

IN THE CHANCERY COURT FOR LEWIS COUNTY
AT HOHENWALD, TENNESSEE

IN RE:

SENTINEL TRUST COMPANY

)
)
)
)
)

NO. 4781

ACTING COMMISSIONER-IN-POSSESSION'S AND SENTINEL TRUST RECEIVER'S
RESPONSE TO BATES' MOTION FOR STAY OF FINAL JUDGMENTS ENTERED
APRIL 12, 2006 AND SUPPORTING OATHS

I. INTRODUCTION

On May 3, 2006, Danny N. Bates ("Bates") filed with the Court a Motion for Stay of Final Judgments Entered April 12, 2006 and Supporting Oaths¹ ("Motion for Stay") with an accompanying Brief in Support. Copy attached as **Exhibit 1**. While Bates' Motion for Stay speaks in terms of staying the final judgments entered on April 12, 2006, communication between undersigned counsel and counsel for Bates (as well as the text of the Motion and supporting Brief) have clarified that the Motion for Stay relates to only one (1) final order -- the April 12, 2006 Order which approved the sale of the building located at 29 W. Main Street, Hohenwald, Tennessee ("Hohenwald Building"), a copy of which is attached as **Exhibit 2** ("Hohenwald Building Order"). This filing is the Acting Commissioner-in-Possession's ("Commissioner") and Sentinel Trust Receiver's ("Receiver") response to Bates' Motion for Stay.

¹ The Supporting Oaths do not contain the signature of Howard Cochran whom Bates describes as a director of Sentinel Trust Company but whom the Acting Commissioner-in-Possession and Sentinel Trust Receiver do not consider as requesting a stay of the final judgments entered April 12, 2006.

II. ARGUMENT

a) **Granting of a Stay on an Appeal Involving a Receivership Action is Discretionary and is Not Automatic Upon the Appellant Posting a Stay Bond or Being Declared a Poor Person**

Bates, in his Motion for Stay, takes an oath of poverty and declares himself incapable of posting a bond for the appeal of the Hohenwald Building Order.² He requests the Court to acknowledge his professed poverty and then to stay the Hohenwald Building Order without need of bond. Throughout his Motion for Stay, Bates seems to assume that, upon being found indigent, the granting of the stay regarding the Hohenwald Building Order automatically follows. Bates is incorrect in this assumption.

Rule 62.01 Tenn.R.Civ.P. states as follows:

In . . . receivership actions . . . an interlocutory or final judgment shall not be stayed after entry unless otherwise ordered by the court and upon such terms as to bond or otherwise as it deems proper to secure the other party.

Id. (emphasis added) (Rule 62 Tenn.R.Civ.P. is attached to a separate Notice of Filing filed herewith (hereinafter "Notice of Filing")). Rule 62.03 Tenn.R.Civ.P. states as follows:

When an appeal is taken from . . . a final judgment in an action specified in Rule 62.01 [e.g., a receivership action] . . . the court in its discretion may suspend relief or grant whatever additional or modified relief is deemed appropriate during the pendency of the appeal and upon such terms as to bond or otherwise as it deems proper to secure the other party.

Id. (brackets added for clarity). Accordingly, the presenting of a stay bond, or being declared a poor person incapable of posting such a bond, does not mean that a final judgment in a receivership action is stayed.³ Rather, the trial court is to consider all of the circumstances and, in its discretion, determine whether a stay of judgment should issue, and, if so, upon what terms.

² The Commissioner and Receiver will address Bates' contentions of poverty later in this Response.

³ Generally, under Rule 62.04, when an appellant posts bond (or, presumably, when an appellant is declared a poor person), the appellant "may obtain a stay." Therefore, in most cases, the posting of a stay bond or being declared a poor person will normally result in the granting of a stay of judgment. But, again, such is not the case with

