

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

FILED
U.S. DISTRICT COURT
DISTRICT OF WYOMING

2016 FEB 23 AM 9 20

STEPHAN HARRIS, CLERK
CASPER

CHRISTOPHER GAGE and
HEATHER GAGE,

Plaintiffs,

vs.

BUFFETS, INC., a/k/a OVATION
BRANDS, d/b/a OLD COUNTRY
BUFFET; and JOHN DOE 1, fictitious
name as real name and address unknown,

Defendant.

Case No. 1:14-CV-0193-SWS

**ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION AND
REQUIRING POSTING OF SECURITY BOND**

This matter comes before the Court on the Plaintiffs' *Motion for Preliminary Injunction Pursuant to F.R.C.P. 65* (ECF No. 54). The Court, having considered the briefs and materials submitted in support of the motion and the Defendant's response thereto, FINDS that a preliminary injunction is not warranted but the posting of a bond to secure Plaintiffs' Judgment is appropriate.

1. On September 30, 2014, Plaintiffs filed their Complaint alleging significant and life-threatening damages resulting from *Salmonella* poisoning suffered by Plaintiff Christopher Gage after consuming food at the Defendant's Old Country Buffet restaurant in Cheyenne, Wyoming. On November 5, 2014, the Clerk entered default against Defendant for its failure to timely answer or otherwise plead in response to the properly-served Complaint. (ECF No. 9.) Subsequently, the Court entered partial default judgment for the amount of sum-certain damages

(\$641,936.50) and further set a hearing to determine the amount of any additional damages due Plaintiffs. (ECF No. 15.)

2. Following the evidentiary hearing, the Court entered its *Findings of Fact and Conclusions of Law* determining Plaintiff Christopher Gage should be awarded additional damages in the amount of \$6,500,000.00 for past and future pain and suffering, emotional distress, disability and disfigurement, and loss of enjoyment of life. The Court further determined Plaintiff Christopher Gage should be awarded \$3,029,536.00 for future medical expenses and caretaking needs. Finally, the Court awarded Plaintiff Heather Gage \$1,200,000.00 for her loss of consortium claim. (ECF No. 28.) A *Judgment* in Plaintiffs' favor was entered accordingly on October 22, 2015, in the total amount of \$10,729,536.00 (in addition to the previously awarded sum-certain damages). (ECF No. 29.)

3. Two weeks later, in its first appearance before the Court, Defendant filed a *Notice of Its Intent to File a Motion to Vacate the Default Judgment, Set Aside the Clerk's Entry of Default, and Request a Temporary Stay of Execution on the Default Judgment* (ECF No. 32). Defendant ultimately filed a *Rule 60(b) Motion to Set Aside the Clerk's Entry of Default, the Court's Partial Default Judgment and Judgment in a Civil Action or in the Alternative Rule 59(e) Motion to Alter or Amend the Judgment* (ECF No. 36) on November 19, 2015, contemporaneously with its *Motion for a Temporary Stay of Execution on the Partial Default Judgment and the Judgment* pending disposition of its Rule 60(b) motion (ECF No. 35).

4. Plaintiffs did not oppose or otherwise respond to Defendant's motion for a temporary stay of execution on the Judgments. The Magistrate Judge granted Defendant's motion for a stay and further ordered that no bond or other security need be posted to secure the Judgments. (ECF No. 44.) On January 7, 2016, this Court held a hearing on Defendant's Rule

60(b) motion, taking the matter under advisement and allowing the parties 60 days to engage in limited discovery and 30 days thereafter to submit supplemental materials and briefing. (*See* Minutes of Hearing, ECF No. 49.) The additional materials are thus due no later than April 6, 2016. (*Id.*)

5. By way of its present motion, Plaintiffs seek an injunction preventing the Defendant's transfer, sale, abandonment, destruction or waste of company assets during the pendency of this case. Plaintiffs' motion was prompted by the Defendant's recent closing of 74 stores around the country. Plaintiffs are understandably concerned that Defendant will dissipate assets that could be used to satisfy their Judgments against Defendant.¹ In response, Defendant argues that an order granting post-judgment injunctive relief concerning assets which are located outside of Wyoming is not permitted or within the Court's jurisdiction, and there is no evidence that Defendant has ever attempted to hide or place assets beyond the reach of Plaintiffs. Defendant also asserts much of the equipment in the closed stores is of minimal value and/or subject to landlord liens, and further notes Plaintiffs elected not to oppose its motion to stay execution of the Judgments pending disposition of its Rule 60(b) motion.² Both sides offer little legal authority for their respective positions.

6. The Court finds the granting of an injunction is not warranted and is not convinced of its authority to do so. However, the potential dissipation of Defendant's assets is now greater given the additional time allowed for discovery and submission of supplemental materials related to Defendant's Rule 60(b) motion. Based upon the information provided regarding Defendant's liquidation of assets, and given the substantial amount of the Judgments

¹ In the alternative, Plaintiffs request the Court lift the stay on execution so Plaintiffs can avoid suffering irreparable harm from the dissipation of assets, agreeing to hold all money collected from execution on the Judgments in a trust account until conclusion of this case.

² In the alternative, Defendant agrees to deposit the net proceeds from sales of its assets into escrow in a trust account until the matter is resolved by settlement or on further order of this Court.

against Defendant, the Court finds a continuation of the stay of execution on the Judgments without the posting of security could be prejudicial to Plaintiffs' recovery of their Judgments if ultimately successful. To avoid any prejudice, the Court will modify the Order granting a stay of execution by requiring Defendant to post a bond to secure the Judgments pursuant to Fed. R. Civ. P. 62(b). THEREFORE, it is hereby

ORDERED that Plaintiffs' *Motion for Preliminary Injunction Pursuant to F.R.C.P. 65* (ECF No. 54) is DENIED; it is further

ORDERED that Defendant shall post a supersedeas bond in an amount equivalent to the Plaintiffs' Judgments against it **no later than March 4, 2016**. In the event Defendant fails to post a bond by the date required, the stay of execution on the Judgments will be lifted.

Dated this 23rd day of February, 2016.



Scott W. Skavdahl
United States District Judge