

Attachment B

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

AUG 12 2021

UNITED STATES OF AMERICA,

v.

LONNIE BRANTLEY

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CLERK U.S. DISTRICT COURT

By: _____

CRIMINAL NO. 4:15-CR-225-BJ

**ORDER DENYING DEFENDANT'S MOTION FOR STAY OR INJUNCTION PENDING
APPEAL OF THE COURT'S ORDER DOCKETED AS ECF DOCUMENT 92**

Pending before the Court is Defendant Lonnie Brantley's Motion for a Stay or Injunction Pending Appeal of the Court's Order Docketed as ECF Document 92 [doc. 96], filed June 4, 2018. In the motion, Brantley requests an injunction or stay pending appeal of the Court's May 21, 2018 Order Partially Granting United States of America's Motion for Finding Default and/or Resentencing, Avoidance of Fraudulent Transfers, the Sale of Real Property, and Increased Payment Schedule and Denying Defendant's Motion for Extension of Time. There are generally four factors a Court considers when determining whether to stay an order pending an appeal: (1) whether the movant has made a strong showing of likelihood of success on the merits; (2) whether the movant has made a showing of irreparable injury if the stay is not granted; (3) whether granting of a stay would substantially harm other parties; and (4) whether granting of a stay would serve the public interest. *Nken v. Holder*, 556 U.S. 418, 434 (2009); *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987). The first factor, a strong showing of a likelihood of success on the merits, requires more than a mere possibility that relief will be granted." *Nken*, 556 U.S. at 434. Moreover, "simply showing some 'possibility of irreparable injury,' . . . fails to satisfy the second factor." *Nken*, 556 U.S. at 434-35. "[A]n injury is irreparable only if it cannot be undone through monetary remedies." *Enter. Int'l, Inc. v. Corporacion Estatal Petrolera Ecuatoriana*, 762 F.2d 464, 472 (5th Cir. 1985) (internal quotations omitted).

After reviewing the above factors, the Court concludes that Defendant's motion should be **DENIED**. To begin with, the Court finds that Brantley has not made a strong showing of likelihood of success on the merits for the reasons set forth by the Government in its response.¹ In addition, as to the last three factors, while Brantley may suffer some irreparable harm by the forced sale of his residence,² such harm is outweighed by the harm to HUD, the victim in this case, and the public interest if Brantley is allowed to continue to pay an expensive mortgage, high utility bills, and property taxes when such money should go to paying Brantley's restitution imposed as a result of Brantley pleading guilty to a misdemeanor criminal offense.

Based on the foregoing, it is **ORDERED** that Brantley's Motion for a Stay or Injunction Pending Appeal of the Court's Order Docketed as ECF Document 92 [doc. 96] is **DENIED**.

SIGNED June 15, 2018.


JEFFREY E. CURETON
UNITED STATES MAGISTRATE JUDGE

¹ The Court notes, that in its response, the Government argues that Brantley cannot get a stay without posting a bond as required by Federal Rule of Civil Procedure 62(d) and Federal Rule of Criminal Procedure 38. Based on the facts in this case, the Court disagrees that such a bond is a requirement of a stay under either rule.

² While loss of a home has been found to cause irreparable injury in the context of a motion for temporary restraining order or preliminary injunction, irreparable harm alone will not support equitable relief because the likelihood of success element is the most important element of the test. See, e.g., *Thompson v. Hughes, Watters & Askanase, LLP*, No. 3:13-CV-429-G-BH, 2013 WL 705123, at *3 (N.D. Tex. Jan. 31, 2013); *Belknap v. Bank of Am., N.A.*, No. G-12-198, 2012 WL 3150271, at *3 (S.D. Tex. Aug. 1, 2012).