

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI**

THE SOCIETY OF LLOYD’S,

Plaintiff,

v.

**ROBERT W. FUERST, HORD HARDIN,
HAROLD F. ILG, WALTER A. KLEIN,
MEADE M. McCAIN, JOHN J.
SHILLINGTON, CYNTHIA J.
TODOROVICH and MICHAEL B.
TODOROVICH**

Defendants.

Case No. 4:03CV1113 HEA

**PLAINTIFF LLOYD’S BRIEF IN OPPOSITION TO HAROLD ILG’S
MOTION FOR A PROTECTIVE ORDER**

Summary

Defendant Harold Ilg’s Motion for a Protective Order fails to provide any support for the motion. Ilg relies on Federal Rule of Civil Procedure 62, but this rule does not relate to protective orders, let alone protective orders from proper discovery requests. Instead, Rule 62 relates to stay of proceedings to enforce a judgment. Federal Rule of Civil Procedure 62(a) provides that “no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after its entry.”

Ilg’s automatic stay of execution under Rule 62(a) expired two months ago. He is the only Defendant to file an appeal of that Judgment. However, pursuant to Federal Rule of Civil Procedure 62(d) Ilg has never given a supersedeas bond approved by the Court. Therefore, in accordance with Rule 62(d), Ilg is not entitled to a protective order or a stay of execution on the Judgment and an order compelling him to comply with the discovery requests should be entered.

I. THE COURT ENTERED JUDGMENT IN LLOYD'S FAVOR AND AGAINST DEFENDANT ILG ON JULY 12, 2004

On July 12, 2004, the Court entered an order granting Lloyd's Motion for Summary Judgment against all Defendants, including Ilg. On July 12, 2004, the Court also entered Judgment in Lloyd's favor and against Ilg and all other Defendants. Specifically, the Judgment against Ilg is for UK £ 242,955 plus interest at the English statutory rate of 8% annum from March 11, 1998. (Attached as Exhibit 1). In accordance with Rule 62(a) Ilg was entitled to an automatic 10 day stay of execution on the Judgment. On August 10, 2004, Ilg filed a notice of appeal to the Eighth Circuit Court of Appeals, but did not post a supersedeas bond pursuant to Rule 62(d). Therefore, Ilg cannot obtain a stay of proceedings and Lloyd's is entitled to execute on and enforce the Judgment against Ilg.

II. LLOYD'S HAS SERVED DEFENDANT ILG WITH REQUESTS FOR THE PRODUCTION OF DOCUMENTS AND A NOTICE OF DEPOSITION IN ITS EFFORT TO EXECUTE ON ITS JUDGMENT AGAINST HIM

Federal Rule of Civil Procedure 69(a), entitled "Execution," states, in relevant part: "In aid of the judgment or execution, the judgment creditor . . . may obtain discovery from any person, including the judgment debtor, in the manner provided in these rules or in the manner provided by the practice of the state in which the district court is held." Missouri Supreme Court Rule 76.28, "Discovery in Aid of Execution," states: "In aid of the judgment or execution, the judgment creditor . . . may obtain discovery as provided by Rule 57.01, 57.03, 57.04, 57.05, 57.06, 57.07, 57.09, 57.10, and 57.01 and may enforce discovery as authorized by Rule 61.01 or by an order treating as a contempt of court the failure to comply with the discovery request." On August 30, 2004, Lloyd's served Ilg with a Request for the Production of Documents pursuant to Missouri Supreme Court Rules 76.28 and 58.01. (Attached as Exhibit 2). These requests relate to assets, including bank accounts and real estate, owned by Ilg and which Lloyd's may be able

to execute on to satisfy the Judgment. To date, Ilg has failed to comply with these requests. In addition, on September 7, 2004, pursuant to Missouri Supreme Court Rules 76.28 and 57.03 Lloyd's has served Ilg with a Notice of Deposition for October 19, 2004, in St. Louis. (Attached as Exhibit 3).

III. FEDERAL RULE 62 DOES NOT RELATE TO PROTECTIVE ORDERS AND PROVIDES THAT A STAY UPON APPEAL MAY BE OBTAINED ONLY IF ILG PROVIDES A SUPERSEDEAS BOND

Inexplicably, Ilg has requested that the Court enter a protective order pursuant to Rule 62 even though it does not provide for protective orders. Federal Rule of Civil Procedure 26(c) provides for protective orders only in limited circumstances. Rule 26(c) states as follows:

Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the district where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

- (1) that the disclosure or discovery not be had;
- (2) that the disclosure or discovery may be had only on specified terms and conditions, including a designation of the time or place;
- (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
- (4) that certain matters not be inquired into, or that the scope of the disclosure or discovery be limited to certain matters;
- (5) that discovery be conducted with no one present except persons designated by the court;
- (6) that a deposition, after being sealed, be opened only by order of the court;
- (7) that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated way; and
- (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

Ilg has not complied with any of these requirements, most notably attaching a certification that he has “in good faith conferred or attempted to confer with other affected parties in an effort to

resolve the dispute without court action” and setting forth “good cause.” In fact, Ilg cannot set forth any “good cause” because Rule 62 provides that a judgment creditor may execute upon the judgment after the automatic 10 day stay.

Ilg does not specify any reasons for the entry of a protective order regarding Lloyd’s Requests for the Production of Documents and Notice of Deposition. Instead, Ilg’s motion and memorandum states he has filed an appeal in the Eighth Circuit. Therefore, Lloyd’s can only surmise that Ilg is attempting to have a stay of execution on the Judgment entered on July 12, 2004. However, the mere filing of an appeal without a supersedeas bond is not grounds for a stay of execution on the Judgment. Ilg’s motion is a transparent attempt to further delay and frustrate Lloyd’s attempts to collect money that he has owed for several years. As noted above, Ilg has not provided a supersedeas bond pursuant to Rule 62(d). In fact, the intent and purpose of Rule 62(d)’s requirement of a supersedeas bond is clearly to prevent this exact situation, namely a judgment debtor delaying a judgment creditor from collecting on a final judgment. Therefore, Ilg should be ordered to produce the requested documents and appear for his deposition.

Conclusion

For the foregoing reasons, Defendants’ Motion to Compel the Deposition of Mr. Demery should be denied and Defendants’ should be ordered to respond to Lloyd’s Motion for Summary Judgment without further delay.

Respectfully submitted,

/s/ Blake T. Hannafan

Blake T. Hannafan
One of the Attorneys

for the Society of Lloyd's

Dated: October 4, 2004

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CERTIFICATE OF SERVICE

I certify that on the 4th day of October, 2004, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following: Harold F. Ilg, 16401 Ranchester Drive, Chesterfield, MO 63005 and 100 L'Ambiance Circle, Unit 202, Naples, FL 34108 and 2043 Woodland Parkway, Suite 200, St. Louis, MO 63146; Armstrong Teasdale LLP, One Metropolitan Square, Suite 2600, St. Louis, MO 63102-2740; Norman W. Pressman, Esq., 121 Hunter Ave., Suite 101, St. Louis, MO 63124-2082; Theodore J. Williams, Jr., Williams Venker & Sanders LLC, 10 South Broadway, Suite 1600, St. Louis, MO 63102; and Michael B. Todorovich, PO Box 16602, St. Louis, MO 63105

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