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IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN THE STATE OF FLORIDA, IN AND FOR HILLSBOROUGH COUNTY
GENERAL CIVIL DIVISION

NEIL J. GILLESPIE,
Plaintiff,

Case No. 05-CA-7205

-vs-

Division: "F"

BARKER, RODEMS & COOK, P.A.
a Florida corporation; and
WILLIAM J. COOK,
Defendants.

-----/

TRANSCRIPT OF EMERGENCY HEARING

BEFORE: HONORABLE MARVA CRENSHAW
Circuit Judge

TAKEN AT: Courtroom 502
George E. Edgecomb Courthouse
Tampa, Florida

DATE & TIME: 14 August 2008

TRANSCRIBED BY: Michael J. Borseth
Court Reporter
Notary Public

(ORIGINAL ✓)
(COPY)

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APPEARANCES:

For the Plaintiff: (Via telephone)

ROBERT W. BAUER, ESQUIRE

Robert W. Bauer, P.A.

2815 NW 13th Street

Gainesville, Florida 32609

(352) 375-2518

NEIL J. GILLESPIE, PLAINTIFF (Via telephone)

For the Defendants:

RYAN C. RODEMS, ESQUIRE

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P R O C E E D I N G S

1
2 (This transcript was made from a voice
3 recording of the home office business extension
4 telephone of Neil J. Gillespie with attorney Robert
5 W. Bauer of Gainesville. Mr. Bauer called Mr.
6 Gillespie on August 14, 2008, at 3:51 p.m. to
7 attend the hearing telephonically.)

8 THE COURT: All right. Counsel on the line,
9 give us your name, please.

10 MR. BAUER: This is Robert Bauer, Your Honor.
11 And I also have my client, Neil Gillespie, on the
12 line.

13 THE COURT: You can have a seat.

14 All right. We're here on your Motion to Stay.

15 MR. BAUER: Yes, Your Honor.

16 THE COURT: Go forward on your Motion to Stay.

17 MR. BAUER: Your Honor, this is an action
18 between the two parties for breach of contract. It
19 arises out of a situation with a attorney/client
20 relationship and a belief that there was not proper
21 execution of that contract. It has survived
22 motions to dismiss and issues and there are still
23 count -- one count out that's staying against the
24 law firm itself and it survived and is ready to
25 move forward with discovery.

1 Initially my client, as many individuals do,
2 have great difficulty in finding people to
3 represent them in cases against other attorneys and
4 he did a lot of pro se work on this. He was not
5 very good at it and did a lot of things that were
6 improper, incorrect. And the Court did give
7 sanctions against him for that. However, and there
8 was a judgment issued on this.

9 The Motion to Stay was filed and it was my
10 understanding that there would -- we would get this
11 hearing scheduled before any actual collection
12 processes proceeded on before any writs of
13 garnishment were issued and before any money was
14 seized. Unfortunately, Mr. Rodems has chose to not
15 respect our motion to stay and just continue
16 forward and do those. We have not had the
17 chance --

18 THE COURT: Mr. Bauer, just a second. I need
19 to make sure that I'm understanding you, because
20 this is Judge Barton's case.

21 MR. BAUER: Yes, Your Honor.

22 THE COURT: Are you telling me that the Motion
23 to Stay was called up from a hearing? Because
24 that's not what I am getting from the file.

25 MR. BAUER: No, ma'am, it was not called up

1 for a hearing, it was just filed. And we have not
2 had a chance to get it called up for a hearing yet.

3 THE COURT: Go ahead.

4 MR. BAUER: And as best -- there is still --
5 there is much left to be done with this case. We
6 feel it's appropriate for the judgment itself to be
7 stayed until the case is complete, because we feel
8 it's likely that we will prevail in this action and
9 damages will be awarded to us. Which can offset
10 the punitive damages that opposing is entitled to.

11 I believe that opposing is attempting to use
12 this in a situation to attempt to make it even more
13 difficult for my client to proceed forward with
14 this case monetarily. And we would request that
15 the Court enter a stay on this action, as also in
16 the writ of garnishment itself we have not gotten
17 the pleading in time for this hearing. We have
18 claim of exemptions for request for the hearing.
19 All the money that has been secured under the writ
20 of garnishment is Social Security money, and thus,
21 would be exempt from this. There's also a head of
22 household claim that originally on the information
23 sheet was indicated there wasn't a head of
24 household claim, but we have done a better
25 accounting of my client's assets and we realize

1 that his elderly mother living with him -- the
2 amount of money that he is using for her would
3 qualify him for a head of household exemption.

4 So there is two credit exemptions that would
5 apply to my client in this case for the writ of
6 garnishment and we request simply that the -- that
7 in reviewing the Motion for Stay the Court consider
8 that issue and allow the stay to be put in place so
9 that we can move forward with this case, get to a
10 final resolution of this. And if there is money
11 that's entitled to my client then that money would
12 be offset by the amount currently awarded to the
13 defendant.

14 MR. RODEMS: Thank you, Your Honor. First, I
15 want to make it perfectly clear --

16 MR. GILLESPIE: Hello.

17 MR. BAUER: Hello.

18 MR. GILLESPIE: I can't hear anything.

19 MR. BAUER: Hold on for me.

20 THE COURT: You accidently got disconnected
21 while I was trying to turn the volume up so that
22 you could hear opposing counsel. Go ahead.

23 MR. RODEMS: Thank you, Your Honor. The first
24 point I would like to make is to address a concern
25 by Mr. Bauer. The Final Judgment entered in favor

1 of my client was entered on March 27th, 2008, by
2 Judge Barton. The Motion for Stay that we're here
3 on I believe was filed on June 9th by Mr. Bauer.
4 The way I heard his argument, there was sort of
5 some implication that there was some agreement that
6 we wouldn't take collection actions until he got
7 that set for hearing. I want to make sure that's
8 clear with the Court. There was never any
9 discussion whatsoever about the Motion for Stay or
10 tabling any collection efforts. Nothing ever
11 discussed about that. Moreover, there was never
12 any effort by the plaintiff's counsel to set the
13 Motion for Stay for hearing. It just sat there.
14 Then earlier this week when the writ of garnishment
15 was served on the bank, then he filed this request
16 for an emergency hearing. And that's how we're
17 here today. And of course we thank you for your
18 time, Your Honor, on such short notice.

19 Under Florida Rule of Appellate Procedure
20 9.310 A and B there is the procedure for obtaining
21 a stay. With a money judgment, which is what we
22 have here, Rule 9.210 B provides that there can be
23 an automatic stay without the necessity of a motion
24 or court order by the filing of a good and
25 sufficient bond, which commonly is referred to as a

1 supersedeas bond. Mr. Gillespie has not filed
2 that.

3 So what he's asking for is a stay under Rule
4 9.310 A. And the Second DCA has written about
5 this. And if I could, your Honor, I would like to
6 hand you a copy of the case **Platt, P-L-A-T-T vs.**
7 **Russek.** Which is at 921 So.2d 5. And in that case
8 the Second DCA dealt with a number of things. The
9 first of which was, could the Court -- could the
10 Circuit Court enter a stay of execution on a
11 judgment under 9.310 A without imposing any
12 conditions whatsoever. And the Second DCA said
13 that it could not. What -- as it's claimed, we
14 concluded the trial court does not have that
15 authority. That's on page 7 of that decision.

16 And then the next issue the court considered
17 is, if the Trial Court could not stay a judgment
18 without imposing some conditions, the next question
19 is whether a trial court could stay a judgment upon
20 conditions that do not necessarily guarantee the
21 full payment of the judgment at the conclusion of
22 the appeal.

23 And the Second DCA said with some hesitation:
24 We conclude that the trial court has this authority
25 but it should be exercised with great care. And

1 then the Court went on to say that the burden of
2 proof and persuasion to impose conditions that do
3 not guarantee the full payment of the judgment at
4 the conclusion of the appeal should be upon the
5 judgment debtor, or in this case, Mr. Gillespie.

6 So a Motion for Stay under 9.310 A is an
7 evidentiary hearing. And Mr. Gillespie bears the
8 burden of proving to you that you should enter a
9 stay for some reason, imposing conditions less than
10 guarantying full payment. And after Mr. Bauer's
11 made his presentation he's offered you no basis for
12 doing this. He has made comments about the Writ of
13 Garnishment and what challenges they have with
14 that. That's a separate proceeding, Your Honor,
15 and we haven't gotten to the point yet where that
16 matter would naturally come before the Court.

17 In fact, when I went back to my office this
18 afternoon in between hearings to appear before
19 Judge Levens, my secretary told me that something
20 had been faxed over. I didn't even have time to
21 look at it, but apparently he filed objections to
22 the Writ of Garnishment. Which means that in due
23 course that would be taken up by the Court. At
24 really has no bearing on whether a stay should be
25 imposed or not.

1 If you look at their Motion for Stay they give
2 two reasons. And I don't know if you have the
3 motion in front of you, but reason -- paragraph 4
4 says: Defendant will not be prejudiced by the
5 granting of this Motion to Stay.

6 And I would suggest, Your Honor, that we would
7 certainly be prejudiced. We have a Final Judgment
8 that has been issued and Mr. Gillespie is
9 continuing to do operations through his bank
10 account that, you know, we have a judgment that has
11 been issued. Delaying us from collecting certainly
12 would prejudice us, just because it prevents us
13 from getting money that this circuit court has said
14 that we're entitled to recover from Mr. Gillespie.

15 The second reason that they give is that there
16 are current claims in the still pending -- in the
17 above-styled action which may serve to offset the
18 damages awarded as far as the judgment. But that's
19 really no reason either. Because if -- they have
20 the right to file a supersedeas bond and have an
21 automatic stay. Then we're guaranteed payment at
22 the conclusion of the case. If the appeal is
23 successful, then they will get the bond back. But
24 the idea that hey, at a further point in litigation
25 there may be claims that we win on, our Final

1 Judgment is final as of right now. And it's
2 speculative to assume that they're going to win on
3 anything and there's nothing in any of the rules
4 that has a good basis or any basis to stay the
5 proceedings because of the fact that there's
6 continuing claim in the case. Clearly if the
7 authors of the rules had felt that staying a
8 judgment in a case where multiple claims were going
9 on until all of the judgments were final, the Court
10 could have easily written that. So they haven't
11 offered you any proof or any reasons or any
12 persuasions, they haven't suggested to you any
13 conditions that they would be willing to accept
14 short of guaranteeing full payment that would put
15 my client in a protective position. And in the
16 Platt case that I referred to earlier, the court
17 said -- the court noted that staying a case when
18 the party who owes the debt might have assets would
19 certainly prejudice the judgment holder by not
20 providing them with protection to the extent that
21 that would be income.

22 Now, the one thing that the Second DCA said,
23 even with the ability to issue conditions and even
24 with using great care, it would be reasonable for
25 the Circuit Court before entering a stay under

1 9.310 under any circumstances, to require the
2 judgment debtor to submit to a deposition in aide
3 of execution and a production of financial records
4 before the entry of such a stay. In other words,
5 before you get to the point of having a stay
6 Mr. Gillespie would have to come in and we would
7 have to have a chance to fully examine him.

8 We have received his Fact Information Sheet,
9 which is required by the Florida Rules of Civil
10 Procedure in the judgment, but that doesn't provide
11 us with enough information. We have not had a
12 chance to depose him yet.

13 So even if the Court was inclined to consider
14 imposing some stay under 9.310(a) we would ask that
15 the suggestion by the Second DCA and that we be
16 given an opportunity before the stay is entered to
17 a full deposition.

18 The other thing I would like to point out,
19 Your Honor, is that even if a stay is issued, all
20 that does is it puts a brake on all the action.
21 The garnishment has already occurred. Once the
22 Court issues a stay it doesn't -- what's the word
23 I'm looking for? I have a case here from the
24 Second DCA, Florida Steel Corporation vs.
25 Enterprises. And what it says is that --

1 MR. BAUER: Could I have the citation, please.

2 MR. RODEMS: Yes. It is 332 So.2d 663, Second
3 DCA, 1976. The stay on a -- of execution doesn't
4 dissolve the writ, it stays the proceedings for
5 collection. So wherever we are today we're frozen.
6 So therefore, he wouldn't even be able to go
7 forward with his objection to the writ of
8 garnishment. It would be frozen until the appeal
9 was concluded. And for that reason this really
10 isn't even an emergency, because he -- whether
11 you -- if you impose the stay, his bank account is
12 still going to be locked up until the appellate
13 proceedings are concluded under this case law. If
14 you don't impose a stay a garnishment proceeding
15 can continue to occur. But he painted this as an
16 emergency. We don't feel that he's met the basis
17 for obtaining a stay under Florida Rule of
18 Appellate Procedure 9.310. Certainly has not
19 offered any evidence and hasn't given the Court
20 anything to suggest that imposing a stay without
21 conditions guaranteeing full payment would be
22 reasonable under the circumstances.

23 Mr. Gillespie hasn't even testified that he
24 doesn't have the means to satisfy the judgment. So
25 for all we know, Your Honor, and again, because we

1 haven't taken his deposition, Mr. Gillespie could
2 be sitting on enough assets to pay this judgment.
3 And if the Court imposed the stay he could dispose
4 of those assets in the interim and we would -- my
5 clients would be severely prejudiced from
6 recovering whatsoever. So we would ask you to deny
7 the motion to stay.

8 THE COURT: Mr. Bauer, according to the court
9 file that I'm looking at, the Final Judgment is
10 entered in March, the Notice of Appeal was filed in
11 April and no Motion to Stay the action is filed
12 until June. Why the delay?

13 MR. BAUER: Your Honor, we had some issues
14 within -- part of it was my fault. Actually, it
15 was our office's fault and I have actually
16 forwarded something to the Court and put in the
17 file specifically stated as that. Is that we
18 thought that the plaintiff had a copy of the
19 information sheet to be filed and had that to be
20 delivered. It was not delivered to us to be filed
21 with the Court.

22 With all of those issues pending it didn't
23 make any sense to be filing a Motion to Stay while
24 there were still the discovery issue of the
25 information sheet being filed. Because there was

1 nothing for the defendant to be proceeding on in
2 the first place, they didn't have the information
3 or any of the numbers or anything to go forward on
4 so they weren't able to.

5 We did file the Motion to Stay shortly
6 thereafter on that. And it has been my practice
7 and the practice in my community and my error in
8 not realizing it would be different there, is
9 whenever a Motion to Stay has been filed the
10 collection actions don't proceed on until after
11 that motion has been heard. We have extended that
12 courtesy and practice that way since I've started.
13 Admittedly, I've only been practicing for three
14 years, but in all situations that I have
15 encountered that's been the practice with it.

16 I did not state or attempt to imply that there
17 was any agreement with Mr. Rodems that they would
18 stay. I didn't say that. I simply said it was my
19 understanding that this is what would happen.

20 As far as his inability to object to the writ
21 itself, that doesn't make any sense. Simply
22 because there was a stay on -- actually on the
23 execution of the writ, logically that has nothing
24 to do with whether or not your ability to do an
25 objection to the writ itself and say, look, I'm

1 exempt from this. So it does still make sense to
2 stay the underlying judgment and say, we need to
3 stop at this point.

4 We are willing to take any other possible
5 exceptions that the Court requires to make sure.
6 If the Court wants to impose the requirement that
7 Mr. Gillespie submit to a deposition for the
8 financial purposes, yes. I think that's perfectly
9 reasonable and goes along with the case law. We
10 will do those things. If the Court wants to set a
11 bond amount that is reasonable, we will happily
12 comply with whatever the Court requires.

13 We're simply asking that relief from this
14 point so that we can proceed forward with the case
15 and honestly quit having these distractions from
16 moving forward with the underlying case. There has
17 been a lot of attempts -- there was problems with
18 that when Mr. Gillespie was pro se and I have come
19 on board and attempted to have a more focused
20 approach. Me and Mr. Rodems did initially have
21 that professional discourse and were able to do
22 that. Unfortunately, there has been recently do to
23 apparently some rulings that we have received,
24 Mr. Rodems has, you know, decided to take a full
25 nuclear blast approach instead of us trying to work

1 this out in a professional manner. It is my
2 mistake for sitting back and giving him the
3 opportunity to take this full blast attack.

4 I think it's appropriate for the Court to
5 issue a stay, that any reasonable exceptions that
6 the Court wants we will be happy to comply with and
7 that's what we ask for.

8 THE COURT: What precludes your client from
9 opposing a stay in accordance with the rule in the
10 form of a supersedeas bond?

11 MR. BAUER: We don't have a problem with that,
12 Your Honor. The biggest issue with this is that we
13 were caught unaware in a situation where there
14 wasn't the Court that we could go to dealing with
15 this situation and we needed -- because of what was
16 going on because of the money that he had and was
17 being seized from the bank and everything was being
18 closed up, we needed to take just as quick a return
19 approach; call the Court, get their assistance,
20 have this stopped. Whatever bond that the Court
21 requires we will get posted.

22 THE COURT: My ruling is then that he post a
23 supersedeas bond in accordance with the appellate
24 rules.

25 MR. BAUER: In the --

1 THE COURT: His posting of that bond then the
2 action will be stayed.

3 MR. BAUER: And the amount of that bond is,
4 Your Honor? The requirement is an amount that's
5 reasonable. That doesn't necessarily mean that
6 it's the full amount. So we need to know what the
7 amount is for us to be able to post that.

8 THE COURT: Well, in the absence of an
9 evidentiary hearing for which this matter is not
10 set, today I would have to require that he post a
11 supersedeas bond in the amount of the judgment
12 pending the matter being set for an evidentiary
13 hearing in front of Judge Barton.

14 MR. BAUER: And Your Honor, we would request
15 that the Court stay this action for five days to
16 allow us to get that done. I'm not in Tampa. It's
17 going to take some logistic issues to get that
18 done. And we request that the Court give us a
19 reasonable amount of time to effectuate that before
20 any further actions are taken against my client.

21 MR. RODEMS: If Mr. Bauer is representing that
22 he will post a bond within five days we would agree
23 to a stay for five days to post a bond. Calender
24 or business days? If he representing to the Court
25 he's going to post a bond, that's fine with me.

1 THE COURT: I will approve a stay based upon
2 that representation, Mr. Bauer, that you will post
3 a supersedeas bond in according with the appellate
4 rules within -- are we talking five calendar days
5 or five business days?

6 MR. BAUER: Well, of course, Your Honor, if I
7 could get business days I would prefer that.

8 THE COURT: All right. Well, then the bond
9 must be posted no later than Thursday, which is --
10 no later than the close of the day on Thursday,
11 August 21st.

12 MR. RODEMS: Your Honor, I would offer this,
13 too, because I am familiar with some of the
14 difficulties in obtaining a bond. If he can post
15 the cash equivalent with a third party agent.

16 THE COURT: Did you hear that, Mr. Bauer?

17 MR. BAUER: That is what we would intend to
18 do.

19 MR. RODEMS: And I am willing to work with him
20 to find an escrow agent that we can agree to, but
21 in lieu of going out and hiring a bonding company
22 and paying them the money, if there is U.S.
23 currency posted with a third party escrow agent, we
24 can agree on who that would be. It could be
25 another attorney or something in a trust account.

1 I would suggest that would be acceptable to the
2 defendants in lieu of the actual posting of a bond.
3 Provided it can be done within the same time frame.

4 THE COURT: The Court will approve any of
5 those alternatives to posting an official
6 supersedeas that the parties agree to. My only
7 requirement is that it be done within the time
8 frame on or before the close of business on August
9 31st, which is a Thursday, at five o'clock. And if
10 you will submit me an order to that affect then the
11 matter will be stayed for that short period.

12 MR. RODEMS: I'm sorry, what day did you say,
13 Your Honor? I thought you said August 31st.

14 THE COURT: August 21st, I stand corrected.
15 Yeah, August the 21st is the five business days.

16 MR. BAUER: And I assume, Your Honor, that
17 direction to submit the order, that was directed to
18 me?

19 MR. RODEMS: I'd be happy to do it, Your
20 Honor.

21 THE COURT: Mr. Rodems indicated that he will
22 submit the order, counsel.

23 MR. RODEMS: I'll send it to Mr. Bauer by
24 e-mail. He'll have that by tomorrow at noon.

25 MR. BAUER: Thank you.

1 THE COURT: Anything further, gentlemen?

2 MR. BAUER: No, ma'am.

3 THE COURT: All right. That's all.

4 MR. RODEMS: Thank you, Your Honor.

5 (Whereupon, the above hearing was

6 concluded.)

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C-E-R-T-I-F-I-C-A-T-E

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

I, Michael J. Borseth, Court Reporter
for the Circuit Court of the Thirteenth Judicial
Circuit of the State of Florida, in and for
Hillsborough County, DO HEREBY CERTIFY, that I was
authorized to and did transcribe a tape/CD recording of
the proceedings and evidence in the above-styled cause,
as stated in the caption hereto, and that the foregoing
pages constitute an accurate transcription of the tape
recording of said proceedings and evidence, to the best
of my ability.

IN WITNESS WHEREOF, I have hereunto set my hand
in the City of Tampa, County of Hillsborough, State of
Florida, this 1 November 2008.

MICHAEL J. BORSETH, Court Reporter

