IN THE CHANCERY COURT FOR LEWIS COUNTY
AT HOHENWALD, TENNESSEE

IN RE:	)	
	)	
SENTINEL TRUST COMPANY	)	NO. 4781
	)	
	)	

ACTING COMMISSIONER-IN-POSSESSION'S AND SENTINEL TRUST RECEIVER'S RESPONSE TO BATES' MOTION FOR STAY OF FINAL JUDGMENTS ENTERED APRIL 12, 2006 AND SUPPORTING OATHS

I. INTRODUCTION

On May 3, 2006, Danny N. Bates ("Bates") filed with the Court a Motion for Stay of Final Judgments Entered April 12, 2006 and Supporting Oaths[1] ("Motion for Stay") with an accompanying Brief in Support. Copy attached as **Exhibit 1**. While Bates' Motion for Stay speaks in terms of staying the final judgments entered on April 12, 2006, communication between undersigned counsel and counsel for Bates (as well as the text of the Motion and supporting Brief) have clarified that the Motion for Stay relates to only one (1) final order -- the April 12, 2006 Order which approved the sale of the building located at 29 W. Main Street, Hohenwald, Tennessee ("Hohenwald Building"), a copy of which is attached as **Exhibit 2** ("Hohenwald Building Order"). This filing is the Acting Commissioner-in-Possession's ("Commissioner") and Sentinel Trust Receiver's ("Receiver") response to Bates' Motion for Stay.

[1] The Supporting Oaths do not contain the signature of Howard Cochran whom Bates describes as a director of Sentinel Trust Company but whom the Acting Commissioner-in-Possession and Sentinel Trust Receiver do not consider as requesting a stay of the final judgments entered April 12, 2006.

II. ARGUMENT

a) Granting of a Stay on an Appeal Involving a Receivership Action is Discretionary and is Not Automatic Upon the Appellant Posting a Stay Bond or Being Declared a Poor Person

Bates, in his Motion for Stay, takes an oath of poverty and declares himself incapable of posting a bond for the appeal of the Hohenwald Building Order.[2] He requests the Court to acknowledge his professed poverty and then to stay the Hohenwald Building Order without need of bond. Throughout his Motion for Stay, Bates seems to assume that, upon being found indigent, the granting of the stay regarding the Hohenwald Building Order automatically follows. Bates is incorrect in this assumption.

Rule 62.01 Tenn.R.Civ.P. states as follows:

> In . . . receivership actions . . . an interlocutory or final judgment shall not be stayed after entry unless otherwise ordered by the court and upon such terms as to bond <u>or otherwise as it deems proper</u> to secure the other party.

<u>Id.</u> (emphasis added) (Rule 62 Tenn.R.Civ.P. is attached to a separate Notice of Filing filed herewith (hereinafter "Notice of Filing")). Rule 62.03 Tenn.R.Civ.P. states as follows:

> When an appeal is taken from . . . a final judgment in an action specified in Rule 62.01 [e.g., a receivership action] . . . the court in its discretion may suspend relief or grant whatever additional or modified relief is deemed appropriate during the pendency of the appeal and upon such terms as to bond or otherwise as it deems proper to secure the other party.

<u>Id.</u> (brackets added for clarity). Accordingly, the presenting of a stay bond, or being declared a poor person incapable of posting such a bond, does not mean that a final judgment in a receivership action is stayed.[3] Rather, the trial court is to consider all of the circumstances and, in its discretion, determine whether a stay of judgment should issue, and, if so, upon what terms.

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[2] The Commissioner and Receiver will address Bates' contentions of poverty later in this Response.

[3] Generally, under Rule 62.04, when an appellant posts bond (or, presumably, when an appellant is declared a poor person), the appellant "may obtain a stay." Therefore, in most cases, the posting of a stay bond or being declared a poor person will normally result in the granting of a stay of judgment. But, again, such is not the case with

Case law decided under, and analysis of, Rule 62 of the Federal Rules of Civil Procedure[4] presents the same result.[5] For example, in Reynolds Metals Co. v. Secretary of Labor, 453 F.Supp. 4, 6 (W.D. Va. 1977) (copy attached to Notice of Filing), the court stated that a party is not entitled to a stay pending appeal, as a matter of right, simply by having filed a sufficient stay bond. The Commissioner and Receiver assert the same is equally true regarding the taking of a pauper's oath -- such should not give the automatic right to secure a stay of judgment pending an appeal in a receivership action. The Wright and Miller treatise on federal practice and procedure addresses the issue squarely:

> By express provision in Rule 62(a) [which is parallel to Rule 62.01 Tenn.R.Civ.P.], different treatment is given to . . . an interlocutory or final judgment in a receivership action; . . . . In [that type of situation] the judgment is not stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal "unless otherwise ordered by the court." Thus the automatic stay does not apply in [receivership] cases, nor can a stay pending appeal be obtained in these cases merely by filing a supersedeas bond. . . . Rule 62(a) permits the trial court to order a stay in receivership cases . . . . [but] as is obvious from the fact that [receivership] cases are excepted from the automatic stay of Rule 62(a), the court should not grant a stay in these cases as a matter of course but should consider carefully the harm that a stay might cause to the party who has obtained the judgment and balance this against the harm that denial of a stay would cause to the losing party.

Wright & Miller, *Federal Practice and Procedure*, Vol. 11, § 2902, pp. 493-94 (copy of § 2902 attached to Notice of Filing) (brackets added for clarity and footnotes omitted). The Wright and Miller treatise continues:

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receivership actions -- see Rule 62.04 Tenn.R.Civ.P. which states that posting a bond entitles an appellant to a stay "except as otherwise provided in Rule 62.01" -- e.g., except in appeals from final judgments in receivership actions.

[4] Rules 62(a) and (d) of the Federal Rules of Civil Procedure are substantially the same language as found in Rules 62.01 and 62.03 of the Tennessee Rules of Civil Procedure. See copy of Rule 62 Fed.R.Civ.P. attached to Notice of Filing.

[5] Tennessee courts have uniformly held that federal decisions on federal rules that are similar to the parallel Tennessee rules, while not binding, are instructive and persuasive. Moredock v. McMurray, 527 S.W.2d 462,463 (Tenn. 1975); Harris v. Chern, 33 S.W.3d 741, 745 (Tenn. 2000); Frazier v. East Tennessee Baptist Hospital, Inc., 55 S.W.3d 925, 928 (Tenn. 2001).

> Rule 62(d) [which is parallel to Rule 62.03 Tenn.R.Civ.P.] permits an appellant to obtain a stay by giving a supersedeas bond. . . . [but] this kind of stay may not be obtained in . . . receivership cases . . . . In [receivership cases] it is discretionary with the court whether to allow a stay.

Id. at § 2905, pp. 518-19 (copy of § 2905 attached to Notice of Filing) (brackets added for clarity and footnotes omitted).

Therefore, regardless of whether or not Bates' oath of poverty is believed and regardless of whether or not he is declared indigent, the Court must consider all of the matters relating to the Hohenwald Building and the Sentinel Trust Receivership ("Receivership") before deciding whether a stay of the Hohenwald Building Order is appropriate.

Case law under Rule 62 of the Federal Rules of Civil Procedure is uniform regarding what considerations a court should weigh in determining a motion to stay: 1) whether the petitioner is likely to prevail on the merits on appeal, 2) whether the petitioner will suffer irreparable injury from denial of the stay, 3) whether other parties will be harmed by issuance of the stay and 4) what public interests are served one way or the other. See e.g., Baker v. Adams County, 310 F.3d 927, 928 (6th Cir. 2002); Drummond v. Fulton County Dept. of Family & Children's Services, 532 F.2d 1001, 1002 (5th Cir. 1976); Rife v. Ashcroft, 374 F.3d 606, 615, n. 3 (8th Cir. 2004); The "Crude Crew" v. McGinnis & Associates, Inc., 585 F.Supp. 1069, 1072 (E.D. Wis. 1984); Rosen v. Tennessee Com'r of Finance and Administration, 204 F.Supp.2d 1061, 1094 (M.D. Tenn. 2001) (vacated on unrelated grounds 288 F.3d 918) (copies attached to Notice of Filing).

Accordingly, even if Bates can carry his burden in showing that he cannot afford to post a stay bond, this Court can, and, respectfully, should deny his request for a stay of judgment because Bates has failed to carry his burden in showing any of the above-referenced factors. Drummond, 532 F.2d at 1002. To the contrary, it is clear that all of the above factors weigh

decidedly against issuance of a stay. Simply put, Bates is not likely to prevail on appeal. The only way in which Bates can have the Hohenwald Building Order overturned is to have the Commissioner's act of taking over Sentinel Trust declared illegal. That is not "likely," particularly when every court to address the issue has ruled against Bates, including the Tennessee Court of Appeals in its recent decision in In re: Sentinel Trust Company #M2005-00031-COA-R3-CV (slip op. filed Dec. 29, 2005 -- copy attached to Notice of Filing). Admittedly, Bates has applied for permission to appeal that decision to the Tennessee Supreme Court, and that application is still pending, but Bates would be disingenuous to say it was "likely" that permission to further appeal would be granted and the Court of Appeals decision would be reversed.

Bates also has not shown that he will be irreparably harmed if a stay of the Hohenwald Building Order is not granted. Absent a stay of judgment, the judgment may be enforced, even while the matter is on appeal. Underwood v. Liberty Mutual Ins. Co., 782 S.W.2d 175, 177 (Tenn. 1989). But, Bates will not be irreparably harmed if the Hohenwald Building is sold. In his Motion for Stay, Bates claims that the Hohenwald Building and its contents are "indirectly my property" because he is the overwhelming majority stockholder of Sentinel Trust Company stock. That interest in the Hohenwald Building and its contents is extremely remote, however, when one recognizes 1) that the Hohenwald Building is a Sentinel Trust asset that is to be liquidated to address the costs of the Receivership and to pay claims against the Receivership estate and 2) that T.C.A. § 45-2-1504(i) requires that all claimants' claims be paid prior to any distribution of funds to stockholders. Indeed, even if the proposed sale price being offered for the Hohenwald Building was $1,000,000 (i.e., the amount of Sentinel Trust funds Bates spent to build it), as opposed to the $450,000 currently being offered, Bates would have no real interest

because he would still receive nothing due to the large deficiency in the Sentinel Trust Pooled Fiduciary Account and the higher priority of other estate claimants to the funds that are available now, and are expected to be available in the future, for distribution. Bates might argue that the loss of the Hohenwald Building would irreparably harm him because he would not have a location from which to conduct business if and after he is victorious on appeal. Respectfully, if Bates regained control of Sentinel Trust Company, 1) there would be no business for him to conduct due to his waiting approximately ten months before challenging the Commissioner's taking possession of Sentinel Trust[6] and 2) there would be other buildings in Lewis County from which he could operate. Accordingly Bates can point to nothing that would support a position that he would be irreparably harmed if the stay of judgment was denied and the Hohenwald Building sold.

Harm, however, will be caused to others if a stay of judgment is issued. First, substantial harm will be caused to the Receivership estate and its claimants if the offer to purchase is withdrawn due to the issuance of a stay of judgment. The purchasers are willing to wait until September - October, 2006 to close, but, if they are not able to close by then because of an existing stay of judgment, they will withdraw their offer. Affidavit of Jeanne B. Bryant at ¶ 5 attached as **Exhibit 3** ("Bryant Aff."). Of course, any appeal initiated now would not be completed until well after September - October, 2006; so if a stay of judgment is allowed, one must assume that Bates will have effectively killed the opportunity to sell the Hohenwald Building for the current $450,000 amount. The evidence of record indicates that the market in Lewis County for a building such as the Hohenwald Building is depressed. See Affidavit of Arthur D. Victorine at ¶¶ 13 and 18, attached as Exhibit D to the Commissioner's and Receiver's

[6] See In re: Sentinel rust Company, slip op. at 30-32 (copy attached to Notice of Filing).

Motion for Approval of Sale of Hohenwald Building -- which is attached hereto as **Exhibit 4**. It was difficult enough, in the current market, to obtain the pending purchase offer; the Commissioner and Receiver do not want to lose it. Indeed, to lose this sale and be forced to wait until after Bates' weak appeal is defeated could well mean a sale of the Hohenwald Building at a significantly reduced price later -- which is particularly and irreparably harmful due to Bates' claimed poverty and professed inability to post a stay bond. Also, a stay of judgment would mean that the Receivership estate would have to continue to incur expenses of upkeep, security and maintenance on the Hohenwald Building which is approximately $3,300/month. See Bryant Aff. at ¶ 3. Moreover, preventing the sale of the Hohenwald Building, through a stay of the judgment, will interfere with the orderly progression of the liquidation of Receivership assets. Likewise, the public interest would not be served through the issuance of a stay of judgment in this matter. An orderly progression of a receivership estate is in the best interests of the public, generally, and of the sizable number of claimants to this particular Receivership estate, specifically.

Thus, for all of these reasons and based upon the case law cited, Bates' Motion for Stay of the Hohenwald Building Order should be denied. Even if a stay bond could be posted, but, particularly, if Bates is deemed indigent and a stay bond is not required, the factors examined above compel that the Court should exercise its discretion and deny Bates' Motion for Stay.

b) Bates' Motion for Stay Confuses Cost Bonds with Stay Bonds and His Oath of Poverty is Inadequate and Dubious

The Commissioner and Receiver assert that, on their faces, Bates' Motion for Stay and his Oath of Poverty are flawed at numerous levels and, thus, do not persuasively support the issuance of a stay of the Hohenwald Building Order.

i) Bates Improperly Confuses the Separate Legal Concepts of Being Excused from Posting a Cost Bond with Being Excused from Posting a Stay Bond

Bates' Motion for Stay specifically states that he requests a stay of the final judgments and "that such stay be granted without any requirement of bond for costs on the basis of the affidavits of poverty." Motion for Stay at p. 1 (emphasis added). Respectfully, Bates confuses two separate and distinct concepts -- a bond for costs on appeal and a bond for staying judgment pending an appeal. Compare Rule 6 T.R.A.P. (addressing bond for costs) with Rule 62.05 Tenn.R.Civ.P. (addressing bond for stay of judgment).

In glossing over, if not ignoring, this difference, Bates presents his oath of poverty which does nothing more than parrot the language of T.C.A. § 20-12-127. See Motion for Stay at p. 2, ¶ 2 of Bates' oath (see copy of T.C.A. § 20-12-127 attached to Notice of Filing). T.C.A. § 20-12-127, of course, is the statute which states that a Tennessee resident may commence an action without giving bond for costs and without payment of litigation taxes if he 1) files the oath of poverty set forth in T.C.A. § 20-12-127(a)(1) and 2) files "an accompanying affidavit of indigency as prescribed by court rules" (T.C.A. § 20-12-127(a)(2)). T.C.A. § 20-12-127, however, does not mention anything about being too poor to post a bond to stay a judgment pending an appeal. Indeed, for T.C.A. § 20-12-127 to be construed as applying to stay bonds creates an internal conflict within the language of the statute itself. The pauper's oath does not immunize the pauper from paying costs, but, rather, T.C.A. § 20-12-127(b) makes clear that a pauper's oath merely suspends collection of costs and litigation taxes "until taxed by the court." A court taxes costs; it does not tax amounts held as security for payments of judgments. In light of subsection (b), T.C.A. § 20-12-127 makes sense only if it applies to cost bonds, not stay bonds. Accordingly, Bates' "oath of poverty," tailored after the boiler plate language provided

in T.C.A. § 20-12-127(a)(2), is insufficient if Bates is seeking a determination of poverty needed to avoid posting a stay bond under Rule 65 Tenn.R.Civ.P.[7]

Bates maintains, however, that the pauper's oath of T.C.A. § 20-12-127 applies equally to the "filing of an appeal" and that the incantation of that oath's language in his papers suffices to illustrate poverty that justifies the waiver of a stay bond. Bates, however, cites only to authority which pre-dates, or which deal with facts that pre-date, the 1979 enactment of the Tennessee Rules of Civil Procedure. Respectfully, whatever relevancy the pre-1979 cases cited by Bates had changed when, in 1979, Rule 62 Tenn.R.Civ.P. was enacted.

Bates cites to the case of V.L. Nicholson Co. v. Transcon, Inv., 595 S.W.2d 474 (Tenn. 1980) to bolster his position that an oath of poverty under T.C.A. § 20-12-127 suffices to avoid the posting of a stay bond. The Nicholson case is one, however, that addresses the oath of poverty provided in T.C.A. § 20-12-127 (which is cited in Nicholson under prior codification as T.C.A. § 20-1629) in the context of a cost bond, not a stay bond:

> Except for false imprisonment, malicious prosecution, slanderous words, and a case for absolute divorce, any resident of the state may file a pauper's oath by swearing to his or her poverty and inability to bear the expense of the action. This applies not only to the commencement of an action, but also to appeals.
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> * * *
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> The next requirement is that the resident must take a solemn oath swearing to his or her poverty and inability to bear the expense of the action. . . . The pauper's oath filed by Transcon . . . allege[s] inability to make the bond for an appeal and is more specific and precise than the wording from the statute, for the pauper's oath filed on behalf of Transcon states that the corporation, due to its financial condition and lack of unencumbered assets, does not have the ability to make the bond. There was no challenge to the actual wording of the pauper's oath; we find that it was legally insufficient. Better practice requires that when a corporation files a pauper's oath it state as specifically as possible its reasons for its inability to bear the costs of the action.

[7] The Commissioner and Receiver would also note that Bates has not complied with T.C.A. § 20-12-127(a)(2) which, in addition to an oath of poverty, requires an accompanying affidavit of indigency, which, respectfully, Bates' three paragraph Affidavit does not provide.

Nicholson, 595 S.W.2d at p. 480 (footnotes and citations omitted, brackets and emphasis added). In short, Nicholson addresses cost bonds, not stay bonds. Bates' reliance upon Nicholson does not support his position that a bare bones T.C.A. § 20-12-127 oath of poverty would suffice to support a request for stay under Rule 62 Tenn.R.Civ.P. Nicholson, itself, states that the better practice requires specificity regarding proof of financial inability, and Nicholson acknowledged that, while its facts and setting was pre-1979, since July 1979, issues related to appeal bonds were controlled by Rule 62 Tenn.R.Civ.P., not T.C.A. § 20-12-127. Id. at p. 481, n. 3.

Again, these two concepts -- bonding for costs and bonding for stay of judgment -- are dramatically different. The first relates to the institution of an action and/or the institution of an appeal and are controlled by T.C.A. § 20-12-127 (for institution of actions) and Rule 6 T.R.A.P. (for institution of appeals). The public policy behind oaths of poverty -- allowing access to the courts to the rich and the poor alike -- has resonance in this context. But, a stay bond and, particularly, a stay bond arising from a final judgment in a receivership action, is different and is controlled by Rule 65 Tenn.R.Civ.P. where considerations other than the financial ability of the appellant to bond the judgment also must be weighed.

ii) Bates' Assertions of Poverty are Dubious

Bates' assertions of poverty, factually ,are dubious and do not support the granting of a stay of judgment without the posting of a stay bond. In short, there is much that the Commissioner and Receiver have discovered in relation to Bates that causes concern regarding his assertion of poverty. For example, aside from quitclaiming his multi-million dollar Lewis County mansion to his wife on April 23, 2004,[8] Bates also quitclaimed to his wife, on July 9,

[8] April 23, 2004 is three short weeks prior to the Commissioner's taking possession of Sentinel Trust Company and was during a timeframe when Bates knew ever intensifying scrutiny was being placed upon his operations at Sentinel Trust. A copy of the April 23, 2004 quitclaim deed is attached as **Exhibit 5**.

2004 (some two months after the Commissioner had taken possession of Sentinel Trust), a 134 acre farm in Lewis County (see **Exhibit 6** for copy of Quitclaim Deed). Bates complains in his oath of poverty that, due to a lien *lis pendens* on the multi-million dollar mansion, his wife cannot mortgage the property to provide to him cash to address a stay bond. Motion for Stay at p. 2 (Bates Affidavit at ¶ 1). Interestingly, Bates' oath of poverty is silent as to his wife's ability to mortgage the 134 acre farm.

In yet another example, on October 12, 2004 (five months after the Commissioner had taken over Sentinel Trust), Bates' wholly-owned and controlled corporation, Sentinel Services Corporation, quitclaimed to a revocable trust -- the Bates Family Trust, to which Danny Bates is the sole trustee -- approximately 150 acres of land located in Lewis and Hickman Counties. See **Collective Exhibit 7** for copies of the two quitclaim deeds that evidence this transfer. Bates has testified that this transaction was, basically, his giving of the land to the Bates Family Trust and that the gift could be reversed and the land placed back under his control at any time prior to his death.[9] Interestingly, Bates' oath of poverty is silent as to his control over that property.

It does not stop there. On July 9, 2004 -- again, three months after Sentinel Trust had been taken over -- Bates quitclaimed to his son, Clifton "Todd" Bates, a 9.5 acre tract of land in Lewis County (**Exhibit 9**) and, on February 22, 2005 -- ten months after Sentinel Trust had been taken over -- Sentinel Services Corporation/Bates sold a 130 acre tract of land in Lewis County to his son, Clifton "Todd" Bates (**Exhibit 10**).[10] Nowhere in Bates' oath of poverty are these

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[9] On August 17, 2005, in the companion action, Lavender, et al v. Bates, et al (Lewis County Chancery Court #4980), Bates' deposition was taken as sole trustee of the Bates Family Trust. Relevant portions of that deposition are attached hereto as **Exhibit 8**. See pp. 27-28 regarding Bates' total ownership of, and control over, Sentinel Services Corporation; see p. 37 regarding Bates characterizing the gift of property to the Bates Family Trust as being a gift from him to that trust; see pp. 17-19, 51-52 regarding the revocable nature of that trust and how he could demand return of the land given to that trust.

[10] While investigation continues, the transaction appears to have resulted in $55,000 being paid by Clifton "Todd" Bates to Sentinel Services Corporation and/or Bates.

transactions (or the proceeds therefrom) mentioned. Sentinel Services Corporation (which Bates acknowledges he owns and controls, and which is, from a business perspective, inactive)[11] has owned, since 1997, a 28 acre tract of land in Lewis County. See **Exhibit 11**. Sentinel Services Corporation is still making payments on this property -- said payments being funded by Bates (see **Exhibit 8** at pp. 53-54), but the equity that has built up in that property is not mentioned in Bates' oath of poverty. Also, on March 8, 2005, Bates sold a 2.4 acre tract of land in Hohenwald to Michael Hinson, which property is being held in trust by Donald Schwendimann until $66,000 (payable at $1,000 per month plus 8% interest) is paid from Hinson to Bates. See **Collective Exhibit 12**. That income is not indicated in Bates' oath of poverty. Respectfully, the Commissioner and Receiver assert that Bates cannot maintain his position that he holds "no property of value" when it appears that he does and/or that he has consciously and methodically divested himself of such.

In reviewing documents relating to Bates' finances, the Commissioner and Receiver have discovered a financial statement from Bates dated April 30, 2004, just prior to the May 18, 2004 institution of the Receivership. See copy attached as **Exhibit 13**. While some of the assets listed (e.g., the tracts of land) are probably some of those already transferred to either his son, his wife or to a family trust which he controls, the status of many of the other assets (e.g., $50,000 cash value on a life insurance policy, $30,000 in various securities, $127,500 in notes and accounts receivable and $58,000 worth of machinery and equipment) stand in the way of Bates stating, under oath, that he holds "no property of value."

Also, while Bates bemoans the fact that a lien *lis pendens* prohibits him from borrowing against the debt-free multi-million dollar mansion (which was constructed with funds from

[11] See **Exhibit 8** at pp. 27-28, 29-31.

Sentinel Trust bank accounts, including the Pooled Fiduciary Account) to post a stay bond, Bates completely fails to mention the value of the furnishings in that multi-million dollar mansion. For example, and as isolated to just one furniture vendor, records available to the Commissioner and Receiver clearly indicate that at least $43,000 of Sentinel Trust funds, much of which came from the Pooled Fiduciary Account, was paid to Ethan Allen Home Interiors to purchase furniture/furnishings for the mansion. See **Collective Exhibit 14**. Bates should be required to sell some, or all, of those items and other furnishings before he is allowed to state, under oath, that he suffers from poverty. Finally, his oath of poverty notwithstanding, Bates is the titled owner of a 2002 STS Cadillac, which he purchased in January 2003 for $50,000 (cash and trade in). See **Exhibit 15**.

In sum, as to Bates' current assertion of poverty, his oath is simply not supported. Indeed, there is ample evidence presented herein to indicate that Bates' position of poverty is one not worthy of credit and, certainly, not sufficient to excuse him from posting a stay bond in conjunction with any stay of the final judgment relating to the sale of the Hohenwald Building.

iii) Bates' Has No "Just Entitlement of Reversal" of the Hohenwald Building Order

Bates contends, under oath, that he is "justly entitled to the relief to be sought in said appeal."[12] Motion for Stay at p. 2 (¶ 2 of Bates Affidavit). In so stating in his Affidavit, Bates seems to be making two basic arguments, neither of which persuade, in the least, toward staying the Hohenwald Building Order.

First, Bates complains that his statutory construction argument -- his "the Commissioner was without authority to take over Sentinel Trust" argument -- has not been fully decided. Bates

[12] This "justly entitled to reversal" language is merely Bates' regurgitation of the form oath of poverty set forth in T.C.A. § 20-12-127(a)(1). As examined earlier, Rule 62 Tenn.R.Civ.P., not T.C.A. § 20-12-127, is the authority which is operative to Bates' request for a stay of judgment and his request that such stay be allowed without any stay bond being posted.

so maintains, presumably, because he has an application to appeal the Court of Appeals ruling against him on that argument to the Tennessee Supreme Court. This also appears to be the thrust of the position articulated by Bates' counsel at the April 12, 2006 hearing when he stated, without elaboration, that "this objection [to the sale of the Hohenwald Building] is filed to preserve our rights on appeal."[13] See **Exhibit 16** (transcript of April 12, 2006 proceedings concerning Motion for Approval of Sale of Hohenwald Building) at p. 13. See also copy of April 10, 2006 Bates Objection to Motion for Approval of Sale of Hohenwald Building attached as **Exhibit 17**. To pin a claimed "just entitlement to reversal" upon the hope that the Tennessee Supreme Court will grant certiorari and reverse, and to ignore the fact that every judge to address his arguments has ruled against him, including the Tennessee Court of Appeals, whose December 29, 2005 upholding the Commissioner's actions decision is the law of the case, certainly illustrates that Bates' position concerning just entitlement of having the Hohenwald Building Order reversed is weak and, certainly, does not counsel toward granting a stay of the Hohenwald Building Order (with or without a stay bond being posted).

Second, Bates indicates that the "justice of this cause" is demonstrated by pointing out that the computer hardware at the Hohenwald Building will be sold with the building. Bates

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[13] Indeed, the entire presentation by Bates' counsel at the April 12, 2006 hearing on the Motion for Approval of Sale of Hohenwald Building was short and consisted of the following:

* * *

> MR. MATHERNE: Your Honor, absent hearing from General Kleinfelter and also replying to any objection that Mr. Schwendimann might make, I leave that as my presentation on the Hohenwald motion.
> MS. KLEINFELTER: I don't have anything to add to --
> CHANCELLOR STAFFORD: Thank you.
> MR. SCHWENDIMANN: If, Your Honor, please, we're cognizant of the Court's comment the last time we were here that you didn't intend to re-lick the calf with regard to certain issues. This objection is filed to preserve our rights on appeal. I don't think we can be denied that whether it's filed yesterday or six weeks ago.
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> And I would point out to the Court that this appraisal is done on the basis of that building being exclusively used as a bank building. That's the only thing the appraiser approached. But our objection is of record. And that's all I have to say.
> CHANCELLOR STAFFORD: You wish to offer any evidence other than just making that statement? Sir?
> MR. SCHWENDIMANN: No.

Exhibit 16 at pp. 12-13.

seems agitated over this because he, apparently, thinks that the wiping of the computer system, prior to the closing of the sale of the Hohenwald Building, will "make permanently unavailable such records." Motion for Stay at pp. 2-3. In making this argument, Bates, obviously, does not remember what the Commissioner and Receiver stated on this point at the April 12, 2006 hearing. Mirror image tapes of the Sentinel Trust computer system, as it existed when the Commissioner took possession in May, 2004, were made at that time, under the supervision of the Tennessee Bureau of Investigation ("TBI"), and the Commissioner and Receiver will secure a duplicate set of that computer data. See **Exhibit 16** at p. 9.[14] For Bates to raise this "loss of computer data" point now as some type of miscarriage of justice, as he does in his Affidavit, is even more strange, if not desperate, given that the "retaining of computer data" issue was not raised by him in his Objection filed on April 10, 2006 (see **Exhibit 17**) nor at the April 12, 2006 oral argument (see **Exhibit 16**).

In sum, Bates can point to no credible "just entitlement for reversal" argument relating to his appeal of the Court's Hohenwald Building Order. Accordingly, this issue, Bates' boiler plate Affidavit notwithstanding, does not weigh in favor of issuing a stay of the Hohenwald Building Order.

iv) Other Aspects of Bates' Motion for Stay Are Disingenuous and Misleading

Bates states in his Affidavit that "some items of property within the said building are not the property of Sentinel Trust." Motion for Stay at p. 2, ¶ 1 of Bates' Affidavit. The incredible vagueness of this contention aside, it is disingenuous for Bates to raise this issue now when he

[14] At the time of the April 12, 2006 hearing, the Commissioner and Receiver were in the process of getting duplicate tapes of the computer backup. Since that date, those tapes have been received, and the Receiver is in the process of verifying that the duplicate tapes are readable. The Receiver will not allow the wiping of computers located at the Hohenwald Building prior to verifying that the duplicates of what has been received from the TBI are readable. Bryant Aff. at¶¶ 6-7.

did not raise it in his April 10, 2006 Objection to the Motion for Approval of Sale of Hohenwald Building (see **Exhibit 17**) nor at the April 12, 2006 hearing (see **Exhibit 16**). Certainly, the Commissioner's and Receiver's Motion for Approval of Sale of Hohenwald Building provided notice that the sale would include the contents, absent objection raised to, and ruling by, the Court concerning ownership of any particular item in the Hohenwald Building, and invited objections to be brought forward at the April 12, 2006 hearing. See **Exhibit 4** at pp. 1-2, 4-5. Bates was mute on this issue then, and his raising it now should be disregarded.

Bates, without citing to a single legal authority, also tries to chill the sale of the Hohenwald Building by suggesting that the purchasers are on notice that seizure of the Hohenwald Building is being contested, and, thus, the purchasers would be purchasing the building subject to the Court's jurisdiction and at their own risk. Bates' Brief in Support at p. 2. In so arguing, again without any legal authority, Bates attempts, in a misleading fashion, to secure, through intimidation of the purchasers, that which he cannot secure otherwise and, in the process, treads closely upon intentional interference with a valid real estate contract. In Tennessee, the taking of an appeal does not, in and of itself, bring about a stay of judgment. Under Rule 62 Tenn.R.Civ.P., judgments may continue to be enforced and actions can be taken pursuant to such judgments unless a stay is ordered. Underwood, 782 S.W.2d at p. 177. If the Hohenwald Building Order is stayed, the closing of the sale will not occur, the sale will be lost and, hopefully, a stay bond will be in place to address the harm caused to the Receivership estates and its claimants; but, if the Hohenwald Building Order is not stayed, then the closing will occur without any demonstrable injury to Bates. Bates should offer valid arguments, to the extent he has any, to secure the stay. He should not be allowed to attempt to intimidate the purchasers with legally unsupportable positions as to what might happen to them if he appeals

but does not secure a stay of judgment -- respectfully, what will happen is that, if there is no stay, the Hohenwald Building will be sold.

Bates also seems to criticize, in his Motion for Stay, selling the Hohenwald Building, which cost approximately $1,000,000 to build, for $450,000. Bates' positions and criticisms aside, he has presented no proof that $450,000 is anything other than a fair market price. Indeed, the undisputed evidence of record indicates that the $450,000 sale price is above the appraised value and, due to the sluggishness of the Lewis County real estate market, the likelihood of obtaining more than that amount is not great. See **Exhibit 4** at pp. 2-4 and 6.

c) Interests of Sentinel Trust Receivership to Be Secured by Bond or Otherwise

Pursuant to Rules 62.01 and 62.03 Tenn.R.Civ.P., when an appeal is taken from a final order in a receivership action, the Court is to determine what is appropriate (including bond or otherwise) to secure the interests of the appellee. The duty of the Receivership is to liquidate the Hohenwald Building through its sale. The predominant and irreparable problem with a stay of judgment is that the current purchasers will withdraw the pending $450,000 offer if they cannot close by the September - October timeframe (Bryant Aff. at ¶ 5), which is well prior to the time needed for the appeal to run its course. Given the poor economic circumstances and depressed real estate market in Lewis County and the overall lack of a market for a building like the Hohenwald Building in that area, it would be an absolute gamble as to whether the Hohenwald Building would sell at a later date and, if so, at what price. The evidence of record is that it would likely not sell for the $450,000 amount in the future. **Exhibit 4** at p. 4. Additionally, numerous and material expenses associated with the maintenance and upkeep of the Hohenwald Building would continue to unduly tax the resources of the Receivership indefinitely into the

future. The Receiver estimates these expenses to be approximately $3,300 a month. See Bryant Aff. at ¶ 3 (attached as **Exhibit 3**).

Therefore, the interests of the Receivership to be fully protected, if a stay issues, are a monetary amount of $450,000 plus reasonable interest (representing the sale price of the Hohenwald Building, that will be frustrated, and, perhaps, never obtainable hereafter) and the amount of $40,000 (representing the expected fees and costs that will occur over the next calendar year if the Receiver is forced to continue the maintenance and upkeep on the Hohenwald Building). Accordingly, the Commissioner and Receiver assert that a stay bond of approximately $490,000 would be needed to fully secure these interests.

III. CONCLUSION

For the reasons set forth herein, Bates Motion for Stay should be denied, or, in the alternative, granted contingent upon Bates posting a stay bond in the amount of $490,000.

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CERTIFICATE OF SERVICE

This is to certify that on May 10th, 2006 a copy of the foregoing Response has been sent by First Class U.S. Mail, postage paid, and also by Federal Express Priority Overnight as noted, to:

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