

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2017-000307-001 DT

12/13/2017

HONORABLE PATRICIA ANN STARR

CLERK OF THE COURT

C. Avena

Deputy

TERRAVITA COUNTRY CLUB INC

ANJALI J PATEL

v.

WILLIAM M BROWN (001)
ARIZONA DEPARTMENT OF REAL ESTATE
(001)

WILLIAM M BROWN
1754 LAKEVIEW ESTATES DR
COLDSRING TX 77331
LYNETTE EVANS

OFFICE OF ADMINISTRATIVE
HEARINGS
REMAND DESK-LCA-CCC

MINUTE ENTRY

The Court has considered the Renewed Motion for Stay filed by Appellant Terravita Country Club, Inc. (“Terravita”), the Response filed by Appellee William M. Brown, and Terravita’s Reply. The Court has also considered the argument presented by the parties.

I. FACTS AND PROCEDURAL BACKGROUND

Terravita filed this action in August of 2017, along with a Motion for Stay. Because Terravita did not provide a copy of the Motion to this division (which does not participate in e-file), the Court only learned of the Motion in October of 2017. The Court considered and then denied the Motion. Terravita filed a Renewed Motion for Stay shortly thereafter.

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The Court notes that the agency issued its final order on July 24, 2017; the order was “effective immediately from the day service is complete.” (July 24, 2017 Final Order at 1.) The Commissioner noted that the Order would “not be stayed unless a stay is obtained from the court in conjunction with the judicial review action.” (*Id.*) The Commissioner denied Terravita’s Request for Rehearing on August 16, 2017.

Thus, Terravita has been subject to a Final Order since at least August of 2017, but has not complied. Admittedly, Terravita filed the first Motion to Stay in August; but the filing of the Motion did not stay the Order. Terravita never informed this Court that there was a pending Motion for Stay, nor did Terravita request a ruling on the Motion. The Court only discovered the Motion while reviewing the court docket for another purpose.

II. LEGAL ANALYSIS

This Court may not grant a stay of an agency’s decision absent good cause. A.R.S. § 12-911; Rule 3(a), Rules of Procedure, Judicial Review of Administrative Decisions. In the context of administrative appeals, “good cause” means that a petitioner “must demonstrate, as regards substantive merit, that [its] petition presents a seemingly valid, genuine, or plausible claim under the circumstances of the case,” or in other words, that [it] has a colorable claim. *P & P Mehta LLC v. Jones*, 211 Ariz. 505, 510, ¶ 22 (App. 2005). In determining whether a petitioner has demonstrated good cause, the Court must consider harm to the petitioner, as weighed against the harm to the agency or other parties to the proceeding. “Only if the court concludes that the balance of harm tips in favor of the petitioner has he shown the ‘harm’ necessary to constitute ‘good cause.’” *Id.* at ¶ 23.

Under this standard, the Court finds that Terravita has made a colorable claim. As defined by *P & P Mehta*, supra, “colorable” simply means “seemingly valid, genuine, or plausible.” The Court cannot and is not determining the merits of the appeal at this stage of the proceedings; the Court is only deciding whether Terravita’s claim is colorable. It has met that low bar.

That is not the end of the inquiry, however. The Court must still balance the potential harms to the parties when determining whether there is good cause to issue a stay.

Terravita argues that it will suffer irreparable harm if a stay is not granted. Terravita argues that if forced to comply with the Commissioner’s Order, “the damage will have been done,” regardless of any success on appeal, and it will be forced to divulge “protected records.”

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(Reply at 2.) But as clarified at oral argument on the Motion, the litigation on which Terravita relies is not “pending,” as it claims. The Scottsdale Municipal Court action has concluded. The fact that an Order of that Court may still be in effect does not mean that the litigation itself is still “pending.” Instead, the criminal prosecution has concluded.

Moreover, Terravita has failed to identify the “books and records” it believes are protected with any particularity. Without a description of the types of records sought, this Court is left in the dark as to the harm that might be inflicted by their disclosure, if indeed there is any.

Terravita argues that the agency will suffer no harm by the imposition of a stay. But that argument ignores the harm to Brown, the requestor of the records. The Commissioner entered an order under which Brown is entitled to production of those records.

“Only if the court concludes that the balance of harm tips in favor of the petitioner has [it] shown the “harm” necessary to constitute “good cause.” *P & P Mehta LLC v. Jones*, supra, 211 Ariz. 505, at ¶ 23. Here, while Terravita may have established a colorable claim, it has not shown the balance of harm tips in its favor in relation to the records request, and thus has not shown harm necessary to constitute good cause.

As to the order that Terravita pay Brown his \$500.00 filing fee, good cause for a stay has been established. If Brown is ultimately successful on appeal, Terravita will be required to pay him the filing fee. In the meantime, a stay of that order is appropriate. Moreover, Brown has made no real argument regarding this portion of the order.

III. CONCLUSION

Therefore,

IT IS ORDERED denying the Renewed Motion for Stay in regard to the records request.

IT IS FURTHER ORDERED granting the Renewed Motion for stay in regard to the payment of the \$500.00 filing fee.

IT IS FURTHER ORDERED lifting the temporary stay entered by this Court on November 29, 2017.

IT IS FURTHER ORDERED Brown’s Answering Brief must be filed with this Court no later than January 15, 2018.

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IT IS FURTHER ORDERED any Reply Brief must be filed in accordance with Rule 6, Rules of Procedure for Judicial Review of Administrative Decisions.

/s/ Patricia A. Starr
THE HON. PATRICIA A. STARR
JUDGE OF THE SUPERIOR COURT

NOTICE: LC cases are not under the e-file system. As a result, when a party files a document, the system does not generate a courtesy copy for the Judge. **Therefore, you will have to deliver to the Judge a conformed courtesy copy of any new filings.**