

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

J. SIMPSON DEAN, JR., )  
 )  
 Plaintiff, )  
 )  
 v. ) Civil Action No. 99-679-KAJ  
 )  
 BRANDYWINE STUDIOS INC., a )  
 Delaware corporation, ANTHONY JOHN )  
 OBARA, JR., JANE W. OBARA, and )  
 BRANDYWINE SCULPTURE STUDIOS, )  
 INC., )  
 )  
 Defendants. )  
 \_\_\_\_\_ )  
 )  
 BRANDYWINE STUDIOS INC., )  
 ANTHONY JOHN OBARA, JR., and )  
 JANE W. OBARA, )  
 )  
 Counter-Claimants, )  
 )  
 v. )  
 )  
 DEAN J. SIMPSON, JR., )  
 )  
 Counter-Defendant. )

**MEMORANDUM ORDER**

This matter is before the court on defendants' post-trial Motion for Stay of Judgment Pending Appeal to the United States Court of Appeals for the Third Circuit and Motion for Relief from Judgment. (Docket Item ["D.I."] 170; the "Motion".) The defendants lost at the trial of this case in December, 2001. (D.I. 158 at 1.) They filed a series of post-trial motions that were denied. (See *id.*) Now, after filing an appeal (D.I. 170 at ¶ 5), and without reference to the controlling Rule and standards and without

mention of a supersedeas bond, the defendants have filed their Motion, seeking to further delay the final resolution of this case.

Rule 62(d) of the Federal Rules of Civil Procedure states that a stay of judgment may be obtained pending appeal if a party posts an appropriate supersedeas bond. “[T]he factors regulating the issuance of a stay are ... : (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987). Defendants have not attempted to demonstrate that they can meet these standards. Rather, their filing is focused on repeating allegations of fraud and misconduct against plaintiff’s counsel. (See D.I. 170 at ¶ 23.) Neither have defendants mentioned the requirement of a bond. Because they have failed to address the pertinent legal standards or to comply with the prerequisites for obtaining a stay, their motion to stay is denied.

Likewise, the defendants’ effort to obtain relief from judgment under Rule 60(b) must be denied. The defendants’ own actions have divested this court of jurisdiction to grant the relief they seek.

Most Courts of Appeals hold that while an appeal is pending, a district court, without permission of the appellate court, has the power both to entertain and to deny a Rule 60(b) motion. If a district court is inclined to grant the motion or intends to grant the motion, those courts also hold, it should certify its inclination or its intention to the appellate court which can then entertain a motion to remand the case. Once remanded, the district court will have power to grant the motion, but not before.

*Venen v. Sweet*, 758 F.2d 117, 123 (3d Cir. 1985). The defendants have failed to demonstrate the extraordinary circumstances warranting relief under Rule 60(b). See

*Moolenaar v. Government of Virgin Islands*, 822 F.2d 1342, 1346 (3d Cir. 1987) (“The remedy provided by Rule 60(b) is ‘extraordinary, and special circumstances must justify granting relief under it.’”) Moreover, the Motion is untimely.

Accordingly, it is hereby ORDERED that defendants’ Motion for Stay of Judgment Pending Appeal to the United States Court of Appeals for the Third Circuit and Motion for Relief from Judgment (D.I. 170) is DENIED. Plaintiff’s Motion to Strike Defendants’ Reply In Support of Their Motion for Stay Pending Appeal and for Relief from Judgment, or in the Alternative, Motion for Leave to File Sur-Reply (D.I. 177) is DENIED as moot.

Kent A. Jordan  
UNITED STATES DISTRICT JUDGE

November 5, 2003  
Wilmington, Delaware