

STATE OF MICHIGAN
IN THE 46th JUDICIAL CIRCUIT COURT
OTSEGO COUNTY

Michigan Department of
Environmental Quality, *et al.*
Plaintiffs,
and

Case No. 09-12933-CE(m)
Honorable Dennis F. Murphy

Michigan Chapter Trout Unlimited
and Pigeon River Country Assn,
Intervening Plaintiffs

v

Golden Lotus, Inc.,
Defendant

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**DEFENDANT GOLDEN LOTUS' MOTION FOR STAY OF PROCEEDINGS
WITHOUT BOND PENDING APPEAL**

Defendant Golden Lotus brings this Motion pursuant to MCR 7.209, and in support states as follows:

1. The Court issued an Opinion and Order on July 22, 2011, granting Interveners'

Motion to Clarify and Enforce Interim Order (“July 22 Order”).

2. It is the position of Golden Lotus (and the State) that the July 22 Order imposes requirements for “dam removal” which go beyond the terms and conditions set forth in the Interim Order entered on April 5, 2011.

3. Defendant filed a Motion for Reconsideration of the July 22 Order which was denied by the Court on August 26, 2011.

4. Defendant timely filed an Application for Leave to Appeal the July 22 Order to the Michigan Court of Appeals.

5. Golden Lotus is now asking this Court to enter an Order staying enforcement of the July 22 Order, without bond, pending resolution of Golden Lotus’ appeal.

6. Upon application, this Court may stay enforcement of its July 22 Order and any related accompanying order or judgment, without bond, under MCR 7.209(E)(1), which states:

Except as otherwise provided by law or rule, the Trial Court may order stay of proceedings, with or without a bond, as justice requires.

7. Justice requires a stay of these proceedings and an order precluding Interveners from initiating any subsequent enforcement proceedings, without a bond, until the entry of a final, non-appealable Order, to wit:

(a) The July 22 Order effectively resolves all parties’ claims and issues – it grants Interveners all relief requested in their Complaint, leaving only enforcement of it remaining;

(b) The Interim Order automatically “morphs” into a Consent Judgment upon issuance of a Permit by the State, without any further action or intervention by the Court other than the ministerial act of signing the Consent Judgment;

(c) The State issued the Permit on July 21, 2011;

(d) Golden Lotus is financially unable to perform the requirements imposed by the July 22 Order; and,

(e) If enforced, the July 22 Order will deprive Golden Lotus of the only viable access road to its main buildings;

(f) The dam has been in existence for over 100 years and there is no immediate need to implement or enforce the July 22 Order while Golden Lotus prosecutes its appeal.

8. There will be no prejudice to the rights of Interveners by granting the stay.

9. Granting a stay will maintain the *status quo*.

10. This court may grant a stay without requiring a bond pursuant to MCL 600.2605,

which provides:

If the party applying for a stay of proceedings is unable to give a stay bond by reason of poverty, the judge may, upon due proof of inability for such reason, grant such stay without requiring such bond upon such conditions and for such reasonable time as the judge may determine.

11. Golden Lotus does not have adequate financial resources to post a cash bond or to pay for a surety bond; and, it has insufficient income to borrow funds necessary to post a bond or pay for a surety bond. It is a 501(C)(3) non-profit organization with extremely limited income and resources. See attached Affidavit of Carol Armour (**Exhibit 1**) and accompanying Income and Expense Statement (**Exhibit A**) and 2009 Tax Return (**Exhibit B**).

12. Additionally, no bond should be required for the reason that the obligations imposed on Golden Lotus by Interim Order are not in the nature of a "money judgment" in favor of Interveners for which they could otherwise seek immediate garnishment, attachment, or post-judgment collection actions. Rather, the July 22 Order imposes an affirmative duty on Golden Lotus to take certain actions in connection with "dam removal." Whether abrogated by reversal in the

Court of Appeals or upheld by that tribunal, the relief is equitable and not appropriate or suitable for imposition of a bond requirement.

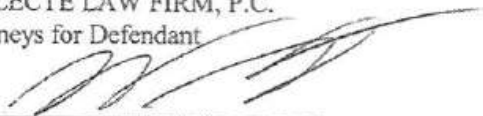
13. Justice requires that this Court grant a stay of proceedings pending appeal, without bond.

RELIEF REQUESTED

Golden Lotus requests that this Court grant a stay of proceedings pending appeal, without bond.

September 15, 2011

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Motion for Stay Pending Appeal -- Sept 14, 2011.wpd