

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

MODERN PLASTICS CORPORATION,

Debtor.

Case No. DK 09-00651
Hon. Scott W. Dales
Chapter 7

NEW PRODUCTS CORPORATION and
UNITED STATES OF AMERICA,

Plaintiffs,

Adversary Pro. No. 13-80252

v.

THOMAS R. TIBBLE, individually and in his
capacity as Chapter 7 Trustee, and FEDERAL
INSURANCE COMPANY,

Defendants.

ORDER DENYING MOTION FOR STAY PENDING APPEAL

PRESENT: HONORABLE SCOTT W. DALES
Chief United States Bankruptcy Judge

Several months after the court directed Mark S. Demorest, Esq., and his client, New Products Corporation, to pay \$166,187.50 to Dickinson Wright, PLLC as a discovery sanction,¹ and two weeks after the court conducted an initial hearing on a related contempt motion, Mr. Demorest and his client filed their Motion to Stay Collection Pending Appeal and Investment Order (the “Stay Motion,” ECF No. 198). *See* Fed. R. Bankr. P. 8007. By the time of the hearing on the Stay Motion, and in response to the court’s order holding them in contempt of the Discovery Order, New Products paid the discovery award in full, purporting to reserve appellate

¹ *See* Memorandum of Decision and Order entered July 24, 2015 (the “Discovery Order,” ECF No. 138).

rights and arguments under the Stay Motion. *See* Notice of Payment of \$166,187.50 to Dickinson Wright, PLLC (ECF No. 203). The court held a telephone hearing to consider the Stay Motion on November 16, 2015, and after listening to oral arguments, took the matter under advisement.

The purpose of any stay pending appeal is to preserve the *status quo* pending appeal, not to change it. *See United States v. Michigan*, 505 F. Supp. 467, 472 (W.D. Mich. 1980). By the time of the hearing on the Stay Motion, New Products had satisfied the Discovery Order by remitting full payment to Dickinson Wright. The current *status quo*, therefore, is that the Discovery Order has been satisfied and there can be no further collection activity. Granting the Stay Motion at this time would not preserve this state of affairs, but would unwind it by requiring disgorgement of the New Products payment through an order that would amount to a mandatory injunction against Dickinson Wright or its clients. In light of the payment, and the other circumstances of the case, the court is unwilling to grant the Stay Motion.

The court acknowledges, as it must, that New Products only paid the \$166,187.50 to Dickinson Wright after the court held it (and its counsel) in contempt, doing so in order to avoid the *per diem* award the court included in its Order Finding Contempt (ECF No. 201). New Products has only itself (and its counsel) to blame for being put to the hard choice of facing the *per diem* addition to the discovery award to preserve the *status quo* or paying the award (and undermining the Stay Motion). Certainly, if New Products and its counsel had complied with their obligations under Rule 45 in the first place, or if they had filed a motion for stay pending appeal promptly after the court denied their reconsideration motion, there would almost certainly have been no suggestion of contempt. Instead, they pushed their adversary and the court to the limit, and only reluctantly satisfied the Discovery Order after the court found them in contempt.

Even if New Products had not changed the *status quo* by paying Dickinson Wright in full, there is persuasive authority for the proposition that the court must approve the amount of any bond under Rule 62, and that a court could require a bond in an amount sufficient to protect the appellee from the anticipated costs of appeal, among other costs associated with delayed payment. *See Lim v. Terumo Corp.*, Slip. Op. No. 11-cv-12983, 2014 WL 2051219 (E.D. Mich. May 19, 2014). Given the litigious behavior leading up to the Discovery Order and following it, the court anticipates significant additional costs on appeal, and therefore would not be inclined to approve a bond in the amount of the discovery sanction (without more), as New Products proposed in the Stay Motion.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Stay Motion is DENIED.

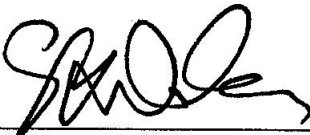
IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Order pursuant to Fed. R. Bankr. P. 9022 and LBR 5005-4 upon Melissa L. Demorest, Esq., Mark S. Demorest, Esq., John Chester Fish, Esq., Cody H. Knight, Esq., Elizabeth M. Von Eitzen, Esq., Daniel F. Gosch, Esq., Scott Knapp, Esq., Mathew Cheney, Esq., and the United States Trustee.

END OF ORDER

IT IS SO ORDERED.

Dated November 16, 2015





Scott W. Dales
United States Bankruptcy Judge