

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION

CHATTANOOGA-HAMILTON  
COUNTY HOSPITAL AUTHORITY  
d/b/a ERLANGER HEALTH  
SYSTEM,

Plaintiff,

v.

CIVIL ACTION FILE NO.:  
4:14-CV-0040-HLM

HOSPITAL AUTHORITY OF  
WALKER, DADE, and CATOOSA  
COUNTIES, and HUTCHESON  
MEDICAL CENTER, INC.,

Defendants.

ORDER

This case is before the Court on the Motion to Stay and Certify  
Questions filed by Defendant Hutcheson Medical Center, Inc.  
("HMC") [86].<sup>1</sup>

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<sup>1</sup>Defendant Hospital Authority of Walker, Dade, and Catoosa  
Counties (the "Hospital Authority") filed a Motion for Joinder in the  
Motion to Stay and Certify Questions. (Docket Entry No. 96.) On  
November 21, 2014, the Court granted the Motion for Joinder.  
(Order of Nov. 21, 2014 (Docket Entry No. 100).)

## **I. Background**

The Court incorporates the background portions of its earlier Orders into this Order as if set forth fully herein, and adds only those background facts that are relevant to the instant Motion. On October 24, 2014, the Court held a hearing on a Motion for TRO filed by the Hospital Authority and HMC. (Docket Entry No. 79.) Following that hearing, the Court entered a written Order granting in part the Motion for TRO. (Order of Oct. 24, 2014 (Docket Entry No. 80).) The Court denied the portion of the Motion seeking to continue the injunction against foreclosure through the conclusion of this action, but granted the portion of the Motion that sought to enjoin the foreclosure sale scheduled for November 4, 2014. (Id.) The Court enjoined the foreclosure sale scheduled for November 4, 2014, and precluded Plaintiff from conducting a foreclosure sale of the hospital property (the "Property") prior to January 6, 2015. (Id.)

On November 19, 2014, HMC filed a Notice of Appeal as to the October 24, 2014, Order. (Docket Entry No. 85.) On that same day, HMC filed its Motion to Stay and Certify Questions. (Docket Entry No. 96.) On the following day, the Hospital Authority filed its Motion for Joinder in the Motion to Stay and Certify Questions. (Docket Entry No. 96.) On that same day, the Hospital Authority filed its own Notice of Appeal. (Docket Entry No. 97.) The briefing schedule established by the Court for the Motion to Stay and Certify Questions is complete, and the Court finds the matter ripe for resolution.

## **II. Motion to Certify Questions**

“Georgia statutory law authorizes certification of state law questions that are ‘determinative of [a] case’ pending in federal district court when there are ‘no clear controlling precedents’ in the decisions of the Georgia Supreme Court.” Bullard v. MRA Holding, LLC, 890 F. Supp. 2d 1323, 1340 (N.D. Ga. Aug. 27, 2012)

(alteration in original) (quoting O.C.G.A. § 15-2-9). “The Eleventh Circuit has indicated that ‘[s]ubstantial doubt about a question of state law upon which a particular case turns should be resolved by certifying the question to the state supreme court.’” Id. (alteration in original) (quoting Cascade Crossing II, LLC v. Radioshack Corp., 480 F.3d 1228, 1231 (11th Cir. 2007)). “A federal court has discretion whether or not to certify a question of state law to a state’s highest court.” Schorr v. Countrywide Home Loans, Inc., No. 4:07-CV-19(WLS), 2009 WL 3189331, at \*1 (M.D. Ga. Sept. 30, 2009); see also Harden v. State Farm Mut. Auto. Ins. Co., 339 F. App’x 897, 901 (11th Cir. 2009) (per curiam) (“[T]he decision to certify a question is discretionary.”).

No party addressed whether the Court may certify questions to the Georgia Supreme Court after a party has filed a notice of appeal and while the notice of appeal remains pending. For the following reasons, the Court finds that it would be inappropriate for

the Court to certify questions to the Georgia Supreme Court at this stage of the proceedings.

“It is the general rule of this Circuit that filing of a timely and sufficient notice of appeal acts to divest the trial court of jurisdiction over the matters at issue in the appeal except to the extent that the trial court must act in aid of the appeal.” Shewchun v. United States, 797 F.2d 941, 942 (11th Cir. 1986); see also United States v. Tovar-Rico, 61 F.3d 1529, 1532 (11th Cir. 1995) (“The filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over the aspects of the case involved in the appeal.”).<sup>2</sup>

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<sup>2</sup>The United States District Court for the Middle District of Georgia has observed:

The Eleventh Circuit has identified several exceptions to this general rule. In all events, the district court will retain the authority to act in aid of the appeal, to correct clerical mistakes or to aid in the execution of a judgment that has not been superseded. More specific exceptions preserve district court jurisdiction over matters involved

Where, as here, “one aspect of a case is before the appellate court on interlocutory review, the district court is divested of jurisdiction over that aspect of the case.” Dayton Indep. Sch. Dist. v. U.S. Mineral Prods. Co., 906 F.2d 1059, 1063 (5th Cir. 1990). “A district court does not have the power to alter the status of the case as it rests before the Court of Appeals.” Id. (internal quotation marks and citation omitted).<sup>3</sup>

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in the appeal where the appeal is from the denial of a defendant’s frivolous double jeopardy motion; where the appeal is from a nonappealable order; or where appeal is by the government from a pretrial suppression order, and the district court retains jurisdiction for purpose of dismissing the indictment. Finally, a corollary of the general rule is that the district court will retain jurisdiction over matters not involved in the appeal.

Diamond Waste, Inc. v. Monroe Cnty., Ga., 869 F. Supp. 944, 946 (M.D. Ga. Dec. 9, 1994) (internal quotation marks, citations, and emphasis omitted).

<sup>3</sup> “[A]n interlocutory appeal does not completely divest the district court of jurisdiction.” Green Leaf Nursery v. E.I. DuPont De Nemours & Co., 341 F.3d 1292, 1309 (11th Cir. 2003). Instead, “[t]he district court has authority to proceed forward with portions of

The questions that HMC and the Hospital Authority have asked this Court to certify to the Georgia Supreme Court are the same matters that HMC and the Hospital Authority seek to litigate on appeal. Certainly, certifying questions to the Georgia Supreme Court would alter the status of the case as it rests before the Eleventh Circuit. Under those circumstances, the Court finds that it would be inappropriate for this Court to certify those questions to the Georgia Supreme Court while the appeals remain pending with the United States Court of Appeals for the Eleventh Circuit. HMC and the Hospital Authority remain free to present their requests to certify questions to the Georgia Supreme Court directly to the Eleventh Circuit. Alternatively, should the Eleventh Circuit prefer to remand the case to this Court to address the certification issue, the Court will address the certification issue at that time.

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the case not related to the claims on appeal.” Id. (internal quotation marks and citation omitted).

### **III. Motion to Stay**

Alternatively, HMC and the Hospital Authority request that the Court stay the foreclosure of the Property while their appeals from the October 24, 2014, Order remain pending.<sup>4</sup> Federal Rule of Civil Procedure 62(c) provides, in relevant part: “While an appeal is pending from an interlocutory order or final judgment that grants, dissolves, or denies an injunction, the court may suspend, modify,

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<sup>4</sup>Plaintiff Chattanooga-Hamilton County Hospital Authority d/b/a Erlanger Health System (“Erlanger”) correctly points out that HMC and the Hospital Authority also argued in their brief that “[t]his case should be stayed pending the Georgia Supreme Court’s decision on the proposed certified questions.” (Mot. Stay (Docket Entry No. 86) at 17.) The Court agrees with Erlanger that it appears that “this more broadly phrased request was unintentional,” and that HMC and the Hospital Authority instead are seeking to stay the foreclosure. (Resp. Mot. Stay (Docket Entry No. 103) at 6.) Indeed, HMC clarified in its reply brief that it requested “that this court stay the foreclosure, . . . pending resolution of the questions presented by certification to the Georgia Supreme Court.” (HMC’s Reply Supp. Mot. Stay (Docket Entry No. 105) at 5.) For the benefit of the Parties, the Court observes that a stay of all proceedings in this case is unwarranted. Instead, subject only to the automatic stay arising from HMC’s bankruptcy filing, the case itself will continue.



restore, or grant an injunction on terms for bond or other terms that secure the opposing party's rights." Fed. R. Civ. P. 62(c). "[E]ven after notice of an appeal has been filed, the trial court still has jurisdiction to make an order under Rule 62(c)." Muhammad v. HSBC Bank USA, N.A., Civil Action No. 09-00053-KD-N, 2010 WL 370307, at \*2 n.2 (S.D. Ala. Jan. 25, 2010). Indeed, Federal Rule of Appellate Procedure 8(a)(1)(C) requires that a party first move in the district court for "an order suspending, modifying, restoring, or granting an injunction while an appeal is pending." Fed. R. App. P. 8(a)(1)(C).

"Where an appellant files a motion for stay pending appeal, that appellant must show: (1) a likelihood that they will prevail on the merits of the appeal; (2) irreparable injury to the [appellants] unless the stay is granted; (3) no substantial harm to other interested persons; and (4) no harm to the public interest." United States v. 2 Parcels of Real Prop. Consisting of 30 Acres, Civil

Action No. 08-0111-WS-M, 2010 WL 2836596, at \*1 (S.D. Ala. July 14, 2010) (alteration in original) (internal quotation marks and citation omitted). “It is well established that the likelihood of success on the merits is ordinarily the most important factor in the analysis and requires, at a minimum, a showing of a substantial case on the merits, even upon a strong showing of the other three factors.” Id. (internal quotation marks and citations omitted). For the following reasons, the Court will stay foreclosure of the Property pending resolution of HMC and the Hospital Authority’s appeals in this case.

First, as the Court previously noted, the likelihood of success on the merits factor is a close one. (Order of Oct. 24, 2014 (Docket Entry No. 80) at 8.) Although the Court found that relevant Georgia law would not prohibit the foreclosure sale or require action by the Attorney General, HMC and the Hospital Authority made persuasive arguments to the contrary, and the Eleventh Circuit

might well find in favor of HMC and the Hospital Authority on that question on appeal. Under those circumstances, the Court concludes that HMC and the Hospital Authority have made a substantial case on the merits. This factor therefore counsels in favor of staying foreclosure pending the resolution of the appeals.

Second, HMC and the Hospital Authority will suffer significant harm if the Court denies a stay of foreclosure but the Eleventh Circuit ultimately concludes that Georgia law would preclude a foreclosure sale. The Court previously found that a foreclosure sale would irreparably harm HMC and the Hospital Authority, substantially limiting their ability to stay in business. (Order of Oct. 24, 2014, at 15-16.) This factor therefore counsels in favor of staying foreclosure.

Third, staying foreclosure pending resolution of the appeals will not cause substantial injury to Erlanger. As the Court previously noted, although “[Erlanger] appears to be correct in its

argument that the only way it will ever get paid is by foreclosing on the hospital property, and that the debt owed to [Erlanger] is continuing to mount while the foreclosure sale is postponed,” HMC and the Hospital Authority will suffer extreme harm from a foreclosure. (Order of Oct. 24, 2014, at 16-17.) This factor therefore counsels in favor of staying foreclosure pending resolution of the appeals.

Fourth, the public interest supports staying foreclosure. As the Court previously noted, “there is no doubt that the public will suffer significant harm if the Foreclosure Sale occurs as scheduled.” (Order of Oct. 24, 2014, at 17.) The public has an interest in the Property continuing to operate as a hospital, and it has an interest in having its local hospital continue to operate. (Id. at 17-18.) Moreover, the Property contains a nursing home, and relocating nursing home patients presents a very difficult situation for both medical providers and patients. (Id. at 18-19.) Further, the

hospital is a large employer, and the possibility of lost jobs resulting from a foreclosure presents a significant public concern. (*Id.* at 19.) For those reasons, the Court finds that a stay of foreclosure would serve the public interest. This factor therefore counsels in favor of staying foreclosure pending resolution of the appeals.

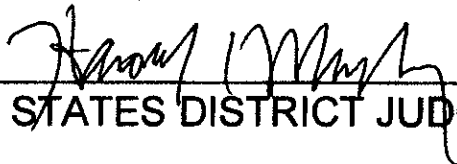
As discussed above, all of the relevant factors counsel in favor of staying foreclosure pending resolution of the appeals. The Court therefore grants the Motion to Stay and stays foreclosure pending the Eleventh Circuit's ruling on the appeals filed by HMC and the Hospital Authority.

#### **IV. Conclusion**

ACCORDINGLY, the Court **GRANTS IN PART AND DENIES WITHOUT PREJUDICE IN PART** HMC's Motion to Stay and Certify Questions [86]. The Court **GRANTS** the portion of the Motion that seeks to stay foreclosure pending the Eleventh Circuit's ruling on the appeals filed by HMC and the Hospital Authority. The Court

**DENIES WITHOUT PREJUDICE** the portion of the Motion that seeks to certify questions to the Georgia Supreme Court. HMC and the Hospital Authority may re-file that request with the Eleventh Circuit.

IT IS SO ORDERED, this the 4<sup>th</sup> day of December, 2014.

  
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UNITED STATES DISTRICT JUDGE