

IN THE CIRCUIT COURT OF TYLER COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION

DIRECTIONAL ONE SERVICES, INC. USA,
a foreign corporation authorized to do business
in the State of West Virginia,

Plaintiff,

v.

Civil Action No. 18-C-14
Presiding Judge: H. Charles Carl, III
Resolution Judge: Christopher C. Wilkes

ANTERO RESOURCES CORPORATION,
a foreign corporation authorized to do business
in the State of West Virginia,

Defendant.

**ORDER GRANTING IN PART ANTERO RESOURCES CORPORATION'S MOTION
TO STAY ENFORCEMENT OF JUDGMENT PENDING APPEAL**

Comes now the Court this 20th day of November 2020, upon *Antero Resources Corporation's Motion to Stay Enforcement of Judgment Pending Appeal*.

The Plaintiff, Directional One Services, Inc., U.S.A., by counsel, Christopher Kamper, Esq., and Defendant, Antero Resources Corporation, by counsel, John D. Pizzo, Esq., have fully briefed the issues necessary. The Court dispenses with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process. So, upon the full consideration of the issues, the record, and the pertinent legal authorities, the Court rules as follows.

FINDINGS OF FACT

1. On August 19, 2019, the Court entered orders on the summary judgment motions made by the parties in this matter.

FILED

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Candy L. Warner
Tyler Co. Circuit Clerk

2. From August 26, 2020, to August 29, 2020, a jury trial was held on the remaining issues in the case in the Tyler County Courthouse, Middlebourne, West Virginia.

3. On November 4, 2020, the Court entered the Final Judgment Order, finding that pursuant to Rule 58 of the West Virginia Rules of Civil Procedure, final judgment is hereby entered in favor of Plaintiff in the amount of \$1,481,510.30, in addition to pre and post judgment interest¹. *See Ord.*, 11/4/20, ¶1. Additionally, the Court found that Plaintiff has a valid Mechanic's Lien against the assets of Defendant, but the Court notes this is limited to the two lost-in-hole properties at issue in this litigation. *Id.* at ¶3.

4. On or about November 10, 2020, Defendant filed Antero Resources Corporation's Motion to Stay Enforcement of Judgment Pending Appeal, seeking a "stay [of] enforcement of the Court's Final Judgment Order until a final disposition of an appeal by Antero". *See Def's Mot.*, p. 2. Defendant also proffered a proposed order accompanying said motion.

5. On or about November 11, 2020, Plaintiff filed Plaintiff's Motion to Strike Proposed Order Granting Stay and Response to Defendant's Motion to Stay Judgment Pending Appeal, arguing the instant motion should be denied because "it fails to discuss, let alone provide any form of security for Directional One" and that "Plaintiff is entitled to the protection of an appeal bond". *See Pl's Resp.*, p. 2.

6. On or about November 13, 2020, Defendant filed its Reply in Support of its Motion to Stay Enforcement of Judgment Pending Appeal and Response in Opposition to Plaintiff's Motion to Strike Proposed Order Granting Stay.

1. ¹ The Court notes it has ordered that the pre-judgment interest shall accrue at a rate of 5.5% per annum from March 22, 2018, the date the contract terminated, through the date of the entry of the Final Judgment Order. *See Ord.*, 11/4/20, ¶1. Further, the Court ordered that the post-judgment interest shall accrue thereafter at a rate of 4.75% per annum. *Id.*

7. On or about November 16, 2020, Plaintiff filed its Reply Brief in Support of Motion to Strike Proposed Order Granting Stay.

8. The Court now finds this issue ripe for adjudication.

CONCLUSIONS OF LAW

9. Rule 28 of the West Virginia Rules of Appellate Procedure governs stays. Under Rule 28(c) of the West Virginia Rules of Appellate Procedure, relief of stay to proceedings of the circuit court in conjunction with an appeal “may be conditioned upon the filing of a bond or other appropriate security in the circuit court, in such amount and upon such conditions as the court granting the stay feels is proper for the protection of the adverse party.” W. Va. R. App. P. 28(c). Also, West Virginia Code § 58-5-14 specifically authorizes the posting of an appeal bond not to exceed the amount of the total judgment, plus costs, interest, and fees. W. VA. CODE § 58-5-14(b).

10. Further, Rule 62(i) of the West Virginia Rules of Civil Procedure states that a “[d]efendant may request a stay to permit an appeal to the Supreme Court of Appeals of West Virginia conditioned on the posting of an appeal bond”. *See* W.Va. R. Civ. P. 62(i).

11. Here, Defendant moved the Court for a stay of proceedings for an appeal, but did not address the issue of a bond or security for Plaintiff. In Response, Plaintiff requested a bond if the Court were to grant the stay.

12. As an initial matter, the Court finds that Plaintiff set forth good cause for the issuance of a bond. Further, the Court finds that is in its discretion to order a bond.

13. However, the Court considers the parties’ arguments regarding the mechanic’s liens at issue in this case. The Court, in its Final Judgment Order, recognized and found that Plaintiff has valid Mechanic’s Liens against the assets of Defendant, but the Court notes they are limited to the two lost-in-hole properties at issue in this litigation. *See* Ord., 11/4/20, ¶3.

14. Defendant argued in its Reply to the instant motion that because of this, the Court should grant Antero's stay of enforcement of judgment pending its appeal without "further conditions because Plaintiff's mechanic's liens protect Plaintiff's interests". See Def's Reply, p. 2. In that same vein, Defendant argued that if the Court were to require Defendant to post an appeal bond, the Court should also "require Plaintiff to discharge its two...mechanic's liens". *Id.*

15. However, the Court considers that the stay Defendant is requesting also applies to the liens. See Pl's Reply to Mot. to Strike, p. 2. Plaintiff has proffered it cannot enforce or execute on those mechanic's liens any more than it can any other part of the Court's order of judgment. *Id.* For these reasons, the Court finds Defendant's argument with regard to the existence of mechanic's liens negating a need for a bond to be without merit.

16. Further, Defendant has proffered no other facts or argument persuasive to this Court to show that no bond should be required.

17. Therefore, good cause having been shown, for the protection of Plaintiff's interests, and for the reasons set forth in detail in Plaintiff's Motion to Strike Proposed Order Granting Stay and Response to Defendant's Motion to Stay Judgment Pending Appeal, Defendant's Motion is GRANTED IN PART insofar as a stay of proceedings is granted upon appeal, but the Court finds that an appeal bond is appropriate.

18. Accordingly, it is hereby ORDERED and ADJUDGED that Defendant's Motion is GRANTED IN PART and that proceedings to enforce or execute the November 4, 2020 judgment in this matter are stayed pending final resolution of the Defendant's appeal to the West Virginia Supreme Court of Appeals. This stay is conditioned on Defendant posting an appeal bond. Defendant is required to post an appeal bond sufficient to satisfy the judgment, including prejudgment interest, rounded off, in the amount of One Million Seven Hundred Thousand Dollars

and Zero Cents (\$1,700,000.00) within fifty (50) days of entry of this Order as a condition for Defendant's appeal to continue.


19. The Court, in its discretion, finds that an appropriate bond amount consists of the judgment order amount, along with pre-judgment interest. However, the Court declines to add post-judgment interest to its appeal bond amount because there is not a certain end date by which to calculate the amount, and the Court declines to estimate an end date of the appeal process. Instead, the Court finds that the judgment order amount, plus the prejudgment interest amount, rounded to \$1,700,000.00, is adequate to protect Plaintiff's interests.

20. If Defendant does not post the bond within fifty (50) days of entry of this Order, Defendant's appeal shall be dismissed from the docket of the Supreme Court of Appeals of West Virginia pursuant to West Virginia Rule of Appellate Procedure 28(c). Defendant's objections to this Order are noted and preserved.

21. Further, since the Court entered its own order on the instant motion, the Court finds the arguments and motion to strike regarding Defendant's proposed order are moot. Therefore, it is hereby ADJUDGED and ORDERED that Plaintiff's Motion to Strike Defendant's Proposed Order, contained in its Response to the instant motion, is DISMISSED AS MOOT.

22. The Clerk is directed to provide a copy of this Order to counsel of record; to the West Virginia Business Court Division, Berkeley County Judicial Center, 380 W. South Street, Suite 2100, Martinsburg, WV 25401 and to the Clerk for the Supreme Court of Appeals of WV.

ENTERED this 20th day of November 2020.



JUDGE H. CHARLES CARL, III
JUDGE OF THE WEST VIRGINIA
BUSINESS COURT DIVISION