road Denton, TX	\$ 86,000.00 1997
House	3100 Montecito Road Denton, TX	\$ 6,750.00 1997
Trading	Trade Profits - Dallas	\$ 84,000.00 1987 - 1991
Trading	Trade Profits - Denton Denton, TX	\$ 76,000.00 1991 - 2000
Sheila	Invested Dallas, TX	\$ 40,000.00 2000
Software	Hotel Program Dallas, TX	\$ 7,000.00 2001
Software	Accounting Program Dallas, TX	\$ 8,000.00 2001 - 2002
Software	Accounting Program Dallas, TX	\$ 12,500.00 2001 - 2002
Software	Builder Account Program Dallas, TX	\$ 6,500.00 2002
Darren	Invested Dalias, TX	\$ 3,000.00 2001 - 2002
Darren	Invested Mt Pleasant, SC	\$ 15,000.00 2005
David	Invested Dallas, TX	\$ 12,500.00 2002
David	Invested Mt Pleasant, SC	\$ 5,000.00 2009
Sheila	Invested Mt Pleasant, SC	\$ 1,000.00 2009
		\$ 791,250.00