



SO ORDERED.

SIGNED this 04 day of September, 2008.

**THIS ORDER HAS BEEN ENTERED ON THE DOCKET.
PLEASE SEE DOCKET FOR ENTRY DATE.**

A handwritten signature in black ink, appearing to read "Richard Stair Jr.", written over a horizontal line.

**Richard Stair Jr.
UNITED STATES BANKRUPTCY JUDGE**

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

In re

Case No. 00-32361

DAVID A. LUFKIN
a/k/a DAVID A. LUFKIN, ATTORNEY

Debtor

WILLIAM T. HENDON, TRUSTEE

Plaintiff

v.

Adv. Proc. No. 01-3059

DAVID A. LUFKIN

Defendant

**MEMORANDUM AND ORDER
ON MOTION FOR STAY**

Before the court is the Motion For Stay filed by the Defendant, *pro se*,¹ on August 28, 2008, asking the court, pursuant to Rule 8005 of the Federal Rules of Bankruptcy Procedure, for a stay

¹ The Defendant's attorney, John P. Newton, Jr., has not withdrawn from representing the Defendant in this adversary proceeding. See E.D. Tenn. LBR 2091-1.

pending his appeal of the Order entered on July 17, 2008, granting in part and denying in part the Plaintiff's Motion for Partial Summary Judgment and sustaining the Plaintiff's objection to the Defendant's discharge under 11 U.S.C.A. § 727(a)(5) (West 2004).

Rule 8005 provides, in material part:

A motion for 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 . . . 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.

FED. R. BANKR. P. 8005. Whether to grant a motion for a stay pending appeal is within the court's discretion, *In re Level Propane Gases, Inc.*, 304 B.R. 775, 777 (Bankr. N.D. Ohio 2004), and in making its determination, the bankruptcy court looks to the following factors:

[W]e consider the same four factors that are traditionally considered in evaluating the granting of a preliminary injunction. These well-known factors are: (1) the likelihood that the party seeking the stay will prevail on the merits of the appeal; (2) the likelihood that the moving party will be irreparably harmed absent a stay; (3) the prospect that others will be harmed if the court grants the stay; and (4) the public interest in granting the stay.

Stephenson v. Rickles Elecs. & Satellites (In re Best Reception Sys., Inc.), 219 B.R. 988, 992 (Bankr. E.D. Tenn. 1998) (quoting *Mich. Coalition of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 153 (6th Cir. 1991)). The Defendant, as movant, bears the burden of proving each factor by a preponderance of the evidence. *Level Propane Gases*, 304 B.R. at 777.

[A] motion for a stay pending appeal is generally made after the district court has considered fully the merits of the underlying action and issued judgment, usually following completion of discovery. As a result, a movant seeking a stay pending review on the merits of a district court's judgment will have greater difficulty in demonstrating a likelihood of success on the merits. In essence, a party seeking a

stay must ordinarily demonstrate to a reviewing court that there is a likelihood of reversal. Presumably, there is a reduced probability of error, at least with respect to a court's findings of fact, because the district court had the benefit of a complete record that can be reviewed by this court when considering the motion for a stay.

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."

....

Of course, in order for a reviewing court to adequately consider these four factors, the movant must address each factor, regardless of its relative strength, providing specific facts and affidavits supporting assertions that these factors exist. This, in turn, develops an adequate record from which we can determine the merits of the motion.

Griepentrog, 945 F.2d at 153-54 (internal citations omitted). "These factors are to be balanced[.]"

Baker v. Adams County/Ohio Valley Sch. Bd., 310 F.3d 927, 928 (6th Cir. 2002), but *Griepentrog*

does not require the court to balance each of the four factors equally. In summary,

[t]he strength of the likelihood of success on the merits that needs to be demonstrated is inversely proportional to the amount of irreparable harm that will be suffered if a stay does not issue. However, in order to justify a stay of the district court's ruling, the defendant must demonstrate at least serious questions going to the merits and irreparable harm that decidedly outweighs the harm that will be inflicted on others if a stay is granted.

Baker, 310 F.3d at 928.

Here, the Defendant has not argued any of the *Griepentrog* factors, nor has he offered any authority in support of his Motion For Stay. He has merely requested a continuation of the automatic

stay provisions of 11 U.S.C.A. § 362(a) (West 2004). The court will not address the *Griepentrog* factors on its own. The failure to argue these factors is, under the authority of *Griepentrog*, sufficient to deny the motion. *Griepentrog*, 945 F.2d at 154; *Best Reception Sys.*, 219 B.R. at 995. Accordingly, the Motion For Stay is DENIED.

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