

COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
22nd JUDICIAL CIRCUIT
DIVISION 3

DEC 21 2010

AMERICAN SADDLEBRED HORSE ASSOCIATION, INC., Plaintiff v. EDWARD R. BENNETT, et al. Defendants	Case No. 09-CI-05292 DEFENDANTS' OPPOSITION TO PROPOSED FINAL JUDGMENT TENDERED BY PLAINTIFF
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I. INTRODUCTION

This matter is before the Court on Plaintiff's, American Saddlebred Horse Association, Inc. ("ASHA") motion to enter a final and appealable order. In response to ASHA's motion, Defendants (1) agreed to dismiss their remaining counterclaims, (2) requested that the Court order ASHA to comply with its ruling within fifteen (15) days of entry of the final judgment and (3) requested that the Court expressly retain jurisdiction to enforce its judgment in this matter.

The Court heard oral arguments regarding this matter on Friday, December 17, 2010. At that time, ASHA objected to a fifteen (15) day deadline to comply with the Court's judgment and suggested a thirty (30) day deadline instead. In response, the Defendants agreed to a thirty (30) day deadline and tendered an order reflecting that agreement.¹ Unfortunately, ASHA revived its objection to the Defendants' proposed order. Rather than citing any law, ASHA simply noted for the record that its objection to the proposed order was "political." The Court said that it would take the matter under advisement and requested ASHA to tender its own proposed order.

¹ A copy of the order tendered by the Defendants is attached as Exhibit 1.

On Tuesday, December 21, 2010, the Defendants received a copy of the order tendered by ASHA.² ASHA's proposed order is different than the Defendants' proposed order on two substantive points. First, ASHA's proposed order attempts to, improperly, bootstrap an automatic stay of this Court's judgment if ASHA simply files an appeal. Second, ASHA's proposed order inexplicably removes language stating that this Court retains jurisdiction to enforce the judgment. The Court should reject both of ASHA's efforts of subversion.

II. DISCUSSION

A. ASHA Is Not Entitled To An Automatic Stay Pending An Appeal

A party may obtain injunctive relief "mandatorily direct[ing] the doing of an act." CR 65.01. "When an appeal is taken from any final judgment granting or denying injunctive relief, the judgment may be stayed as provided in Rule 65.08." CR 62.02 (emphasis added). In fact, the Kentucky Supreme Court made clear that there is "no room for doubt that CR 65.08 is the exclusive authority under which a stay may be had after a final judgment granting or denying injunctive relief has been appealed." *Bella Gardens Apartments, Ltd. v. Johnson*, 642 S.W.2d 898, 900 (Ky. 1982). CR 65.08 requires that a party seeking a stay of execution of an injunction ~~file a motion, either before the Circuit Court or the Court of Appeals,~~³ requesting such a stay. Of course, with the filing of the motion, the party that obtained the injunctive relief is entitled to an opportunity to respond to the motion.

ASHA's proposed final judgment is merely an attempt to get around this explicit requirement set forth by the Civil Rules and the Kentucky Supreme Court. ASHA's proposed judgment only requires ASHA to either comply with the judgment within thirty (30) days or file

² A copy of the Order tendered by ASHA is attached as Exhibit 2.

³ The clear preference of CR 65.08 is that the party file its motion with the Circuit Court. If the party fails to file a motion with the Circuit Court and instead files directly with the Court of Appeals, it must expressly state why a motion to the Circuit Court would have been impractical.

a notice of appeal. In other words, under the plain terms of ASHA's proposed order, if ASHA simply files a notice of appeal, it would not be required to produce the documents at issue. As discussed above, such a stay of this Court's judgment pending an appeal is improper. Rule 65.08 is the exclusive method for ASHA to request a stay pending an appeal, and ASHA should not be allowed to sidestep those procedures. If the ASHA wishes to stay this judgment pending an appeal, ASHA is required to file an appeal and then file a motion pursuant to Rule 65.08. ASHA must then attempt to meet its burden, and the Defendants will have an opportunity to respond.

B. This Court Should Expressly Retain Jurisdiction To Enforce Its Decision

Although ASHA's proposed final judgment copied almost all of the other language included in the Defendants' proposed final judgment, ASHA omitted a provision stating, "This Court retains jurisdiction to enforce this Final Judgment and Order." While the Members believe that this Court inherently retains such jurisdiction, *see Penrod v. Penrod*, 489 S.W.2d 524, 527 (Ky. 1972) (holding that the trial court retains jurisdiction to enforce its orders even where the case is pending appeal); *Nat'l Elec. Services Corp. v. District 50, United Mine Workers of Am.*, 279 S.W.2d 808, 812 (Ky. 1955) (holding that a court "necessarily retains jurisdiction" to enforce injunctions), there is simply no reason for not including this provision. It is a standard provision in cases involving injunctive relief and serves to clarify the Court's intention to retain jurisdiction to enforce its orders.

III. CONCLUSION

Accordingly, the Defendants object to the proposed order tendered by ASHA and request that the Court enter the order tendered by the Defendants.

Respectfully submitted,

Stephen A. Houston
by *LFK*

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CERTIFICATE OF SERVICE

A copy of the foregoing document was served via electronic mail and First Class United States Mail, postage prepaid, to the following on the 21st day of December, 2010:

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**COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
22nd JUDICIAL CIRCUIT
DIVISION 3**

**AMERICAN SADDLEBRED
HORSE ASSOCIATION, INC.,**

Plaintiff

v.

EDWARD R. BENNETT, et al.

Defendants

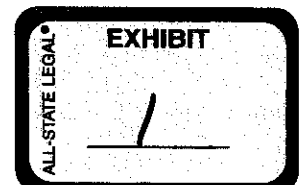
Case No. 09-CI-05292

FINAL JUDGMENT AND ORDER

This matter came before the Court on Joint Motions for Summary Judgment by the Plaintiff, American Saddlebred Horse Association, Inc. (hereinafter "ASHA") and the Defendants, Edward R. Bennett, Carl T. Fischer, Jr., Kris Knight, Tom Ferrebee, Simon Fredricks, MD and Lynn W. Via (hereinafter "Defendants" or the "Members") on the ASHA's Complaint and the Members' Counter-Claim. On December 2, 2010, the Court entered an Opinion, Order and Judgment denying the ASHA's motion and granting the Members' motion. On December 10, 2010, the ASHA moved this Court for entry of a final judgment and appealable order. On December 15, 2010, the Members filed a response to ASHA's motion.

ACCORDINGLY, IT IS HEREBY ORDERED AND ADJUDGED that:

(1) No later than thirty (30) days following the entry of this Order, the ASHA shall allow the Members to inspect all records requested by the Members. The ASHA shall provide copies of records selected by the Members for a reasonable fee.



(2) Counts II (Breach of Contract) and III (Promissory Estoppel) of the Members' Counter-Claims are dismissed without prejudice.

(3) This Court retains jurisdiction to enforce this Final Judgment and Order.

This Order is FINAL AND APPEALABLE, there being no just cause for delay.

ENTERED this _____ day of _____, 2010.

JUDGE JAMES D. ISHMAEL, JR.

This is to certify that a true and correct copy of the foregoing Order was served upon the following parties, via First Class Mail, this _____ day of _____, 20_____.

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AMERICAN SADDLEBRED
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v.

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Case No. 09-CI-05292

FINAL JUDGMENT

This matter came before the Court on Joint Motions for Summary Judgment by the Plaintiff, American Saddlebred Horse Association, Inc. (hereinafter "ASHA") and the Defendants, Edward R. Bennett, Carl T. Fischer, Jr., Kris Knight, Tom Ferrebee, Simon Fredricks, MD and Lynn W. Via (hereinafter "Defendants" or the "Members") on the ASHA's Complaint and the Members' Counter-Claim. On December 2, 2010, the Court entered an Opinion, Order and Judgment denying the ASHA's motion and granting the Members' motion.

On December 10, 2010, the ASHA moved this Court for entry of a final judgment and appealable order. On December 15, 2010, the Members filed a response to ASHA's motion.

ACCORDINGLY, IT IS HEREBY ORDERED AND ADJUDGED that:

- (1) No later than thirty (30) days, following the entry of this Order, the ASHA shall (i) file its notice of appeal or (ii) allow the Members to inspect all records requested by the Members and copy those selected for a reasonable fee in accordance with the Court's Opinion, Order and Judgment entered December 2, 2010.



(2) Counts II (Breach of Contract) and III (Promissory Estoppel) of the Members' Counter-Claims are dismissed without prejudice.

This Order is FINAL AND APPEALABLE, there being no just cause for delay.

ENTERED this _____ day of _____, 2010.

JUDGE JAMES D. ISHMAEL, JR.

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