

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA (WILLIAMSPORT)**

<p>Emanuele DiMare, et. al. Plaintiffs</p> <p style="text-align: center;">v.</p> <p>Shop-Vac Corporation, et. al. Defendants</p>	<p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p>	<p>Case No. 4:12-md-02380-YK</p>
---	--	---

**OBJECTOR/APPELLANT’S MOTION TO STAY APPEAL BOND REQUIREMENT
AND RETURN ALL POSTED APPEAL BONDS PENDING APPEAL**

The Objector, Michelle W. Vullings, respectfully moves this Court for an order staying the appeal bond requirement pursuant to the Court's Order Granting in Part Class Counsel’s Motion to Compel Objector/Appellant Michelle W. Vullings to Post an Appeal Bond [Doc. 227], and for the return Objector/Appellant Michelle W. Vullings’ \$5,000 appeal bond in full pending Objector/Appellant Michelle W. Vullings’ appeal.

Background

On December 9, 2016, the Court approved the settlement of the Consumer Plaintiff’s claims against Shop-Vac Corporation and the other Defendants. In doing so, the Court rejected the objections of two individual objectors, including Ms. Vullings, and concluded that the objections lacked merit. The objectors appealed the Court's approval of the settlement.

The Class Counsel subsequently moved the Court for an order requiring the objectors to post a \$32,000 appeal bond, pursuant to Federal Rule of Appellate Procedure Seven, pending the objectors' appeals of the Court's approval of the settlement. The Court granted the Class Counsel’ motion in Part on February 8, 2016, Ordering Appellant/Objector Michelle W. Vullings to post bond in the amount of \$5,000. The Court found that while Class Counsel made no effort to

justify their \$32,000 estimate, requiring Objector/Appellant Michelle W. Vullings to post an appeal bond in the amount of \$5,000 was “reasonable.”

Ms. Vullings has now appealed the Court's order imposing an appeal bond in the amount of \$5,000. Because enforcement of the appeal bond pending Ms. Vullings' appeal of that bond order would cause Ms. Vullings irreparable harm, she now respectfully requests that the Court enter an order staying the appeal bond requirement, until the conclusion of Ms. Vullings' appeal regarding the propriety of that appeal bond.

Argument

In determining whether to grant a motion for stay pending appeal of a civil order, the court must consider the following factors: (1) whether the movant has made a strong showing that the movant is likely to succeed on the merits of the appeal, (2) whether the movant will be irreparably injured absent a stay, (3) whether the issuance of the stay will substantially injure other parties' interests in the proceeding and (4) where the public interest lies. *United States v. Diageo, Inc.*, 91 A.F.T.R.2d 2003-2236 (D. Minn. 2003). These factors are to be "applied flexibly according to the circumstances of each case." *de la Fuente v. DCI Telecommunications, Inc.*, 269 F. Supp. 2d 237, 240 (S.D.N.Y. 2003). In that regard, at least one court has observed that "[p]robability of success is inversely proportional to the degree of irreparable injury evidenced. A stay may be granted with either a high probability of success and some injury, or vice versa." *Shays v. Fed. Election Comm'n*, 340 F. Supp. 2d 39, 44 (D.D.C. 2004) (emphasis added).

A. Ms. Vullings Has a High Likelihood of Success in Her Appeal

While it is true that Federal Rule of Appellate Procedure allows a district court to require an appeal bond pending appeal, this bond is strictly limited to an amount necessary to ensure

payment of the "costs on appeal." Rule 7 provides in pertinent part that, "[i]n a civil case, the district court may require an appellant to file a bond or provide other security in any form and amount necessary to ensure payment of costs on appeal." The purpose of a Rule 7 appeal bond is to ensure that the appellant, if he is unsuccessful on appeal, can pay the "costs on appeal" incurred by his opponent.

In the present matter, Ms. Vullings has a high likelihood of successful in her appeal because, as the Court found, Class Counsel made no effort to justify their request. Class Counsel's requests are merely phantom numbers with no actual calculation or substantiation. This Court Ordered Objector/Appellant Michelle W. Vullings to post an appeal bond in the amount of \$5,000 and Ordered that amount only because the Court found it was "reasonable" versus it being the actual costs of appeal as Rule 7 dictates.

Objector/Appellant Michelle W. Vullings has posted the \$5,000 appeal bond with the intent of fully complying with this Court's Order. Thus, this Court should stay the appeal bond requirement and return Objector/Appellant Michelle W. Vullings' \$5,000 appeal bond in full pending Objector/Appellant Michelle W. Vullings' appeal.

B. Ms. Vullings Will be Irreparably Harmed if a Stay is Not Entered

Federal Rule of Appellate Procedure 7 refers specifically and only to "a bond ... necessary to ensure payment of costs on appeal." *Allen v. J.P. Morgan Chase Bank, NA*, No. 15-3425, 2015 WL 12714382, at *1 (7th Cir. Dec. 4, 2015). The Court should not penalize Appellants with a bond amount based on unsupported suppositions. *Melinda Mehigan, et. al. v. Ascena Retail Group, Inc., et. al.*, No. 15-cv-00724 MAK (E.D. Pa. Oct. 14, 2016).

In the present matter, Class Counsel moved the Court for an order requiring the objectors to post a \$32,000 appeal bond, pursuant to Federal Rule of Appellate Procedure 7, pending the

objectors' appeals of the Court's approval of the settlement. The Court granted Class Counsel's motion in Part on February 8, 2016, Ordering Appellant/Objector Michelle W. Vullings to post bond in the amount of \$5,000. The Court found that while Class Counsel made no effort to justify their \$32,000 estimate, requiring Objector/Appellant Michelle W. Vullings to post an appeal bond in the amount of \$5,000 was "reasonable."

In the present matter, if Ms. Vullings' appeal bond is not returned in full pending her appeal, she will be irreparably harmed as the output of these funds will cost Ms. Vullings interest by the day. Thus, this Court should stay the appeal bond requirement and return Objector/Appellant Michelle W. Vullings' \$5,000 appeal bond in full pending Objector/Appellant Michelle W. Vullings' appeal.

C. Issuance of a Stay Will Not Harm the Class, Class Counsel, or the Defendants, and Public Interest Supports Issuance of a Stay

First, a stay of the enforcement of the appeal bond until the circuit court has had the opportunity to determine the appropriate amount of the appeal bond will not harm the Class, Class Counsel, or the Defendants in any way. Second, the scope of an appeal bond under Rule 7 is an important issue; one that the Third Circuit has not yet completely addressed. In light of these circumstances, public interest supports a stay of the Court's appeal bond requirement as it will allow the Third Circuit to address unanswered issues of law and clarify the law as it should be applied within this jurisdiction.

Thus, the issuance of a stay will not harm the Class, Class Counsel, or the Defendants, and Public Interest supports issuance of a stay. Accordingly, this Court should stay the appeal bond requirement and return Objector/Appellant Michelle W. Vullings' \$5,000 appeal bond in full pending Objector/Appellant Michelle W. Vullings' appeal.

Date: February 21, 2017

/s/ Brent F. Vullings
Brent F. Vullings, Esq.
3953 Ridge Pike Suite 102
Collegeville, PA 19426
Telephone: 610-489-6060
Attorney for Objector
Michelle W. Vullings

CERTIFICATE OF SERVICE

The undersigned certifies he electronically filed the foregoing Notice of Appeal via the ECF system for the Middle District of Pennsylvania, thus effecting service on all attorneys registered for electronic filing.

Date: February 21, 2017

/s/ Brent F. Vullings _____
Brent F. Vullings, Esq.
3953 Ridge Pike Suite 102
Collegeville, PA 19426
Telephone: 610-489-6060
Attorney for Objector
Michelle W. Vullings

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA (WILLIAMSPORT)**

Emanuele DiMare, et. al.	:	Case No. 4:12-md-02380-YK
Plaintiffs	:	
	:	
v.	:	
	:	
Shop-Vac Corporation, et. al.	:	
Defendants	:	
	:	

ORDER

Upon consideration of Objector/Appellant’s Motion to Stay Appeal Bond Requirement and Return all Posted Appeal Bonds Pending Appeal (hereinafter referred to as “the Motion”), and upon consideration of any response thereto,

IT IS HEREBY ORDERED AND DECREED that the Motion is GRANTED, the Appeal Bond Requirement is stayed pending Appeal, and Objector/Appellant Michelle W. Vullings’ Posted Appeal Bond shall be returned pending Appeal.

Dated: _____

J.