

ORIGINAL

IN THE SUPREME COURT OF OHIO

WILLIAM WESTBROOK,
Plaintiff-Appellee,

v.

VALERIE SWIATEK, et al.,
Defendants-Appellants,

Supreme Court Case No.
09-0828
On Appeal from the Delaware
County Court of Appeals,
Fifth Appellate District
Court of Appeals Case Nos.
08CAE12-0078 & 08CAE12-0079

MOTION OF APPELLANTS VALERIE SWIATEK, DEBORAH BONNER, VICTORIA BONNER, ABL GROUP, LTD., ALUM CREEK, INC., COBBLETON BACHMAN, LLC, COBBLETON BACHMAN II, LLC, RENNOB, INC., AND WHITTINGTON, INC., FOR EXPEDITED CONSIDERATION OF THEIR MOTION FOR STAY OF TRIAL COURT PROCEEDINGS TO ENFORCE ORDER PENDING APPEAL TO THIS COURT

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FILED
MAY 05 2009
CLERK OF COURT
SUPREME COURT OF OHIO

**APPELLANTS' MOTION FOR EXPEDITED CONSIDERATION OF THEIR MOTION
FOR STAY OF TRIAL COURT PROCEEDINGS TO ENFORCE ORDER
PENDING APPEAL TO THIS COURT**

Appellants Valerie Swiatek, et al., have commenced a discretionary appeal from a judgment of the Fifth District Court of Appeals, which dismissed an appeal from a Judgment Entry Awarding Advancement of Litigation Expenses” to Appellee William Westbrook (the “Order”). Concurrently with their Notice of Appeal, in accordance with Ohio S.Ct. R. II, Section 2, the Appellants have filed a Motion For Stay of Trial Court Proceedings To Enforce the Order (“Motion For Stay”) pending the Court’s disposition of their discretionary appeal. Appellants hereby move this Court for expedited consideration of the Appellants’ Motion For Stay. Appellants bring this motion pursuant to Ohio S.Ct. R. XIV, Section 4(C), on the ground that the interests of justice warrant immediate consideration of the Appellants’ Motion To Stay Enforcement.

The background behind the Appellants’ discretionary appeals is detailed in their Motion For Stay. In this discretionary appeal, Appellants will ask this Court to decide whether an order awarding a so-called “advancement” of attorney’s fees and legal expenses, purportedly under the provisions of corporate bylaws, is a final appealable order. The Fifth District Court of Appeals tersely held that it was not, providing no explanation as to why such an order does not satisfy any definition of “final order” in R.C. 2505.02.

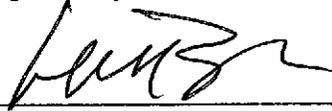
As noted in the Motion For Stay, the trial court has ordered the Appellants to pay Appellee Westbrook \$227,975.75 in attorney’s fees and \$12,976.31 in litigation expenses. These amounts include over \$80,000 for fees Appellee incurred in the *prosecution* of his claims against the Appellants while the lawsuit is ongoing. It also ordered the Appellants to pay Appellee about another \$80,000 in fees incurred in an action where Appellee never asserted a claim for fees and never even moved for an award of fees.

In this case, a stay is appropriate in order for this Court to have the opportunity to review the jurisdictional memoranda—and potentially accept a case of public or great general interest—without having the matter arguably deemed moot by proceedings to enforce the trial court’s Order. Indeed, the possibility of enforcement is not just a theoretical possibility. Shortly after the court of appeals dismissed the Appellants’ appeal, Appellee Westbrook filed a motion for a show cause order, seeking to hold Appellants in contempt for not yet having paid the “advancement” of attorney’s fees and legal expenses as set forth in the December 10, 2008 Order. Thus, absent a stay of enforcement issued by this Court, the Appellants could ultimately be forced to comply with the Order without ever having any appellate tribunal explain why the Order is not appealable under R.C. 2505.02—much less review the merits of an Order that Appellants respectfully submit is deeply flawed as a matter of fact and law.

Without expedited consideration of their Motion For Stay, there stands the very real possibility that the trial court will entertain Westbrook’s show-cause motion and allow enforcement of the Order *before* this Court has a chance to rule on the Motion For Stay in the ordinary course. Indeed, the trial court has scheduled a hearing on the Westbrook’s motion to show cause for **May 13, 2009**. (See Judgment Entry Scheduling Show Cause Hearing, Apr. 30, 2009, true and correct copy attached.) Thus, the trial court is poised to rule on Westbrook’s “show cause” motion little more than a week after the Appellants are filing their motion for stay and motion for expedited consideration with this Court. Should the trial court rule before this Court has the opportunity to grant a stay, the Appellants will be forced to comply with an Order that is deeply flawed factually and legally, a circumstance that would arguably moot any appeal from the Order at this juncture in the case.

Accordingly, in the interests of justice, this Court should GRANT the instant motion and expedite its consideration of the Appellants’ Motion For Stay that lies at the heart of this appeal.

Respectfully Submitted,



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Counsel for Appellants

CERTIFICATE OF SERVICE

I do hereby certify that a true copy of the foregoing Appellants' Motion For Expedited Consideration Of Their Motion For Stay Of Trial Court Proceedings To Enforce Order Pending Appeal To This Court was served, via regular U.S. Mail, this 5th day of May, 2009, upon:

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Vladimir P. Belo (0071334)

Examined: 04/30/09 10:09:55

IN THE COURT OF COMMON PLEAS, DELAWARE COUNTY, OHIO

WILLIAM WESTBROOK, :

Plaintiff, :

VS. :

VALERIE SWIATEK, et al., :

Defendants. :

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Case No. 06 CV H 08 0683

JUDGE EVERETT H. KRUEGER

JAN ANTONIOPLOS
CLERK

2009 APR 30 AM 8:05

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COMMON PLEAS COURT
DELAWARE COUNTY, OHIO
FILED

JUDGMENT ENTRY SCHEDULING SHOW CAUSE HEARING
AND
JUDGMENT ENTRY SETTING NON-ORAL HEARING

This matter is before the Court upon the Plaintiff's, William Westbrook, Motion for Show Cause Order, filed on April 27, 2009. The Plaintiff submits that the Defendants have failed to advance him litigation fees and expenses, although ordered to do so by January 12, 2009. The Plaintiff submits that the appeal of this Court's order awarding advancement of litigation fees was dismissed by the Fifth District Court of Appeals on April 13, 2009 and that no stay of the order has been entered by any court. The Plaintiff requests a hearing be held at which the Defendants should be made to show cause why they should not be held in contempt. The Court hereby sets a Show Cause Hearing on May 13, 2009 at 1:00 p.m. Since the Corporate Defendants were ordered to advance litigation expenses, Valerie Swiatek, the representative of the Corporate Defendants, shall appear at the hearing to show cause as to why the Defendants shall not be held in contempt.

In addition, the Defendants filed a Notice of Decision on April 28, 2009, informing the Court that the Supreme Court of Ohio issued an entry declining jurisdiction to hear the Plaintiff's appeal from the Fifth District Court of Appeals' decision vacating the Court's Entry appointing a receiver. Therefore, this matter is no longer deferred and the Court hereby



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sets a Non-Oral Hearing on the Defendants' pending Motions for Summary Judgment on May 8, 2009.

Dated: April 29, 2009

Everett H. Krueger /XMF
EVERETT H. KRUEGER/JUDGE

The Clerk of this Court is hereby Ordered to serve a copy of this Judgment Entry upon the following by Regular Mail, Mailbox at the Delaware County Courthouse, Facsimile transmission

cc: O. JUDSON SCHEAF III, 41 SOUTH HIGH STREET, SUITE 1700, COLUMBUS, OH 43215
QUINTIN F. LINDSMITH, 100 SOUTH THIRD STREET, COLUMBUS, OH 43215
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This document sent to each attorney party by

ordinary mail
 fax
 attorney mailbox
 certified mail

Date: 4/30/09 By: [Signature]