

No. 19-20799

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

HEWLETT-PACKARD COMPANY,
Plaintiff-Appellee

v.

QUANTA STORAGE, INCORPORATED,
Defendant-Appellant

Appeal from the United States District Court for the
Southern District of Texas, Houston Division; No. 4:18-CV-00762

**OPPOSED LEVEL I MOTION FOR EXTENSION
OF TIME TO FILE BRIEF OF APPELLEE**

TO THE COURT OF APPEALS FOR THE FIFTH CIRCUIT:

Appellee respectfully files this opposed Level I motion for extension of time to file its Appellee's Brief.

1. The present deadline for filing the brief is April 1, 2020.
2. Appellee seeks a 30-day extension, until May 1, 2020, to file its brief.
3. This is Appellee's first request for an extension.
4. This motion is opposed for the reasons set forth in Appellant's letter previously filed with the Court.

5. The following grounds provide the justification for this request to extend the time to file the brief. Lead appellate counsel, Russell Post, has been and continues to be engaged in other litigation with imminent deadlines that have prevented him from completing the brief before the present deadline, including but not limited to the following:

- No. 02 CRS 38882, *State of North Carolina v. Tolliver et al.*; in the General Court of Justice, Superior Court Division, Forsyth County, North Carolina. This is a “factual innocence” proceeding by the North Carolina Innocence Inquiry Commission to consider an application for post-conviction relief on behalf of individuals alleging that they were wrongly convicted of murder. Mr. Post represents a journalist whose investigative reporting became the subject of inquiry by the Commission, raising issues of journalistic privilege. The Commission hearing took place March 9-13, and Mr. Post’s client was required to appear before the Commission on March 10.
- No. 16-47428; *In re Directory Distributing Associates, Inc., Debtor*; in the United States Bankruptcy Court for the Eastern District of Missouri. This case is a bankruptcy proceeding that involves two adversary actions brought under the Fair Labor Standards Act. Mr. Post is counsel for a class of creditors and has been actively engaged in negotiations over a plan of reorganization that is expected to be filed within the next 30 days.
- Nos. CJ-2018-90 & CJ-2018-91; *Charles Brite, et al. v. National Oilwell Varco, L.P.*; in the District Court of Pittsburg County, State of Oklahoma. This is an oilfield explosion case. Mr. Post filed a motion for new trial on March 2, 2020, and is currently preparing the documents required to perfect the appeal before the deadline of April 3, 2020.

6. In addition, the difficulties associated with the COVID-19 virus and its disruption of normal work activity are public knowledge. As a member of his firm’s executive committee, Mr. Post has been fully engaged in firm management actions over the last two weeks that have required a great deal of his professional time.

7. Mr. Post and his colleagues are now working remotely, and while they will be fully dedicated to this brief for the immediate future, delays are inescapable when lawyers cannot collaborate in person. This situation will compound the time required to draft, review, revise, and finalize the brief among the numerous lawyers who will be involved.

8. Given the magnitude of this appeal, which involves antitrust liability and a damage award exceeding \$400 million, it is critical that Mr. Post and his team devote sufficient time and resources to present a thorough defense of the judgment. Work has been underway on the Appellee's Brief ever since the Appellant's Brief was filed, but under the circumstances the brief cannot be completed by the deadline.

9. Appellant previously lodged a letter with the clerk stating its opposition to any extension of time for the Appellee's Brief on the ground that the judgment had not been superseded and Appellee sought to enforce it. The district court has since entered an order allowing Appellant to supersede the judgment by posting a greatly reduced bond, Ex. A, so there is no longer any emergency.

10. This motion is not filed for the purpose of delay, but to allow counsel adequate time to prepare the brief.

Conclusion

For all these reasons, Appellee respectfully requests that this Court grant an extension of time to file its brief until May 1, 2020.

Respectfully submitted,

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**ATTORNEYS FOR APPELLEE,
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CERTIFICATE OF CONFERENCE

I certify that I conferred with counsel for Appellant, and Appellant opposes this motion for the reasons set forth in its letter on file with the Court.

/s/ Russell S. Post

Russell S. Post

CERTIFICATE OF SERVICE

I hereby certify that on March 23, 2020, a copy of the foregoing motion was filed electronically with the Clerk of the Court using the Court's ECF System. Notice of this filing will be sent electronically by operation of the Court's electronic filing system to all counsel of record:

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Attorneys for Appellant Quanta Storage, Incorporated

/s/ Russell S. Post

Russell S. Post

Exhibit A

ENTERED

March 12, 2020

David J. Bradley, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

HEWLETT-PACKARD COMPANY, §

Plaintiff, §

v. §

Civil Action No. H-18-762

QUANTA STORAGE, INC. *and* §

QUANTA STORAGE AMERICA §

INC., §

Defendants. §

ORDER

Pending before the Court is Quanta Storage, Inc.’s Motion for Stay of Execution and Opposition to HP’s Motion for Writ of Execution (Document No. 412). Having considered the motion, submissions, and applicable law, the Court determines the motion to stay execution of the judgment should be granted in part.

I. BACKGROUND

This is an anti-trust case. On October 24, 2013, Plaintiff HP Inc. (formerly known as Hewlett-Packard Company) (“HP”) filed this lawsuit against several defendants, including Defendants Quanta Storage, Inc. (“Quanta Storage”) and Quanta Storage America Inc. (“Quanta Storage America”). HP alleges Quanta Storage and Quanta Storage America (collectively, the “Quanta Defendants”) participated in a conspiracy to artificially inflate prices of optical disk drives

(“ODDs”) in violation of the Sherman Act, 15 U.S.C. § 1 *et seq.* On November 15, 2013, this case was transferred to the United States District Court for the Northern District of California for consolidated pretrial proceedings before the Judicial Panel on Multi-district Litigation (the “MDL Panel”). On March 8, 2018, the MDL Panel remanded the case to this Court for trial. All other defendants besides the Quanta Defendants settled prior to the MDL Panel remanding this case to this Court.

On October 15, 2019, a jury trial on HP’s claims against the Quanta Defendants commenced. During trial, Quanta Storage did not call **any** witnesses or offer **any** exhibits into evidence, and counsel for Quanta Storage conducted very limited cross examination. On October 22, 2019, the jury returned a verdict in favor of HP in the amount of \$176,000,000.00. The jury unanimously found HP proved by a preponderance of the evidence, *inter alia*: the Quanta Defendants **knowingly, voluntarily, and intentionally participated** in a conspiracy to fix, raise, maintain, and stabilize prices of optical disc drives; and (2) HP suffered injury to its business or property.¹ On October 23, 2019, the Court entered judgment in accordance with the jury’s verdict.

On January 2, 2020, the Court: (1) denied Quanta Storage’s renewed motion for judgment as a matter of law; (2) denied Quanta Storage’s motion for a new trial;

¹ *Jury Verdict*, Document No. 296 at 18–19.

and (3) granted HP's motion to amend the judgment. After trebling damages pursuant to 15 U.S.C. § 15(a) and deducting settlement credits, the Court issued an amended final judgment in favor of HP in the amount of \$438,650,000.00, plus post-judgment interest.² On March 3, 2020, Quanta Storage moved to stay execution of the amended judgment pending appeal. On March 5, 2020, the Court conducted a hearing on the motion to stay execution of the amended judgment (the "Hearing").

II. LAW & ANALYSIS

Quanta Storage moves to stay execution of the amended judgment pending appeal, contending posting a supersedeas bond in the full amount of the amended judgment would impose an undue financial burden on Quanta Storage. Quanta Storage further contends it is willing to provide alternative security in the form of an injunction. HP contends: (1) Quanta Storage has not met its burden to show posting the full bond will pose an undue financial burden; and (2) the alternative security Quanta Storage proposes is insufficient to protect HP. Alternatively, HP contends it is willing to agree to alternative security in the form of injunctive relief and a \$133,000,000.00 bond.

"At any time after judgment is entered, a party may obtain a stay by providing a bond or other security." Fed. R. Civ. P. 62(b). Rule 62 usually requires a bond in

² *Order*, Document No. 333 at 3–5; *Amended Final Judgment*, Document No. 334.

the amount of “the whole amount of the judgment remaining unsatisfied, costs on appeal, interest, and damages for delay.” *Poplar Grove Planting and Refining Co., Inc. v. Bache Halsey Stuart, Inc.*, 600 F.2d 1189, 1191 (5th Cir. 1979). The Court may choose to depart from the usual requirement, if the judgment debtor objectively demonstrates posting the full bond amount would pose an undue financial burden. *Id.* Once the judgment debtor meets this burden, “the court is . . . free to exercise a discretion to fashion some other arrangement for substitute security through an appropriate restraint on the judgment debtor’s financial dealings, which would furnish equal protection to the judgment creditor.” *Id.*

At the Hearing, Quanta Storage stated all its assets, with the exception of its registered patents and trademarks, are located outside the United States and the location of the assets have made Quanta Storage incapable of securing a bond in the full amount of the amended judgment. Quanta Storage further stated Quanta Storage needs the assets it currently has to maintain production and sale of optical disc drives (“ODDs”) and robotic arms. Quanta Storage produces financial statements in the form of balance sheets and income statements covering most of 2018 and 2019 (the “Financial Statements”).³ The Financial Statements are attached to the declaration

³ *Quanta Storage, Inc.’s Motion for Stay of Execution and Opposition to HP’s Motion for Writ of Execution*, Document No. 412, Exhibit 1-A (*Financial Statements*) [hereinafter *Financial Statements*].

of Jake Wang (“Wang”),⁴ the Head of Quanta Storage’s Legal and Intellectual Property Departments.⁵ The Financial Statements show Quanta Storage’s assets total \$11,963,809,000.00 in New Taiwan dollars (approximately \$398 million USD).⁶

HP alleges the Financial Statements underestimate Quanta Storage’s assets, because the Financial Statements do not reflect any capital in Quanta Storage’s subsidiaries.⁷ In support, HP produces the annual report published by Quanta Storage’s parent company, Quanta Computer, Inc.⁸ However, HP fails to establish how the paid-in capital reported by Quanta Computer, Inc. establishes the amount of paid-in capital Quanta Storage has in Quanta Storage’s subsidiaries. Furthermore, the Financial Statements reflect Quanta Storage’s capital surplus and paid-in capital

⁴ HP objects to Wang’s declaration, contending the declaration lacks foundation and Wang lacks personal knowledge. In the declaration, Wang states he is the Head of Quanta Storage’s Legal and Intellectual Property Departments and has personal knowledge of the financial documents or has reviewed Quanta Storage’s financial records. *Quanta Storage, Inc.’s Motion for Stay of Execution and Opposition to HP’s Motion for Writ of Execution*, Document No. 412, Exhibit 1 (*Declaration of Jake Wang*). The Court finds that, for the purposes of this motion, Wang’s declaration lays a sufficient predicate to establish foundation and personal knowledge. Accordingly, HP’s objection is overruled.

⁵ *Quanta Storage, Inc.’s Motion for Stay of Execution and Opposition to HP’s Motion for Writ of Execution*, Document No. 412, Exhibit 1 (*Declaration of Jake Wang*).

⁶ *Financial Statements*, *supra* note 3, at 1.

⁷ *Plaintiff’s Expedited Response to Motion for Stay of Execution and Proposed Injunction Language*, Document No. 416 at 7.

⁸ *Plaintiff’s Expedited Response to Motion for Stay of Execution and Proposed Injunction Language*, Document No. 416, Exhibit B (*Quanta Computer, Inc.’s Published Annual Report*).

in the equity section.⁹ Based on the Financial Statements, Wang’s declaration, representations made at the Hearing, and the submissions, the Court finds Quanta Storage has met its burden to objectively demonstrate posting the full bond would pose an undue financial burden. *See United States v. Loftis*, No. 3-06-CV-1633-P, 2009 WL 10678613, at *3–4 (N.D. Tex. Aug. 3, 2009) (Solis, J.) (finding defendant established an undue financial burden by showing her current net worth was less than the judgment). Having found Quanta Storage has met its burden, the Court now turns to the issue of alternative security.

As alternative security, Quanta Storage agrees to an injunction “prohibiting Quanta [Storage] from selling, transferring, or otherwise disposing of any asset valued at over \$100,000.00 without prior Court approval, which will be verified through monthly financial disclosures to the Court.”¹⁰ HP contends the injunction, on its own, is insufficient to protect its interest in the judgment. HP produces evidence to show Quanta Storage’s stock performance has declined in the past

⁹ *Financial Statements*, *supra* note 3, at 1.

¹⁰ *Quanta Storage, Inc.’s Reply to Plaintiff’s Expedited Response to Motion for Stay of Execution*, Document No. 417 at 1.

year.¹¹ Because of the conduct underlying liability in this case,¹² the amount of Quanta Storage's current assets, and the decline in Quanta Storage's stock, the Court finds the proposed injunction, on its own, is an insufficient alternative security. The Court finds a reduced bond amount, in addition to the injunction, is necessary to protect HP's interest. Accordingly, the motion to stay execution of the amended judgment pending appeal is granted in part.

III. CONCLUSION

Based on the foregoing, the Court hereby

ORDERS that Quanta Storage, Inc.'s Motion for Stay of Execution and Opposition to HP's Motion for Writ of Execution (Document No. 412) is **GRANTED IN PART**. The motion is granted as to the request to stay execution of the amended judgment (pending approval of the reduced bond) and as to the request to allow alternative security in the form of an injunction. The Court further

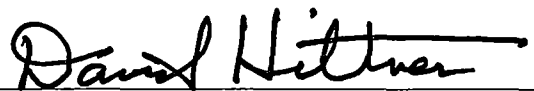
¹¹ *Plaintiff's Expedited Response to Motion for Stay of Execution and Proposed Injunction Language*, Document No. 416, Exhibit C (*Quanta Storage Company Stock Information*).

¹² The Court notes the conduct underlying liability in this case was sufficiently serious to warrant associated criminal charges. While no Quanta Storage employees were criminally indicted, evidence presented at trial, including several video depositions of executives of other defendants' companies who were convicted and incarcerated for their participation in the price fixing of ODDs, implicated Quanta Storage employees. *See, e.g., Plaintiff's Trial Exhibits*, Document No. 399 at 200–01 (*Video Deposition Transcript of Daniel Hur*), 240–41 (*Video Deposition Transcript of Dae Hwa Jeong*).

ORDERS that Quanta Storage, Inc. is immediately enjoined from selling, transferring, or otherwise disposing of any asset valued at over \$100,000.00, without prior Court approval. The injunction shall remain in effect throughout the pendency of Quanta Storage, Inc.'s appeal. Quanta Storage, Inc. shall also file monthly financial disclosures to the Court for the duration of the injunction to verify compliance. The Court further

ORDERS that Quanta Storage, Inc. shall post a supersedeas bond in the amount of \$85,000,000.00 within fifteen days of this Order if it desires to stay execution of the amended judgment. The stay shall go into effect after Quanta Storage, Inc.'s bond is posted and approved by the Court.¹³

SIGNED at Houston, Texas, on this 12 day of March, 2020.



DAVID HITTNER
United States District Judge

¹³ Also pending before the Court are Plaintiff's Motion for Post-Judgment Relief in Aid of Enforcing Judgment and Emergency Motion for Restraining Order (Document No. 402) and Plaintiff's Motion for Writ of Execution (Document No. 403). In light of the Court's Order, the motions are denied as moot at this time.