

Order Plaintiffs and their representative Recording Industry Association of America (RIAA) to:

- a. Deposit with the Clerk of the Court, Robert Dennis, “the required *lawful money* . . . of the United States . . . in the amount of three times the amount awarded (approximately $\$70,000 \times 3 = \$210,00.00$) on July 16, 2007 by the Court in favor of Defendant Deborah Foster.
- b. The Clerk of the Court should be directed to place such funds in an interest bearing account so that at the conclusion of the Plaintiffs’ appeals (in which Defendant will have to participate) the funds will be readily available to the Defendant and her counsel.
- c. Plaintiffs and the RIAA must identify as the true owners of such funds as Deborah D. Foster and her counsel of record, Marilyn D. Barringer-Thomson and Warren W. Henson, III.
- d. The Court should find that the Plaintiffs and their agent the Recording Industry Association of America are subject to the jurisdiction of the Court.
- e. Alternately, the Court should order the Defendant Deborah Foster’s counsel Marilyn D. Barringer-Thomson to act as the surety and order Plaintiffs to tender payment in cash of the aforementioned sum to said counsel. LCvR62.2 (a)-(b); (g).

Argument And Authority

Plaintiffs have made and continue to make absolutely *no effort* either to pay or to provide any security for the sum (inclusive of interest) set forth in the Court's July 16, 2007 Order.³ Indeed, Plaintiffs do not inform the Court in their August 14, 2007 response that they will provide any security and merely cite to various federal statutes irrelevant to Defendant's motion for judgment for post judgment execution and collection. Plaintiffs' intention is clearly to further delay any payment to Defendant Deborah Foster.

Rule 67 of the Federal Rules of Civil Procedure provides:

In an action in which any part of the relief sought is a judgment *for a sum of money or the disposition of a sum of money* or the disposition of any other thing capable of delivery, *a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum* or thing, whether or not that party claims all or any part of the sum or thing. *The party making the deposit shall serve the order permitting deposit on the clerk of the court.* Money paid into court under [this rule shall be deposited and withdrawn in accordance with the provisions of Title 28, U.S.C., §§ 2041, and 2042; the Act of June 26, 1934, c. 756, § 23, as amended \(48 Stat. 1236, 58 Stat. 845\), U.S.C., Title 31, § 725v; or any like statute. The fund shall be deposited in an interest-bearing account or invested in an interest-bearing instrument approved by the court.](#)

Fed. R. Civ. P. 67 (Deposit in Court)(2007)(emphasis added). *See*, LCvR 62.2; *See also*, LcvR 67.1-LCvR67.2.

It is obvious that the Plaintiffs, the RIAA and their counsel have no intention of *voluntarily* making the above payment in the absence of an order of the Court. This has been and continues to be a pattern and practice of the Plaintiffs and their counsel in this litigation. *See*, Foster Motion, Doc. No.246, Attachment 1 (8-11-07 email). Foster's counsel has expended substantial hours in this case in the rendition of legal services for similar tasks necessitated by Plaintiffs litigation tactics.

³Plaintiffs have not attempted any settlement negotiations during the period of July 16, 2007 and continuing.

For the years of this district court litigation (2004-2007), the Plaintiffs and their representatives have fought and resisted the dismissal with prejudice of Deborah Foster and have historically caused her to incur attorneys' fees, costs and expenses as shown by the record in this case.

Given Plaintiffs history in this case, the Plaintiffs, in all probability, will (attempt to) appeal the Court's orders to the U.S. Court of Appeals for the Tenth Circuit and also to the U.S. Supreme Court because they are dissatisfied with the District Court's orders to the extent that they favor Deborah Foster.⁴ Plaintiffs and the RIAA may also again change attorneys (as shown by the record in this case) because of apparent dissatisfaction with their performance, tactics, the results obtained or because Plaintiffs disagrees with their agents at the RIAA.⁵ Attached hereto as *Defendant's Exhibit 1* is the Corporate Disclosure Statement filed on November 18, 2004 (Doc. No. 6) by the Plaintiffs (former counsel) in this case.

The Court should order Plaintiffs to provide specific information to identify specifically all bank accounts and assets located throughout the U.S. and the world and should order that no transfer of assets should occur by (and through) Plaintiffs, the RIAA or their counsel.

Under the Copyright Act, Defendant Deborah Foster is also entitled to continue to recover for fees and costs related to the Court's July 5, 2007 evidentiary hearing, post judgment collection

⁴Deborah Foster should never have been sued by the Plaintiffs. *See, Arista Records, et al. v. (Mrs.) Tallie Stubbs*, Case No. 06-793-VML, in the U.S. District Court for the Western District of Oklahoma. *See also, Arista Records, et al. v. Does 1-11*, Case No. 07-568-R, in the U.S. District Court for the Western District of Oklahoma.

⁵The Court should recall that no Plaintiff appeared before the Court at the July 5th evidentiary hearing and only Mr. Doroshov from the RIAA appeared before the Court. Defendant Deborah Foster appeared at the July 5th hearing.

activities and appellate proceedings.⁶

In further support of the specific relief sought for Defendant Deborah Foster, the undersigned counsel requests the Court take judicial notice pursuant to Rule 201 of the Federal Rules of Evidence of the record in cases wherein the undersigned counsel successfully prosecuted claims under the False Claims Act (for fraud on the U.S. Government at Tinker Air Force Base) and judgments were taken on the merits in June 1997 and on attorneys' fees, costs, and expenses in March 1998 in *U.S. ex rel Debra A. Shaw v. AAA Engineering & Drafting, Inc., Janice Keelin Lowe Mansfield, and Wilbur Brakhage* consolidated with *Debra A. Shaw v. AAA Engineering & Drafting, Inc., Janice Keelin Lowe Mansfield, and Wilbur Brakhage*, Case Nos. 95-950-M and 95-951-M, in the U.S. District Court for the Western District of Oklahoma against solvent judgment debtors/defendants. Debra Shaw had to file motions to request supercedes bond(s) to be made by the defendants/judgments debtors. An appeal bond was posted (and approved by a non-party AUSA) in an insufficient amount to cover the 1997 merits judgments with post judgment interest; and, consequently, no bond or other security was given on the 1998 attorneys' fees, costs and expense judgment by the defendants/judgment debtors! In May, 2000, the False Claims Act judgments were affirmed on appeal in *U.S. ex rel Debra A. Shaw v. AAA Engineering & Drafting, Inc., et al.*, 213 F.3d 519 (10th Cir. 2000) and *U.S. ex rel Debra A. Shaw v. AAA Engineering & Drafting, Inc., et al.*,

⁶On August 13, 2007, Defendant moved the Court pursuant to Fed. R. Civ. P. 58 (d) to enter a formal judgment in her favor and against the Plaintiffs pursuant to the Court's Orders dated July 13, 2006 [Doc. 125-126], February 6, 2007 [Doc. 162] April 23, 2007 [Doc. 212], February 6, 2007 and July 16, 2007 [Doc. 245]. Defendant's motion for attorneys' fees is separate from and collateral to any decisions by the District Court on the merits, *Deboard v. Sunshine Mining & Refining Co.*, 208 F.3d 1228, 1236-1237 (10th Cir. 2000)

213 F.3d 538 (10th Cir. 2000). The record shows that the amount of the judgments taken for the appeals and post judgment collection activities *substantially exceeded* the amount of the judgments for the prosecution of the cases in the district court from 1995 through 1998. Assets transfers were made by representatives of the two (2) corporate judgment debtors and others. The attorneys for the judgment debtors sought to withdraw after losing the appeal. The undersigned was required to engage in numerous post judgment collection activities in Oklahoma, Utah, and Montana.

Accordingly, a lesson was learned by the undersigned counsel in her representation of Debra Shaw - - seek relief from the District Court to require the losing party to tender cash payment in an amount sufficient to cover the entire appellate process to the Clerk of the Court as soon as practicable. A refund may be paid by the Court Clerk to the Plaintiffs and the RIAA of any money which remains after the Plaintiffs and the RIAA lose their appeals. Otherwise, Defendant Deborah Foster (and her counsel) would have to fund (and render legal services) for Plaintiffs' appeals *without any assurance of receiving any compensation consistent with the Court's orders on the merits and on the attorneys' fees, costs, and expenses.*⁷

“***Judgment*** as used in these rules includes a decree ***and any order*** from which an appeal lies. A judgment shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings.” Fed. R. Civ. P. 54(a)(2007)(emphasis added). The Court's prior orders in this case, including but not limited to the July 16, 2007 Order, are within the definition of judgments as defined by the Federal Rules of Civil Procedure. *Contra*, Plaintiffs' Response. Assuming *in arguendo* that any stay applied to the Court's July 16, 2007 Order, the period for such a stay has

⁷Defendant and her counsel files pleadings relating to the Court's July 16, 2007 Order with full reservation of rights concerning any appeal.

expired because Plaintiffs have failed to comply with Rule 54, Rule 67 and LCvR 62.2.

Additionally, Rule 62 (Stay of Proceedings to Enforce a Judgment) provides, in pertinent part:

(a) Automatic Stay; Exceptions--Injunctions, Receiverships, and Patent Accountings. ***Except as stated herein***, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after its entry. ***Unless otherwise ordered by the court***, an interlocutory or final judgment in an action for an injunction or in a receivership action, ***or a judgment or order directing an accounting in an action for infringement*** of letters patent, ***shall not be stayed*** during the period after its entry and until an appeal is taken or during the pendency of an appeal. The provisions of subdivision (c) of this rule govern the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal.

_____ (b) Stay on Motion for New Trial or for Judgment. ***In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of*** or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of ***a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b)***.

_____ (c) Injunction Pending Appeal. When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal ***upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party***. If the judgment appealed from is rendered by a district court of three judges specially constituted pursuant to a statute of the United States, no such order shall be made except (1) by such court sitting in open court or (2) by the assent of all the judges of such court evidenced by their signatures to the order.

_____ (d) Stay Upon Appeal. When an appeal is taken the appellant by giving a supersedeas bond ***may obtain a stay subject to the exceptions contained in subdivision (a) of this rule***. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the appeal, as the case may be. The stay is effective when the supersedeas bond is approved by the court.

_____ **(f) Stay According to State Law.** *In any state in which a judgment is a lien upon the property of the judgment debtor* and in which the judgment debtor is entitled to a stay of execution, a judgment debtor is entitled, in the district court held therein, to such stay *as would be accorded the judgment debtor had the action been maintained in the courts of that state.*

_____ **(h) Stay of Judgment as to Multiple Claims or Multiple Parties.** When a court has ordered a final judgment under the conditions stated in Rule 54(b), the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments *and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.*

Conclusion

_____ Plaintiffs, the losing parties in their *persecution* of Deborah Foster, *disingenuously argue* belatedly for a stay of execution without informing the Court and Deborah Foster of any arrangement for payment of any and all of the sums awarded and to be awarded to the Defendant Deborah Foster and to her counsel. Fed. R. Civ. P. 54 (2007)(judgments, costs and attorneys' fees).

In sum, the Court should enter judgement on the separate and collateral July 16, 2007 Order on Copyright Act attorneys' fees and costs with the specific relief sought by the Defendant Deborah Foster to enable the Court Clerk to accept the sum of \$210,000.00 to be ordered paid by the Plaintiffs and their representatives; and, to enable Defendant Deborah Foster to immediately commence post judgment collection proceedings, including but not limited to registration of the judgment(s) in various federal courts for execution and hearings on assets unless and until payment is made by Plaintiffs.⁸

⁸ See Court's Orders dated July 13, 2006 [Doc. 125-126], February 6, 2007 [Doc. 162] April 23, 2007 [Doc. 212], February 6, 2007 and July 13, 2007 [Doc. 245].

Respectfully submitted,
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CERTIFICATE OF SERVICE

This is to certify that on this 15th day of August 2007, I electronically transmitted the above and forgoing to the Clerk of the Court using the ECF System for filing. Based on the electronic records current on file, the Clerk of the Court will transmit a Notice of Electronic Filing to the all ECF registrants in this case:

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