

**Not for Publication or Citation**

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

IN RE:	)	
	)	CASE NO. 07-20206
WOODHOLLOW LOFT, INC.	)	REG/jd
	)	
Debtor	)	ADV. PROC. NO. 07-2123
	)	
	)	
SISTERS OF ST. FRANCIS HEALTH	)	
SERVICES, INC. d/b/a ST. MARGARET	)	
MERCY HEALTHCARE CENTERS	)	
	)	
Plaintiff	)	
	)	
vs.	)	
	)	
WOODHOLLOW LOFT, INC.	)	
	)	
Defendant	)	

**DECISION AND ORDER DENYING MOTION  
FOR STAY PENDING APPEAL**

At Fort Wayne, Indiana, on May 6, 2010.

This matter is before the court to consider the defendant/debtor’s motion for a stay of the court’s judgment pending appeal. Fed. R. Bankr. P. Rule 8005. That judgment was entered by Judge Klingeberger on November 16, 2009. He recently recused himself from the debtor’s main case and from this adversary proceeding, both of which have now been assigned to the undersigned. The judgment in question determined that the debtor “has no right or privilege in the continued use of [an alcoholic beverage permit]” and ordered the debtor to “cooperate fully with [the plaintiff] concerning the transfer of [that permit].” The court has reviewed the debtor’s motion, the parties’ briefs, and Judge Klingeberger’s decision, and having done so concludes that the motion for stay should be denied.

To begin with, the debtor makes no serious showing concerning its likelihood of success on appeal. Its brief on this issue it does nothing more than assert, in a single, short paragraph, that the debtor contends an agreement demonstrates its right to use the permit. Unfortunately, that contention does nothing more than restate the general position the debtor took at trial. It does nothing to identify, much less attempt to demonstrate, any legal or factual error in Judge Klingeberger's decision. See, In re Porter, 54 B.R. 81, 82 (Bankr. N.D. Okla. 1985). Absent an arguable error which might be corrected on appeal, the debtor has done nothing more than indicate a difference of opinion with the trial judge and that is not enough to succeed on appeal. See, In re Sims, 1992 WL 55721 (E.D. La. 1992). Secondly, the debtor has done nothing to propose or suggest a mechanism by which the successful plaintiff can be compensated for the delay in receiving its rights under the judgment. Fed. R. Bankr. P. Rule 8005 (relief may be conditioned on the filing of a bond or other security) See also, In re Altman, 230 B.R. 17, 21 (Bankr. D. Conn. 1999). That judgment determined the plaintiff is the owner of the permit in question, but instead of recognizing that right the debtor apparently wishes to continue using the plaintiff's property for free, while it continues to debate the issue. In light of these deficiencies, which weigh substantially in favor of the plaintiff, the court need not balance any other considerations associated with staying the court's judgment. See, Matter of Forty-Eight Insulations, Inc., 115 F.3d 1294, 1300-01 (7th Cir. 1997).

IT IS THEREFORE ORDERED that the defendant's motion for stay pending appeal is DENIED.

/s/ Robert E. Grant  
Chief Judge, United States Bankruptcy Court