

IN THE CIRCUIT COURT OF HOWELL COUNTY
IN THE MISSOURI COURT OF APPEALS, SOUTHERN DISTRICT

State ex rel. Chris Koster, Attorney)
General; Missouri Department of)
Agriculture; and Missouri State Milk)
Board,)
)
Plaintiffs/Respondents,)
)
)
v.)
)
Morningland of the Ozarks, LLC,)
d/b/a Morningland Dairy)
)
Defendant/Appellant.)

FILED

JUN 28 2011

CINDY WEEKS
Circuit Clerk, Howell County MO

No. 10AL-CC00135
No. SD 31390

ORDER ON MOTION FOR SUPERSEDEAS BOND

Comes now the undersigned judge, by referral under the Southern District's Rule 81.10 Order of June 21, 2011, and takes up Defendant/Appellant's "Petition To Stay Execution, etc." (motion to post supersedeas bond)

The court being fully informed in the premises, upon due consideration of evidence and argument heretofore presented, does find and order as follows.

1. On February 23, 2011, the court entered its "Final Order of Permanent Injunction" providing, inter alia,

"7. Defendant Morningland of the Ozarks, LLC shall destroy all of its cheese products condemned by the Missouri State Milk Board on August 26, 2010, pursuant to the Board's October 1, 2010, destruction letter under the supervision of the Director of the Department of Agriculture, save and except for eleven (11) blocks said to have been imported from Wisconsin, as to which condemnation shall be released."

2 On March 8, 2011, the court took up and sustained Morningland's Rule 76.25 motion to stay execution of the mandatory injunctive provision upon posting cash or corporate surety bond in proper form in the sum of \$2,000 prior to 9:00 a.m. 3/9/11.

3 On March 9, the court filed its formal order reciting the relevant facts and considerations incident to the stay of execution.

4 On June 1, 2011, defendant/appellant filed Notice of Appeal and then or thereafter filed in the Court of Appeals the instant motion.

5 On June 13, 2011, this court heard evidence on plaintiff's application to show cause why defendant should not be adjudged in contempt for, inter alia, distributing condemned cheese in violation of the Final Order. Upon consideration of that evidence, the court finds no relevant changes in the circumstances recited in its order of March 9, and no reason why additional supersedeas should be required.

6 Any presently unknown circumstances affecting the propriety or sufficiency of the bond previously authorized would be addressed by the court of appeals pursuant to Rule 81.09(c).

WHEREFORE, defendant/appellant's motion for supersedeas bond will be granted, and execution of the mandatory injunction above recited, **but no other part of the court's judgment,** stayed upon posting with the clerk, within ten days hereafter, defendant/appellant's cash or corporate surety bond in the sum of \$2,000, conditioned as required by Rule 81.09(b), and this court's approval thereof.

SO ORDERED this 28th day of June, 2011.


DAVID DUNLAP
Senior Judge