UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION (DETROIT)

In re:	Case No. 17-50551
Arrel Adoma Leatherwood,	Chapter 7
Debtor.	Honorable Mark A. Randon

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ORDER DENYING CREDITOR'S MOTION FOR STAY PENDING APPEAL

The Court reopened Arrel Leatherwood's bankruptcy and granted her motion for contempt against Options 4 You, LLC for violation of the discharge injunction (Dkt. Nos. 25, 33). On or before March 25, 2021, the Court ordered Options to deliver two checks to Leatherwood's attorney: a check payable to Leatherwood for $1,315.00, and a check payable to her attorney for $1,794.00. Options appealed. Before the Court is its motion for a stay pending appeal.

There are four factors used to determine whether to grant a stay pending appeal: "(1) whether the defendant has a strong or substantial likelihood of success on the merits; (2) whether the defendant will suffer irreparable harm if the district court proceedings are not stayed; (3) whether staying the district court proceedings will substantially injure other interested parties; and (4) where the public interest lies." *Baker v. Adams Cnty./Ohio Valley Sch. Bd.*, 310 F.3d 927, 928 (6th Cir. 2002). The Court "is required to make specific findings concerning each of the four factors, unless fewer are dispositive of the issue." *Performance Unlimited, Inc. v. Questar Publishers, Inc.*, 52 F.3d 1373, 1381 (6th Cir. 1995) (quotations and citation omitted). The "most critical" factors are the first two: a strong showing of the likelihood of success and that the movant will suffer irreparable harm. *Nken v. Holder*, 556 U.S. 418, 434 (2009). In balancing

these factors, "[t]he probability of success that must be shown is inversely proportional to the degree of irreparable injury the plaintiffs will suffer absent an injunction. Thus, a stay may be granted with either a high probability of success and some injury or *vice versa*." *Ohio v. Nuclear Regulatory Comm'n*, 812 F.2d 288, 290 (6th Cir. 1987) (internal citation omitted).

Options does not have a strong likelihood of success on the merits. *See In re Leatherwood*, No. 17-50551, 2021 WL 726072, at **2-4 (Bankr. E.D. Mich. Feb. 23, 2021).

As to the second factor, "economic loss does not constitute irreparable harm, in and of itself. Economic loss is generally recoverable while injunctive relief is available only when legal remedies prove inadequate." *Ohio v. Nuclear Regulatory Comm'n*, 812 F.2d at 290 (internal citation omitted). "The key word [as it relates to this factor] is *irreparable*. Mere injuries, however substantial, in terms of *money*, time and energy necessarily expended in the absence of a stay are not enough." *Virginia Petroleum Jobbers Ass'n v. Fed. Power Comm'n*, 259 F.2d 921, 925 (D.C. Cir. 1958) (emphasis added). Absent a stay, Options' loss is purely economic—$3,109.00.[1] This is not irreparable harm. In the unlikely event that Options succeeds on appeal, its economic loss is recoverable.

Options also argues that the United States Supreme Court's decision in *City of Chicago, Illinois v. Fulton*, 141 S. Ct. 585 (2021) requires reversal on appeal. But *Fulton*—which Options argued before this Court and this Court considered—is wholly inapplicable. In *Fulton*, the Supreme Court held that the mere retention of estate property after the filing of a bankruptcy does not violate the automatic stay as an act to "exercise control" of the property. *Id.* at 592; *see*

[1]Options says the Court erred in awarding attorney fees without allowing it to address the reasonableness of such fees. However, the Court reviewed the billing statement of Leatherwood's attorney, finding that the time expended on the motion and hourly rate were reasonable. The Court only awarded a fraction of the amount on the billing statement.

also 11 U.S.C. § 362(a)(3). This case involves a violation of the discharge injunction under 11 U.S.C. § 524(a)(2), which voided Options' judgment and enjoined the "*continuation*" of its garnishment to recover the debt. 11 U.S.C. §§524(a)(1) and (a)(2) (emphasis added). Moreover, Options was not even in possession of the funds from the second garnishment when it received actual knowledge of Leatherwood's bankruptcy and discharge. It received those funds six months later.

Because Options fails on the first two factors, Options' motion is **DENIED**.[2]

IT IS ORDERED.

Signed on March 30, 2021

/s/ Mark A. Randon

Mark A. Randon
United States Bankruptcy Judge

[2]The Court notes that the public interest is served when creditors respect the discharge injunction and allow debtors to obtain a fresh start under the bankruptcy code. No other interested party will be harmed.