

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

RICHARD R. COOCH
RESIDENT JUDGE

NEW CASTLE COUNTY COURTHOUSE
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**Re: Mateson Chemical Corporation v.
Stephanie Mateson Barton
Record No.: 07J-09-114**

Submitted: November 15, 2007
Decided: January 15, 2008

On Defendant's Motion to Stay Enforcement of Judgment.
DENIED.

Dear Counsel:

Before the Court is Stephanie Mateson Barton's ("Defendant's") motion to stay enforcement of a judgment entered against her on September 7, 2007 in Delaware Superior Court, New Castle County ("the Delaware judgment.")

The issue is whether Defendant is entitled to a stay of the Delaware judgment under the Delaware Uniform Enforcement of Foreign Judgments

Act, specifically 10 *Del. C.* § 4784(a), despite having failed to post security when she appealed the underlying Pennsylvania judgment of the Pennsylvania Court of Common Pleas to the Pennsylvania Superior Court. Plaintiff, Mateson Chemical Corporation, had that judgment then transferred to Delaware.

For the reasons that follow, the Court holds that Defendant is not entitled to a stay under 10 *Del. C.* § 4784(a) because she did not “furnish[] security for the satisfaction of the judgment as required by the state in which it was rendered,”¹ i.e., 120% of the amount of the Pennsylvania judgment when she filed her appeal, as required by 42 Pa. S.C.A. 1731(a). Therefore, Defendant’s motion is **DENIED**.

I. FACTS AND PROCEDURAL HISTORY

On July 17, 2007, the Court of Common Pleas of Philadelphia County, First Judicial District of Pennsylvania, entered judgment against Defendant in *Mateson Chemical Corp v. Barton, et. al.*, (“the Pennsylvania judgment”) in the amount of \$117,262.80.² Defendant filed an appeal of the Pennsylvania judgment on August 17, 2007 to the Pennsylvania Superior Court, but did not post security when she did so.

Plaintiff then had the Pennsylvania judgment transferred to Delaware, and judgment was entered against Defendant in this Court on September 7, 2007.

On October 23, 2007, Defendant filed the present motion to stay enforcement of the Delaware judgment, citing her appeal of the Pennsylvania judgment.

II. CONTENTIONS OF THE PARTIES

Defendant contends that her appeal of the Pennsylvania judgment entitles her to a stay of the Delaware judgment under 10 *Del. C.* § 4784(a).³ Defendant claims that Pennsylvania law “does not require [her] to post security for satisfaction of the Pennsylvania judgment prior to appealing it to the Pennsylvania Superior Court,”⁴ and asserts that she has met her burden under 10 *Del. C.* 4784(a). Defendant reads 42 Pa. S.C.A. 1731(a) as only

¹ 10 *Del. C.* § 4784(a).

² Def. Mot. to Stay Enforcement of J., Ex. A., citing Court of Common Pleas of Philadelphia County Case No. 1180 (July, 2005).

³ *Id.* at 2.

⁴ *Id.*

requiring a defendant to post security in order to effect an *automatic* supersedeas.⁵

Plaintiff contends that 42 Pa. S.C.A. 1731(a) requires an appellant to post bond in the amount of 120% of the amount of the judgment appealed from in order to prevent an execution on the judgment during the pendency of the appeal.⁶ Plaintiff argues that since Defendant has not done so, she has not met the requirements of 10 *Del. C.* § 4784(a), which requires an appellant (in the foreign jurisdiction) to show proof that the appellant “has furnished security for the satisfaction of the judgment as required by the state in which it was rendered.”⁷

III. STANDARD OF REVIEW

The sole question before the Court on this motion is whether Defendant is entitled a stay of judgment under 10 *Del. C.* § 4784(a). The statute provides the standard of review:

§ 4784. Stay.

(a) If the judgment debtor shows the court that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished security for the satisfaction of the judgment as required by the state in which it was rendered....

⁵ Defendant raises additional arguments in her reply to Plaintiff’s response to her motion. Defendant argues that 10 *Del. C.* § 4784(b), and 10 *Del. C.* § 4782, makes Pennsylvania procedural law inapplicable, since, Defendant argues, these statutes establish that “enforcement in Delaware is governed by the procedures and defenses applicable to Delaware judgments.” Def. Reply Br., at 3-4. Defendant also argues in her reply brief that Plaintiff has not taken the necessary steps to have an executable judgment entered in Pennsylvania; namely, filing a praecipe to enter a judgment on the verdict. *Id.* at 4.

However, the Court will not address these arguments since they were raised for the first time in Defendant’s reply, and Defendant did not attempt to raise them at oral argument. *See Thompson v. State*, 2006 WL 2096440 (Del. Super.) (“[d]efendant should have raised this argument in his opening brief. The Court ignores the argument advanced in the reply brief”).

⁶ Pl. Answ. to Def. Mot. to Stay Enforcement of J., at 2.

⁷ 10 *Del. C.* § 4784(a).

IV. DISCUSSION

This Court has previously addressed the issue raised in this case. In *Kontrol Automation, Inc. v. Chesapeake Hydro, Inc.*,⁸ this Court also had to decide whether a judgment-debtor was entitled to a stay of execution of a Delaware judgment, despite the judgment-debtor's having failed to post security when it appealed the underlying Pennsylvania judgment.

In *Kontrol*, the Court was asked by a judgment-creditor to grant relief of a stay of execution of a Delaware judgment filed against a judgment-debtor. The judgment-debtor argued that since it had filed an appeal of the underlying Pennsylvania judgment it was entitled to a stay under 10 *Del. C.* 4784, despite its not having posted security when filing its appeal of the Pennsylvania judgment. As in the present case, the parties disagreed as to whether an appellant/judgment-debtor had to post security under 42 Pa. S.C.A. 1731(a) when filing an appeal.

The *Kontrol* court held that by failing to post security when appealing the Pennsylvania judgment, the judgment-debtor had not complied with 42 Pa. S.C.A. 1731(a), which calls for "appropriate security in the amount of 120 per cent of the amount found due by the lower court and remaining unpaid" to be furnished by a judgment-debtor. Thus, the *Kontrol* court held that "§ 4784(a) [did] not apply since [the judgment-debtor] failed to furnish the necessary security bond required for an appeal in Pennsylvania [under] ... Rule 1731(a) of the Pennsylvania Rules of Appellate Procedure."⁹

Nonetheless, the *Kontrol* court allowed the judgment-debtor a stay of execution of judgment for ten days to give the judgment-debtor the "opportunity to file the necessary security for the satisfaction of the judgment as required by Pennsylvania law."¹⁰ The court based this holding on the outcome of a New York state case, *Mansfield State Bank v. Cohen*¹¹ that had been cited by both parties. In *Mansfield*, a Texas court had entered default judgment against an individual, and in favor of a bank. The bank then sought to enforce the judgment in New York. The *Mansfield* court denied the individual's motion to stay the execution of the Texas court judgment in New York, holding that the individual had failed to file the "supersedeas bond" required by Texas Rules of Civil Procedure, and so was

⁸ *Kontrol Automation, Inc. v. Chesapeake Hydro, Inc.*, 1989 WL 124897 (Del. Super.).

⁹ *Id.* at *1.

¹⁰ *Id.* at *2.

¹¹ *Mansfield State Bank v. Cohen*, 407 N.Y.S.2d 373 (1977).

not entitled to a stay in New York.¹² Despite so holding, but recognizing that New York courts have “taken a liberal approach to the vacating of default judgments,”¹³ the *Mansfield* court stayed execution of the New York judgment for ten days, giving the individual the opportunity file the necessary “supersedeas bond.”¹⁴ Characterizing the *Mansfield* holding as “persuasive precedent,” the *Kontrol* court gave the same 10 day opportunity to the judgment-debtor in that case.

This Court agrees with the *Kontrol* court that 42 Pa. S.C.A. 1731(a) requires a judgment-debtor to furnish security in Pennsylvania in order to effect a stay of execution. 42 Pa. S.C.A. 1731(a) states in pertinent part:

- (a) ...Except as provided by subdivision (b)[¹⁵], an appeal from an order involving solely the payment of money shall, unless otherwise ordered pursuant to this chapter, operate as a supersedeas upon the filing with the clerk of the lower court of appropriate security in the amount of 120% of the amount found due by the lower court and remaining unpaid....

The statute clearly requires a judgment-creditor to post security to effect a supersedeas.¹⁶

At oral argument counsel for Defendant acknowledged that since his client had not posted security in Pennsylvania, she is not eligible for supersedeas, automatic or otherwise, in Pennsylvania.¹⁷ Defendant’s counsel agreed with the Court’s understanding that, in Defendant’s view, “theoretically, the Plaintiff could execute on the judgment in Pennsylvania, but ... [under] 10 *Del. C.* 4784(a) ..., Plaintiff could not execute on it in Delaware.”¹⁸

¹² *Id.* at 375.

¹³ *Id.* at 376.

¹⁴ *Id.*

¹⁵ Subdivision (b) applies to domestic relations matters, which are not at issue here.

¹⁶ *See, e.g., In re Meade Land & Development Co., Inc.* 1 B.R. 279, 283 (Bankr., E.D. Pa. 1979) (“In appealing this final judgment, the Plaintiff has also chosen not to abide by Rule 1731 of the Pennsylvania Rules of Appellate Procedure, 42 Pa.C.S.A., as evidenced by its failure to deposit a bond with the Court in the amount of 120% of the judgment. Thus, the decision rendered by the State Court, which has not been stayed during the appeal pursuant to statutory procedure, is considered to be final and therefore provable.”).

¹⁷ Oral Arg. Tr., at 7 (November 9, 2007).

¹⁸ *Id.* at 7-8.

The Court declines to accept Defendant's reading of 10 *Del. C.* § 4784(a) and 42 Pa. S.C.A. 1731(a). It is clear 1) that Pennsylvania law requires a judgment-debtor to post security in order to effect a stay; and, 2) that it is within the discretion of this Court under the Delaware Uniform Enforcement of Foreign Judgments Act to deny a motion for a stay of execution if a judgment-debtor has not met the requirements for a stay of execution in the foreign jurisdiction.¹⁹

Nor does the Court find any reason to go beyond the plain wording of the statute by granting any additional time, such as ten days, to Defendant to post security in Pennsylvania, and, to this limited extent, this Court declines to follow *Kontrol's* grant of a ten day period in which to allow the judgment-debtor to post security in the foreign jurisdiction.

The Court holds that Defendant is not entitled to a stay under 10 *Del. C.* § 4784(a) because she failed to post the necessary security when filing her appeal of the Pennsylvania judgment as required by 42 Pa. S.C.A. 1731(a).

V. CONCLUSION

For the preceding reasons, Defendant's motion to stay enforcement of judgment is **DENIED**.

Very truly yours,

cc: Prothonotary

¹⁹ *See, e.g.*, 30 Am. Jur. 2d *Executions, Etc.* § 783 (2007) (“[a] request by a judgment debtor to stay the execution of a foreign judgment [is] properly denied where the judgment debtor, alleging that the foreign judgment was being appealed in a foreign court, failed to post the necessary bond incident to such appeal”); 30 Am. Jur. 2d *Executions, Etc.* § 331 (2007) (“[a] trial court does not abuse its discretion in dismissing a judgment debtor's complaint contesting the validity of a foreign judgment if the debtor fails to post the required bond”).