

District Court, Larimer County, State of Colorado 201 LaPorte Avenue, Suite 100 Fort Collins, CO 80521-2761 (970) 494-3500	DATE FILED: May 23, 2019 CASE NUMBER: 2018CV149 ▲ COURT USE ONLY ▲
Plaintiff: Eric Sutherland v. Defendants: The City of Fort Collins, et. al.	
ORDER DENYING MOTION TO STAY ENFORCEMENT OF JUDGMENTS	

Plaintiff filed a Motion Stay Enforcement of Judgments on April 22, 2019. Having considered the motion, responses, reply, and applicable law, the Court finds and orders as follows.

I. Background

The Court granted Timnath Development Authority (TDA)'s and Compass Mortgage Corporation (CMC)'s motion for attorney fees on December 6, 2018. The Court granted Steve Miller's and Irene Josey's motion for attorney fees on April 2, 2019. The Court granted the City of Fort Collins's motion for attorney fees on April 2, 2019.

Plaintiff filed a notice of appeal stating that he is appealing these orders, among others, on May 6, 2019.

On May 2, 2019, Plaintiff filed a "Motion to Deem this Proceeding *coram non judice* since June 23, 2018 Pursuant to Rule 60(b)(5)".

II. Legal Standards

A court may stay the enforcement of a judgment "pending a motion for relief from a judgment or order made pursuant to C.R.C.P. 60". C.R.C.P. 62(d).

A court may stay the enforcement of a judgment during an appeal if a supersedeas bond is filed with, and approved by, the court. C.R.C.P. 62(d). A

supersedeas bond is required “as a prerequisite for obtaining an order staying execution of the judgment”. *Muck v. Arapahoe Cty. Dist. Court*, 814 P.2d 869, 873 (Colo. 1991).

III. Application of Law

Plaintiff asks the Court to stay the enforcement of three judgments granting attorney fees to TDA and CMC, Steve Miller and Irene Josey, and the City of Fort Collins. Plaintiff argues that staying the enforcement of those judgments will not prejudice the Defendants and will spare Plaintiff from suffering “irreparable harm”. Plaintiff further argues that he will be successful in his appeal of the three underlying orders. Finally, Plaintiff argues that the enforcement of the judgments should be stayed until his pending Rule 60 motion is decided.

TDA, CMC, and the City of Fort Collins oppose Plaintiff’s motion. These Defendants argue that, now that these judgments are on appeal, Plaintiff’s only avenue for obtaining a stay of enforcement is through Rule 62(d). The Defendants point out that Plaintiff has not posted the required supersedeas bond. Defendants argue that Plaintiff’s motion should be denied because the required bond has not been posted.

Plaintiff has presented two theories justifying a stay in the enforcement of the judgments: (1) he is appealing the underlying orders, and (2) he has a pending Rule 60 motion. Plaintiff cannot prevail on his first theory because he has not posted a supersedeas bond. C.R.C.P. 62(d). Posting this bond is required “as a prerequisite” before a stay will be granted. *Muck*, 814 P.2d at 873. As Plaintiff has not posted a supersedeas bond, the Court does not stay the enforcement of the judgments on those grounds.

The Court also does not stay the enforcement of the judgments on Plaintiff’s second theory. The Court recognizes that Plaintiff has filed a motion pursuant to Rule 60 and that this motion could justify a stay in the enforcement of the judgments. However, the Court does not have jurisdiction to rule on Plaintiff’s Rule 60 motion as the case is on appeal. *See Musick v. Woznicki*, 136 P.3d 244, 246–50. (Colo. 2006). Plaintiff’s notice of appeal states that he is specifically asking the Court of Appeals to decide “Was the proceeding in the trial court *coram non judice*?”. Notice of Appeal at 6. Plaintiff’s Rule 60 motion asks the Court to determine a matter that Plaintiff has specifically asked the Court of Appeals to determine. As such, this Court’s resolution of the Rule 60 motion would necessarily affect the judgment on appeal.

In short, the Court will not have jurisdiction over Plaintiff's Rule 60 motion until the appeal is resolved. Therefore, the Court declines to stay the enforcement of the judgments pending the resolution of Plaintiff's Rule 60 motion.

Order

Plaintiff's motion is denied.

Dated: May 23, 2019.

BY THE COURT:



Gregory M. Lammons
District Court Judge