

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH DAKOTA  
Central Division

In re:	)	Bankr. No. 97-30004
	)	
KIRWAN RANCH, a South Dakota	)	
partnership	)	Chapter 7
	)	
Debtor.	)	
	)	
JOHN LOVALD	)	Adv. No. 99-3001
	)	
Plaintiff,	)	
	)	ORDER GRANTING DEFENDANTS'
-vs-	)	MOTION FOR STAY PENDING
GERALD R. KIRWAN, JR. and	)	RESOLUTION OF MOTION TO
LEONA J. KIRWAN	)	EXTEND TIME TO FILE AN APPEAL
	)	AND ANY SUBSEQUENT APPEAL
Defendants.	)	

The matter before the Court is the MOTION FOR STAY OF THE JUDGMENT PENDING APPEAL AND FOR APPROVAL OF DEFENDANT[s'] SUPERSEDE[A]S BOND submitted by Defendants on January 3, 2001 and filed January 8, 2001 with Defendants' Notice of Appeal and the stipulated SUPERSEDEAS BOND submitted jointly by Defendants and Plaintiff on January 3, 2001 and filed January 8, 2001 with Defendants' MOTION FOR STAY OF THE JUDGMENT PENDING APPEAL AND FOR APPROVAL OF DEFENDANT[s'] SUPERSEDE[A]S BOND; and

IT APPEARING that Defendants, as the parties seeking the stay pending appeal, must show that: (1) they are likely to succeed on the merits; (2) they will suffer irreparable injury unless the stay is granted; (3) no substantial harm will come to other interested parties; and (4) the stay will do no harm to the public interest, *Ross v. Strauss (In re Ross)*, 223 B.R. 702, 703 (B.A.P. 1998); and

IT FURTHER APPEARING that Defendants will not likely succeed on the merits based on the present record because their appeal was not filed timely under Fed.R.Bankr.P. 8002(a), see *In re Valdez*, Bankr. No. 698-61386-FRA7, 2000 WL 1058950, slip op. at 2 (Bankr. D. Ore. May 26, 2000), and said untimeliness deprives the United States District Court for the District of South Dakota of jurisdiction to review the orders and judgments from which Defendants have appealed, see *Veltman v. Whetzal*, 93 F.3d 517, 520-21 (8th Cir. 1996); but,

IT ALSO APPEARING that Fed.R.Bankr.P. 8002(c)(2) permits Defendants to seek an extension of time to file an appeal based on excusable neglect; therefore,

IT IS HEREBY ORDERED that Defendants' MOTION FOR STAY OF THE JUDGMENT PENDING APPEAL AND FOR APPROVAL OF DEFENDANT[s'] SUPERSEDE[A]S BOND is

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GRANTED pending resolution of any timely motion under Rule 8002(c) and, if a motion to extend the time to file a notice of appeal is granted under Rule 8002(c)(2) and a timely appeal is filed, the stay shall remain in place pending final resolution of any appeal to the United States District Court for the District of South Dakota or the United States Court of Appeals for the Eighth Circuit; and

IT IS FURTHER ORDERED that the stipulated SUPERSEDEAS BOND and related terms as set forth in Defendants' MOTION FOR STAY OF THE JUDGMENT PENDING APPEAL AND FOR APPROVAL OF DEFENDANT[S'] SUPERSEDE[A]S BOND is APPROVED as the security required for a stay pending appeal under Fed.R.Bankr.P. 8005. Defendants shall immediately comply with all agreed terms.

So ordered this 10 day of January, 2001.

BY THE COURT:



Irvin N. Hoyt  
Bankruptcy Judge

ATTEST:  
Charles L. Nail, Jr., Clerk



*Charles L. Nail, Jr.*  
Deputy Clerk

**NOTICE OF ENTRY**  
Under F.R.Bankr.P. 9022(a)  
**Entered**

**JAN 10 2001**

**Charles L. Nail, Jr., Clerk**  
**U.S. Bankruptcy Court**  
**District of South Dakota**

I hereby certify that a copy of this document was mailed, hand delivered, or faxed this date to the parties on the attached service list.

**JAN 10 2001**

Charles L. Nail, Jr., Clerk  
U.S. Bankruptcy Court District of South Dakota

By *CLN*

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Total notices mailed: 10

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Aty Gerry, Clair R. PO Box 966, Sioux Falls, SD 57101-0966  
Aty Goldammer, Vance RC PO Box 5015, Sioux Falls, SD 57117-5015  
Intereste U.S. District Court, 225 S. Pierre Street, Room 205 Federal Building, Pierre, SD 57501