

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 00-33898

CATHERINE L. PRINTUP
a/k/a CATHERINE FLOWERS
a/k/a KATIE PRINTUP
a/k/a CATHERINE HOLLAND

Debtor

CATHERINE L. PRINTUP

Plaintiff

v.

Adv. Proc. No. 00-3152

HOUSEHOLD FINANCIAL SERVICES,
INC. and ASSOCIATES FINANCIAL
SERVICES CO., INC.

Defendants

MEMORANDUM ON MOTION FOR STAY PENDING APPEAL

APPEARANCES: JAMES M. CRAIN, ESQ.
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RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

By Judgment dated July 26, 2001, the court denied the Plaintiff's Objection to Claim of Secured Status by which the Plaintiff sought a determination that two Deeds of Trust encumbering her residence were invalid due to each instrument's failure to identify a trustee.¹ Subsequently, on August 9, 2001, the court entered an Order denying the Plaintiff's Motion to Amend Judgment. On August 16, 2001, the Plaintiff then filed a Notice of Appeal.

Presently before the court is the Plaintiff's Motion for Stay Pending Appeal (Motion) filed August 29, 2001. The Motion is brought pursuant to FED. R. BANKR. P. 8005, which provides in material part:

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 motion for such relief, or for modification or termination of relief granted by a bankruptcy judge, may be made to the district court or the bankruptcy appellate panel, but the motion shall show why the relief, modification, or termination was not obtained from the bankruptcy judge.

I

In determining whether a stay should be granted, the court should consider four factors:

- (1) the likelihood that the movant will prevail on the merits of the appeal;
- (2) the likelihood that the movant will be irreparably harmed absent a stay;

¹ The factual background of this adversary proceeding has been previously set forth by the court, see *Printup v. Household Fin. Servs., Inc. (In re Printup)*, Ch. 7 Case No. 00-33898, Adv. No. 00-3152 (Bankr. E.D. Tenn. July 26, 2001), and will not be repeated herein.

- (3) the chance that others will be harmed if the court grants the stay; and
- (4) the public interest in granting the stay.

See *Stephenson v. Rickles Elecs. & Satellites (In re Best Reception Sys., Inc.)*, 219 B.R. 988, 992 (Bankr. E.D. Tenn. 1998) (citing *Michigan Coalition of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 153 (6th Cir. 1991)); accord *Stearns Bldg. v. WHBCF Real Estate (In re Stearns Bldg.)*, No. 98-1257, 1998 WL 661071, at *3 (6th Cir. Sept. 3, 1998) (Applying *Griepentrog* to a Rule 8005 motion). “These factors are not prerequisites that must be met, but are interrelated considerations that must be balanced together.” *Griepentrog*, 945 F.2d at 153. The relationship of these elements has been further explained as follows:

To justify the granting of a stay, however, a movant need not always establish a high probability of success on the merits. The probability of success that must be demonstrated is inversely proportional to the amount of irreparable injury plaintiffs will suffer absent the stay. Simply stated, more of one excuses less of the other. This relationship, however, is not without its limits; the movant is always required to demonstrate more than the mere “possibility” of success on the merits. For example, even if a movant demonstrates irreparable harm that decidedly outweighs any potential harm to the defendant if a stay is granted, he is still required to show, at a minimum, “serious questions going to the merits.”

In evaluating the harm that will occur depending upon whether or not the stay is granted, we generally look to three factors: (1) the substantiality of the injury alleged; (2) the likelihood of its occurrence; and (3) the adequacy of the proof provided. In evaluating the degree of injury, it is important to remember that

[t]he key word in this consideration is *irreparable*. Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.

In addition, the harm alleged must be both certain and immediate, rather than speculative or theoretical. In order to substantiate a claim that irreparable

injury is likely to occur, a movant must provide some evidence that the harm has occurred in the past and is likely to occur again.

Id. at 153-54 (citations omitted) (emphasis in original).

II

Clearly, under *Griepentrog*, a Rule 8005 movant need not make a strong showing on each of the four pertinent factors. Certain minimum burdens, however, must be met. The Plaintiff's failure to make these required showings dictates that her Motion must be denied.

The Plaintiff alleges that, absent the requested stay, the Defendants would perhaps foreclose on her home. This possibility, according to the Plaintiff, "clearly and persuasively" establishes a likelihood of irreparable harm. The court disagrees. For purposes of Rule 8005, "the harm alleged must be both certain and immediate" and must be substantiated by some evidence. *Griepentrog*, 945 F.2d at 154. The Plaintiff's unsupported allegation of speculative future harm is simply insufficient to warrant a stay pending appeal.

Similarly, the Plaintiff has failed to demonstrate "serious questions" regarding the court's Judgment that would indicate more than a "mere possibility of success" on the merits. In her Brief in Support of Motion for Stay Pending Appeal, the Plaintiff rehashes arguments that demonstrate, at best, her confusion regarding the effect that her Chapter 7 discharge has on a tenancy by the entirety interest that was never part of her individual bankruptcy estate. The Plaintiff additionally points to uncertainty regarding an issue of state property law. This issue, however, was not a basis for the court's Judgment.

In short, the Plaintiff has not demonstrated “serious questions going to the merits” of the court’s prior decisions in this case nor has she offered evidence of a “certain and immediate” danger of irreparable harm. Accordingly, the court need not address the third and fourth considerations set forth in *Griepentrog*.

The Plaintiff’s Motion for Stay Pending Appeal will be denied. An appropriate order will be entered.

FILED: September 10, 2001

BY THE COURT

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

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ORDER

For the reasons stated in the Memorandum on Motion for Stay Pending Appeal filed this date, the court directs that the Motion for Stay Pending Appeal filed by the Plaintiff on August 29, 2001, is DENIED.

SO ORDERED.

ENTER: September 10, 2001

BY THE COURT

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE