

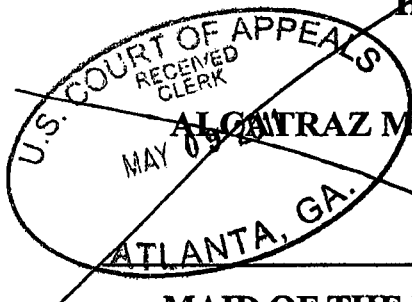
Exhibit

27

APPEAL NO. 11-10259-E

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

**In re: BARBARA G. WINDSOR,
Appellant**



**ALCATRAZ MEDIA, LLC, ALCATRAZ MEDIA, INC. AND
WILLIAM M. WINDSOR,
Defendants**

**MAID OF THE MIST CORPORATION, MAID OF THE MIST
STEAMBOAT COMPANY, LTD., Plaintiffs and Appellees,**

**Appeal from the United States District Court
for the Northern District of Georgia, Atlanta Division
Civil Action No. 1:09-CV-01543-WSD
Judge William S. Duffey, Jr.**

EMERGENCY MOTION FOR STAY

Barbara G. Windsor
P.O. Box 681236
Marietta, GA 30068
Phone: 770-578-1094
Fax: 770-234-4106
Email: williamwindsor@bellsouth.net

**PRO SE FOR APPELLANT,
BARBARA G. WINDSOR**

CERTIFICATE OF INTERESTED PERSONS

Barbara G. Windsor, Pro Se, hereby certifies pursuant to FRAP 26.1 and 11th Cir. Rule 26.1-1 that the following persons, judges, associations of person, firms, partnerships, or corporations may have an interest in the outcome of this case:

- Alcatraz Media, Inc., and Alcatraz Media, LLC, Defendants (jointly “Alcatraz”).
- Anderson, Jr., Carl Hugo, Counsel for Appellees, Maid of the Mist Corp. and Maid of the Mist Steamboat Company, Ltd.
- Bright, Sarah Louise, Counsel for Appellees, Maid of the Mist Corp. and Maid of the Mist Steamboat Company, Ltd.
- Brown, Marc W., Counsel for Appellees, Maid of the Mist Corp. and Maid of the Mist Steamboat Company, Ltd.
- Duffey, Hon. William S., United States District Judge.
- Evans, Hon. Orinda D., United States District Judge.
- Everybody Loves Travel, LLC, company owned by the owners of Defendants Alcatraz Media, Inc., and Alcatraz Media, LLC.
- Glynn, Christopher, President of Maid.
- Hawkins & Parnell, Counsel for Appellees, Maid of the Mist Corp. and Maid of the Mist Steamboat Company, Ltd.


- Huber, Christopher J, United States Attorney.
- Maid of the Mist Corporation, Appellee, and Maid of the Mist Steamboat Company, Ltd., Appellee, (jointly “Maid”).
- Phillips Lytle, Counsel for Appellees, Maid of the Mist Corp. and Maid of the Mist Steamboat Company, Ltd.
- Raley, G. Brian, Former Counsel for Defendants Alcatraz Media, Inc., and Alcatraz Media, LLC.
- Windsor, Barbara G., Appellant.
- Windsor, William M., Defendant. (Defendants Alcatraz and Windsor are reflected herein as “A&W.”)

Corporate Disclosure Statement

No corporate disclosure statement is necessary for this party because Barbara Windsor is a natural, human, person.

Respectfully submitted this 9th day of May 2011.

Barbara G. Windsor:


Barbara G. Windsor
Pro Se

P.O. Box 681236 -- Marietta, GA 30068
Phone: 770-578-1094 -- Fax: 770-234-4106
Email: williamwindsor@bellsouth.net

Barbara G. Windsor (“Barbara”) hereby submits this EMERGENCY MOTION FOR STAY to this Court for consideration. Barbara shows the Court as follows:

1. Barbara has attempted to file Motions for Stays in the District Court, but Judge William S. Duffey, Jr. (“Judge Duffey”) has ignored them or denied them. (See Exhibit A for one example.) Judge Duffey denies due process and interferes with Barbara’s rights by requiring that Barbara submit Requests for Specific Approval to file anything, and then he ignores them. Judge Duffey also illegally interferes with the District Court Clerks staff to deny Barbara the right to file documents with the Clerk.

2. This is an EMERGENCY MOTION because Judge Duffey is ordering Barbara to produce the discovery that is the primary subject of the appeal and appear in court on Friday, May 13, 2011. This Court must take action to order the stay prior to Friday, May 13, 2011.

3. Barbara filed the Notice of Appeal and paid the appeal fee. (Exhibit B.) The Notice of Appeal was originally dated April 11, 2011, but it was returned by the Clerk of the Court. It was resubmitted on May 5, 2011 with \$455 cash. Based upon Georgia law, the underlying case was automatically stayed and a supersedeas took effect. Judge Duffey has refused to acknowledge that this took effect.

4. Barbara's husband has previously done legal research on stays, and the following information is taken from his filings.

5. The rule summarized in *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58, 103 S.Ct. 400, 401 (1982) is designed to prevent conflict among tribunals, as well as to prevent the waste of time and money that occurs if the district court makes changes after an appeal is filed. (*Wisconsin Mutual Insurance Co. v. United States*, 441 F.3d 502 (7th Cir. 03/20/2006).)

"Someone must be in charge of a case; simultaneous proceedings in multiple forums create confusion and duplication of effort; the notice of appeal and the mandate after its resolution avoid these by allocating control between forums." (*Apostol v. Gallion*, 870 F.2d 1335 (7th Cir. 03/28/1989).)

"As the Eleventh Circuit has explained, once a notice of appeal has been filed, the 'district court retains only the authority to act in aid of the appeal, to correct clerical mistakes, or to aid in the execution of a judgment that has not been superseded.' *Showtime/The Movie Channel, Inc. v. Covered Bridge Condominium Ass'n, Inc.*, 895 F.2d 711, 713 (11th Cir. 1990)." (*Baron v. Best Buy Co., Inc.*, 79 F.Supp.2d 1350 (S.D.Fla 12/01/1999).)

6. This Appeal divests Judge Duffey of any jurisdiction to continue to consider such motions.

"[T]he filing of a notice of appeal only divests the district court of jurisdiction respecting the questions raised and decided in the order that is on appeal." (*Motorola Credit Corp. v. Kemaluzan*, No. 03-7792 (2d Cir. 10/21/2004).)

7. But Judge Duffey is ignoring this. This Court must grant a stay to stop Judge Duffey from further violation of the law, rules, and Barbara's Constitutional rights.

8. Under Georgia law, this case is stayed, and Judge Duffey has no jurisdiction to consider motions while a case is stayed due to appeal. Judge Duffey acknowledged this law in Civil Action No. 1:09-CV-01543-WSD. Defendant Judge Evans has stated in this in several orders. This Court has issued orders expressing that the instant case is stayed.

9. In *Bryant v. Jones*, No. 1:04-CV-2462-WSD (N.D.Ga. 01/10/2007), Judge William S. Duffey ordered as follows:

"[A] federal district court and a federal court of appeals should not attempt to assert jurisdiction over a case simultaneously. The filing of a notice of appeal is an event of jurisdictional significance – it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." (*Blinco v. Green Tree Servicing, LLC*, 366 F.3d 1249, 1251 (11th Cir. 2004).

10. "...those aspects of the case involved in the appeal." Those are Judge Duffey's words. Well, "those aspects of the case involved in this appeal" are that this Court does not have the right to consider motions while related orders are on appeal. This appeal deals with the very issue that Judge Duffey expressed in *Blinco*.

11. The quote used by Judge Duffey came from *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58, 103 S.Ct. 400, 401 (1982).

"district court is without jurisdiction to consider motions submitted after the appeal was filed." (*Ball v. United States*, 470 U.S. 856, 84 L. Ed. 2d 740, 105 S. Ct. 1668 (1985). (*United States v. Christy*, 3 F.3d 765 (4th Cir. 09/01/1993).)

12. The Eleventh Circuit says there are exceptions to *Griggs*, but the attempts by Judge Duffey to damage Barbara while the case is on appeal is not an exception.

“According to the Court of Appeals for the Eleventh Circuit, exceptions to *Griggs* include "authority to act in aid of the appeal, to correct clerical mistakes or to aid in the execution of a judgment that has not been superseded." *Showtime/The Movie Channel v. Covered Bridge Condominium Ass'n*, 895 F.2d 711 (11th Cir. 1990) (citing *Matter of Thorp*, 655 F.2d 997 (9th Cir. 1981)).” (*BURFORD EQUIP. CO. v. CENTENNIAL INS. CO.*, 857 F. Supp. 1499 (N.D.Ala. 04/22/1994).)

“The Eleventh Circuit has identified several exceptions to this general rule. In all events, the district court will retain the authority to ‘act in aid of the appeal, to correct clerical mistakes or to aid in the execution of a judgment that has not been superseded.’ *Showtime v. Covered Bridge Condominium Ass'n*, 895 F.2d 711, 713 (11th Cir. 1990). More specific exceptions preserve district court jurisdiction over matters involved in the appeal where the appeal is from the denial of a defendant's frivolous double jeopardy motion, see *Rogers*, 788 F.2d at 1475; where the appeal is from a nonappealable order, see *United States v. Hitchmon*, 602 F.2d 689, 691 (5th Cir 1979) (en banc); or where appeal is by the government from a pretrial suppression order, and the district court retains jurisdiction for purpose of dismissing the indictment, see *United States v. Gatto*, 763 F.2d 1040, 1049 (9th Cir. 1985). Finally, a corollary of the general rule is that the district court will retain jurisdiction over matters not involved in the appeal.” (*DIAMOND WASTE, INC. v. MONROE CTY.*, 869 F. Supp. 944 (M.D.Ga. 12/9/1994).)

13. The Eleventh Circuit says the District Court has no jurisdiction to entertain motions.

“Shivers notice of appeal filed on December 6, 2005 divested the district court of jurisdiction over the matters brought on appeal. This case remained in this court until January 12, 2006, when we ordered the dismissal of the appeal filed on December 6, 2005 because it was untimely. During this period, the case was exclusively within our jurisdiction, and the district court

had no discretion to entertain the motion for an extension filed on January 5, 2006. The court properly dismissed the motion for lack of jurisdiction.” (*Shivers v. Hill*, 205 Fed.Appx. 788 (11th Cir. 11/14/2006).)

14. Judge Duffey simply has no jurisdiction.

“On May 31, 2006, the District Court clerk entered an order awarding Chrysler \$11,882.64 in costs. The plaintiffs did not request review of the clerk's order in the District Court and instead filed a notice of appeal from that order on June 5, 2006. Afterwards, on June 16, 2006, the magistrate judge independently entered an order purporting to award Chrysler only \$8,049.45 in costs. We cannot review either costs order on appeal. Generally, “[t]he filing of a notice of appeal . . . confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.” *Liddell v. Bd. of Educ. of St. Louis*, 73 F.3d 819, 822 (8th Cir. 1996) (quoting *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982) (per curiam)). Here, the magistrate judge did not have jurisdiction to enter the June 16 costs order because the June 5 notice of appeal from the May 31 costs order divested the District Court of its jurisdiction to enter another costs order. Thus, the June 16 order has no effect.” (*Ahlberg v. Chrysler Corp.*, No. 06-1560 (8th Cir. 03/28/2007).)

15. The Supreme Court and the Eleventh Circuit have made it quite clear that Judge Duffey has lost jurisdiction. They have specifically said that the issue of continued litigation of issues in the district court is not collateral to the questions presented by an appeal, but the mirror image of the questions presented on appeal. In this Appeal, the issues are whether Judge Duffey’s refusal to honor the automatic stay and plan to continue with the motion for sanctions are improper. In purporting to continue with motions for sanctions and attorneys’ fees, which Barbara has now appealed, Judge Duffey is violating well-established case law.

“The Supreme Court has explained that ‘a federal district court and a federal

court of appeals should not attempt to assert jurisdiction over a case simultaneously. The filing of a notice of appeal is an event of jurisdictional significance – it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.’ *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58, 103 S.Ct. 400, 401 (1982); see also *Marrese v. American Academy of Orthopedic Surgeons*, 470 U.S. 373, 379, 105 S.Ct. 1327, 1331 (1985), reh'g denied, 471 U.S. 1062, 105 S.Ct. 2127 (1985). The only aspect of the case involved in an appeal from an order denying a motion to compel arbitration is whether the case should be litigated at all in the district court. The issue of continued litigation in the district court is not collateral to the question presented by an appeal under § 16(a)(1)(A); ‘it is the mirror image of the question presented on appeal.’ *Bradford-Scott Data Corporation, Inc. v. Physician Computer Network, Inc., No. 97-2415 (7th Cir. 10/14/1997)*, 128 F.3d at 505.

“[w]hether the litigation may go forward in the district court is precisely what the court of appeals must decide.’ *Bradford-Scott Data Corp.*, 128 F.3d at 506.

“Accordingly, the proper course for obtaining a stay in this context follows. When a litigant files a motion to stay litigation in the district court pending an appeal from the denial of a motion to compel arbitration, the district court should stay the litigation so long as the appeal is non-frivolous. If the district court denies the motion to stay, then the appellant may file a motion to stay in this Court. If this Court then determines that the appeal is non-frivolous, then this Court should stay the litigation in the district court pending the appeal of the denial of the motion to compel arbitration.” (*Blinco v. Green Tree Servicing, LLC*, 366 F.3d 1249 (11th Cir. 04/26/2004).)

Continuation of proceedings in the district court largely defeats the point of the appeal and creates a risk of inconsistent handling of the case by two tribunals. (*Bradford-Scott Data Corporation, Inc. v. Physician Computer Network, Inc., No. 97-2415 (7th Cir. 10/14/1997)*.)

A notice of appeal from an interlocutory order does not produce a complete divestiture of the district court's jurisdiction over the case; rather, it only divests the district court of jurisdiction over those aspects of the case on appeal. Our caselaw makes this point clearly: "It is the general rule that a district court is divested of jurisdiction upon the filing of the notice of appeal

with respect to any matters involved in the appeal. However, where an appeal is allowed from an interlocutory order, the district court may still proceed with matters not involved in the appeal." *Taylor v. Sterrett*, 640 F.2d 663, 667-68 (5th Cir. 1981); see also *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982) ("The filing of a notice of appeal is an event of jurisdictional significance -- it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.") (emphasis added).

"Once a notice of appeal is filed jurisdiction is vested in the Court of Appeals, and the trial court thereafter has no power to modify its judgment in the case or proceed further except by leave of the Court of Appeals. Thus, the filing of a notice of interlocutory appeal divests the district court of jurisdiction over the particular issues involved in that appeal. (*City of Los Angeles v. Santa Monica Baykeeper*, 254 F.3d 882 (9th Cir. 06/26/2001).)

16. The District Court has no jurisdiction to consider motions for sanctions.

(*Trulis v. Barton*, 107 F.3d 685, 67 F.3d 779, 95 Cal. Daily Op. Serv. 7528, 36 Fed.R.Serv.3d 1422, 97 Cal. Daily Op. Serv. 1296 (9th Cir. 09/27/1995).

17. As the November 10, 2010 order is involved with the issue of the existence of a stay, this appeal of that order clearly divests Judge Duffey of control over those aspects of the case involved in the appeal.

"When one aspect of a case is before the appellate court on interlocutory review, the district court is divested of jurisdiction over that aspect of the case. A district court does not have the power to 'alter the status of the case as it rests before the Court of Appeals.'" (citations omitted); *Dayton Indep. Sch. Dist. v. U.S. Mineral Prods. Co.*, 906 F.2d 1059, 1063 (5th Cir. 1990). (*Florida Evergreen Fol. v. E.I. Dupont de Nemours*, 165 F.Supp.2d 1345 (S.D.Fla 08/23/2001).) (Also cited in *Green Leaf Nursery v. E.I. DuPont De Nemours and Co.*, 341 F.3d 1292 (11th Cir. 08/15/2003).)

"Moreover, the district court's exercise of jurisdiction in this case would violate the general prohibition against two courts entertaining duplicative

litigation. Cf. *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58, 103 S.Ct. 400, 402 (1982). This prohibition is meant to 'promote judicial economy and avoid the confusion and inefficiency that might flow from putting the same issue before two courts at the same time.' Cf. 20-303 *Moore's Federal Practice*: Civil § 303.32 [1] (3d ed. 2009); *Shewchun v. United States*, 797 F.2d 941, 943 (11th Cir. 1986) (noting that the prohibition against a district court exercising jurisdiction over a case properly before the court of appeals prevents parties from "fight[ing] a 'two front war' for no good reason")." (*In re Hughes*, No. 09-11676 (11th Cir. 12/11/2009).)

"Rule 4(a) (4) provides a list of post-judgment motions that, if timely filed, "the appeal self-destructs." * (citing 9 J. Moore, B. Ward & J. Lucas, *Moore's Federal Practice* ¶ 204.12[1], at 4-65 n. 17 (2d ed. 1982)). The list of post-judgment motions in Rule 4(a) (4) (A) includes motions 'for a new trial under Rule 59; or for relief under Rule 60 if the motion is filed no later than 10 days after the judgment is entered.'" Fed. R. App. P. 4(a) (4) (A) (v-vi). As was previously stated, Plaintiff's Rule 59 motion was not timely filed. Plaintiff's Rule 60 motion, which was timely filed, was nevertheless filed more than ten days after judgment was entered. When a post-judgment motion is not one of the four enumerated in Rule 4 (a) (4), the motion does not operate to stay a party's notice of appeal and the district court lacks jurisdiction to consider the motion. See *Alward v. Burrelle's Info. Servs.*, No. 365 2001 WL 1708779 at *3 (D. Ariz. Dec. 5 2001). Accordingly, this case remains stayed, and this Court cannot consider Plaintiff's motion for relief from judgment until the appeal is ruled upon by the Court of Appeals." (*Mishra v. HCA Inc.*, No. CV 105-101 (S.D.Ga. 09/08/2009).)

"...we believe that the rule announced by the court en banc in *Hitchmon* is properly extended to the facts of this case. That court and others have stated in exceptionally expansive language that the filing of an appeal of virtually any sort acts to freeze all proceedings in the district court pending resolution of the appeal. As the former Fifth Circuit there stated, upon filing an appeal "the district court is divested of jurisdiction to take any action with regard to the matter except in aid of the appeal." 602 F.2d at 692. (*Shewchun v. United States*, 797 F.2d 941 (11th Cir. 08/26/1986).)

18. Judge Duffey is violating the rules and Barbara's Constitutional rights. Article III of the Constitution requires that this Court uphold the Constitution. Therefore, this Court must order a STAY.

WHEREFORE, Barbara prays that this Court grant said motion and that this Court do as follows:

- (1) grant this motion;
- (2) order a stay in Civil Action 1:09-CV-01543-WSD; and
- (3) grant such other relief as the Court deems appropriate.

Submitted, this 9th day of May 2011.

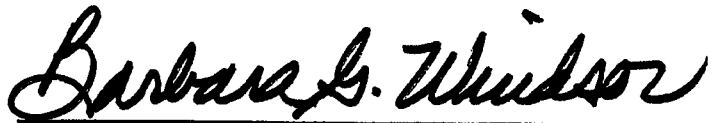


BARBARA G. WINDSOR
Pro Se

PO Box 681236
Marietta, GA 30068
Telephone: 770-578-1094
Facsimile: 770-234-4106
Email: williamwindsor@bellsouth.net

CERTIFICATE OF COMPLIANCE

I hereby certify that this pleading has been prepared in Times New Roman 14-point font, one of the font and point selections approved by this Court and meets the requirements of this Court.

A handwritten signature in black ink that reads "Barbara G. Windsor". The signature is written in a cursive style with a horizontal line underneath it.

BARBARA G. WINDSOR

Pro Se

P.O. Box 681236

Marietta, GA 30068

Telephone: 770-578-1094

Facsimile: 770-234-4106

Email: williamwindsor@bellsouth.net

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of May 2011, I served this motion by
United States Postal Service with sufficient postage addressed as follows:

Carl Hugo Anderson, Jr., Esq.
Sarah Bright, Esq.
HAWKINS PARNELL
4000 Suntrust Plaza
303 Peachtree Street
Atlanta, Georgia 30308
Telephone: 404-614-7400
Facsimile: 404-614-7500
Email: canderson@hptylaw.com

Mr. Christopher Huber, Esq.
U.S. Attorney's Office
United States District Court
Richard B. Russell Federal Building and U.S. Courthouse
75 Spring Street, SW
Atlanta, Georgia 30303

This 9th day of May 2011.



Barbara G. Windsor
Pro Se

P.O. Box 681236
Marietta, GA 30068
Telephone: 770-578-1094
Facsimile: 770-234-4106
Email: williamwindsor@bellsouth.net