
ENERGY TRANSFER LP, <i>et al.</i> ,)	Case No.: 30-2019-CV-00180
)	
Plaintiffs,)	BRIEF IN SUPPORT OF
)	GREENPEACE DEFENDANTS’
v.)	EXPEDITED MOTION TO EXTEND
)	AUTOMATIC STAY UNDER RULE
GREENPEACE INTERNATIONAL, <i>et al.</i> ,)	62(a)
)	
Defendants.)	
)	
)	

[¶1] Consistent with the Court’s authority under Rule 62(a) and its inherent power of supervision, Greenpeace Defendants seek an extension of the 30-day automatic stay through the time needed for the Court to approve the appeal “bond or other security” under Rule 62(b). Plaintiffs have advised that absent such relief, they will seek to execute on the Judgment during the Court’s approval process. Greenpeace Defendants also proposed consideration of this motion on shortened time; plaintiffs advised they would not agree to expedited briefing.

I. APPLICABLE RULES

[¶2] The applicable Rules for this Motion are Rules of Civil Procedure Rule 62(a) & (b), which provide in relevant part:

(a) Automatic Stay. . . . [E]xecution on a judgment and proceedings to enforce it are stayed for 30 days after filing notice of entry of judgment . . . unless the court orders otherwise.

(b) Stay by Bond or Other Security. At any time after judgment is entered, a party may obtain a stay by providing a bond or other security. The stay takes effect when the court approves the bond or other security and remains in effect for the time specified in the bond or other security.

N.D.R.Civ.P. 62 (emphasis added).

II. ARGUMENT

¶3 The purpose of the automatic stay is to “permit[] the party against whom judgment has been entered to determine what course of action follow,” including filing “posttrial motions[s].” 11 *Wright & Miller’s Federal Practice & Procedure* § 2902 (3d ed. Apr. 2025). Rule 62(a) affords the judgment debtor opportunity to stay execution of a judgment over the course of an appeal. *Id.* To ultimately obtain a stay under Rule 62(b), [i] the Court must establish the amount of any bond (subject to the statutory cap);¹ [ii] if a bond is required, Greenpeace Defendants must secure a bond from the market based on the Court’s ruling; and [iii] Greenpeace Defendants will need to submit a motion to obtain Court approval for their proposed security. Given the time allocated under the Rules to brief and adjudicate these various issues, the process will almost certainly extend beyond the Rule’s 30-day automatic stay.

¶4 As plaintiffs have advised the Court that they will not stay execution beyond the 30-day automatic stay period, to allow Greenpeace Defendants to post Court-approved security, Greenpeace Defendants respectfully request the Court issue an order extending the automatic stay until the Court approval of the proposed security as set forth in Rule 62(b).

¶5 Rule 62(a) specifically authorizes the Court to grant a stay of execution pending appeal. “[E]xecution on a judgment and proceedings to enforce it are stayed for 30 days after filing notice of entry of judgment or entry of default judgment *unless the court orders otherwise.*” N.D.R.Civ.P. 62(a) (emphasis added). Thus, while Rule 62(a) creates a default rule of a 30-day automatic stay prohibiting enforcement of the judgment, the Rule also gives the trial court discretion to extend the automatic stay pursuant to its inherent authority. *See Bd. of Trustees of N.D. Pub. Emps. Ret. Sys. v. N.D. Legis. Assembly*, 2023 ND 185, ¶ 89, 996 N.W.2d 873, 902–03, *as clarified* (Oct. 12, 2023) (“A motion to temporarily stay execution of a judgment

¹ Greenpeace Defendants will shortly be submitting a motion under Rule 62(b) to address security by separate motion.

requiring payment of money . . . is within the trial court’s inherent power of supervision over its process.”).²

[¶6] A brief extension of the automatic stay will result in no prejudice, as it simply affords Greenpeace Defendants what the rules contemplate: a pause in execution until the Court determines and approves the conditions of a stay of execution during appeal. Wright & Miller, *supra*, § 2902. Even when the Court determines the required bond amount, a stay secured by bond only “takes effect when the court approves the bond or other security,” N.D.R.Civ.P. 62(b); thus, the interim stay should extend until the Court grants Defendants’ motion for approval of security. Absent this modest extension, Greenpeace Defendants’ right to a stay could be functionally nullified before the Court resolves their Rule 62 motion.

III. CONCLUSION

[¶7] Thus, Greenpeace Defendants respectfully request that the Court enter an Order Extending the Automatic Stay barring Plaintiffs from executing or taking any proceedings to enforce the judgment, until the Court “approves the bond or other security” pursuant to Rule 62(b).

² Fed. R. Civ. P. 62(a) advisory committee’s note to 2018 amendment (noting that the rule as amended, which is identical to the North Dakota rule, “expressly recognizes the court’s authority” to “supersede” the automatic stay “by a court-ordered stay”; “the court may choose to supersede it by ordering a stay that lasts longer”); Wright & Miller, *supra*, § 2902 (“[Federal] Rule 62(a) . . . now expressly recognize[s] the court’s authority to extend an automatic stay as well as to dissolve it, by providing that the stay is automatic, ‘unless the court orders otherwise.’”) Many courts have exercised their discretion to extend Rule 62(a)’s automatic stay in the interim pending the determination of the required bond amount. *See, e.g., Clapper v. Am. Realty Invs., Inc.*, No. 3:14-CV-2970-X, 2023 WL 6932525, at *2 (N.D. Tex. Oct. 18, 2023); *Kelley v. BMO Harris Bank N.A.*, No. 19-cv-1756 (WMW), 2022 WL 17496033, at *2 (D. Minn. Dec. 8, 2022); *Brooks v. Dash*, No. 19-CV-1944(JSR), 2020 WL 2521311, at *2 (S.D.N.Y. May 16, 2020); *Druding v. Care Alternatives*, No. 1:08-CV-2126-NLH-AMD, 2019 WL 5957403, at *3 (D.N.J. Nov. 13, 2019).

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