

**IN THE CIRCUIT COURT OF HOWELL COUNTY
STATE OF MISSOURI**

STATE OF MISSOURI ex rel.)	
CHRIS KOSTER,)	
the MISSOURI DEPARTMENT OF)	
AGRICULTURE, and the)	
MISSOURI STATE MILK BOARD)	
)	
Plaintiff,)	
)	
v.)	Case No. 10 AL-CC00135
)	
MORNINGLAND OF THE OZARKS, LLC,)	
d/b/a MORNINGLAND DAIRY)	
)	
Defendant.)	

**Plaintiff’s Memorandum in Opposition to
Defendant’s Petition to Stay Execution of the Court’s February 23rd Judgment**

On March 4, 2011, Defendant filed a Petition to Stay the Execution of this Court’s February 23rd Judgment. This Court should deny Defendant’s request for a stay because it is unwarranted and unsupported by good cause as required by the Missouri Court Rules. Plaintiff, State of Missouri, therefore files this Memorandum in Opposition to Defendant’s Petition to Stay Execution of the Court’s February 23rd Judgment and states the following in support thereof:

A. Plaintiff’s right to execute this Court’s judgment accrued immediately upon the entry of the judgment.

Defendant’s insistence that Plaintiff is not entitled to execute this Court’s judgment until the decision is final for the purposes of appeal is unfounded and contrary to extensive Missouri case law. While Defendant’s assertion that this Court’s decision is not final until thirty days have elapsed is accurate for the purposes of Defendant’s potential appeal of the final judgment, finality of the decision is not a prerequisite for execution of the judgment. Missouri law distinguishes between a “judgment final for execution and a judgment final for appeal.” *Turner*

v. Sloan, 595 S.W.2d 778, 780 (Mo. App. W.D. 1980). Missouri courts have consistently held that the right to execute a judgment accrues immediately upon the entry of the judgment. *Griggs v. Miller*, 374 S.W.2d 119, 121 (Mo. 1963) (“The right to an execution follows immediately upon rendition of a judgment.”); *State v. Haney*, 277 S.W.2d 632, 635 (Mo. 1955) (“Right to execution follows immediately upon the rendition of judgment.”); *Homfeld v. Homfeld*, 954 S.W.2d 617 (Mo. App. W.D. 1997) (“Right of party to execute judgment accrues immediately upon entry of the judgment.”); *Fielder v. Fielder*, 671 S.W.2d 408 (Mo. App. E.D. 1984); *State ex. rel Turner v. Sloan*, 595 S.W.2d 778, 780 (Mo. App. W.D. 1980) (“Right to execute judgment . . . accrues immediately upon rendition.”).

Defendant suggests that this Court’s judgment is unenforceable until thirty days from the entry of the Judgment and Order have expired, or in other words, until the judgment is final for appeal. If this Court were to find, as Defendant urges, that the issuance of a final order of permanent injunction is not enforceable until the Court’s decision is final, the result would be absurd. Such a finding would allow any defendants that are subject to a court’s injunction to continue to violate the law for a period of thirty days following the issuance of an injunction before the injunction could be enforced against them. For example, if a defendant were dumping hazardous waste into a river and a court issued an injunction ordering the defendant to stop the dumping, the defendant could continue dumping its waste into the river for a period of thirty days following the issuance of the injunction. Such a reading of the law is clearly contrary to the purpose of injunctive relief and should therefore be disregarded.

Furthermore, Defendant alleges that this Court did not specify a date by which the destruction of the cheese is to occur. *Defendant’s Petition to Stay Execution of the Court’s February 23rd Judgment*, page 1. However, this Court did provide a date, as the *Final Order of*

Permanent Injunction states that “Defendant . . . shall destroy all of its cheese products condemned by the Missouri State Milk Board, pursuant to the Board’s October 1, 2010, destruction letter.” *Final Order*, page 2. Therefore, the October 1 destruction letter governs the destruction date. In keeping with the terms of the October 1 destruction letter, the Milk Board, through counsel, scheduled a date of destruction giving Defendant seven days notice thereof. The Milk Board acted in good faith, providing Defendant with more than the three days notice required by the October 1 letter. Plaintiff should therefore be allowed to proceed with the execution of this Court’s *Final Order of Permanent Injunction*.

B. Defendant has not shown good cause for the issuance of a stay.

Under Missouri Court Rule 76.25, Defendant must establish good cause for staying the execution of the judgment rendered by this Court. Defendant fails to show the requisite good cause, and its Petition should therefore be denied. In an attempt to show good cause, Defendant claims that it “remains in compliance with the embargo order.” *Defendant’s Petition to Stay Execution of the Court’s February 23rd Judgment*, page 2. However, this does not amount to “good cause” as Defendant has made written statements directly contradicting this assertion.

Defense counsel accuses Plaintiff’s counsel of “fabricating Defendant’s intent” to create a “new enterprise” and sell the contaminated cheese. *Id.* However, Plaintiff’s concerns are well-founded and supported by *express* statements made by Denise and Joseph Dixon (the “Dixons”), the owners of Morningland Dairy, in letters mailed to the Missouri State Milk Board, the Missouri Attorney General’s Office, and to this Court on January 18, 2011. In their January 18 letters, attached hereto as Exhibit A, the Dixons make the following statements:

This letter is our official notice to your agency concerning our First and Fourteenth Amendment Private Health Membership Association. This association will be marketing products to our private members only in the private domain. . . . Please be informed that Morningland Dairy is a 1st and 14th Amendment private unpasteurized whole milk

membership association that only has private contract members and does not involve public persons in any manner. . . . Your Agency and others do not have jurisdiction or authority to even investigate our private . . . association You are hereby put on notice that any interference with our private association activities may result in a Federal Civil and Constitutional Rights lawsuit under Title 42 U.S.C. § 1983 by suing persons involved in their “individual capacities.”

Letter from Denise and Joseph Dixon (emphasis in original).

In addition, the Dixons filed a pleading with this Court on February 22, 2011, attached hereto as Exhibit B, wherein they asked this Court to take judicial notice of its lack of jurisdiction over Defendant. *Request for Judicial Notice*. In sending the documents, the Dixons quite clearly manifested their intent to evade regulation and sell their product in some sort of private association. Their threat to bring a section 1983 action against individuals attempting to enforce Missouri law further demonstrates their intention not to comply with the Court’s ruling. Plaintiff is not alone in its concern about the plans conveyed by the Dixons in their letters; this Court also took notice of Defendant’s intent in its *Judgment and Order*, page 10, footnote 3.

Furthermore, Defendant cannot establish good cause because a stay under these circumstances serves no purpose. If a stay is granted and the cheese continues to remain undestroyed, Defendant will retain control over it and the risk to the public remains great. Should Defendant remain in control of the cheese, the cheese might be shipped out of state, stolen and consumed, or donated as food to a food pantry. Defendant has not demonstrated any other way in which a stay would further its interests. Should Defendant successfully appeal this Court’s decision, it could then pursue a remedy at law for damages. However, the risk to the public is substantial if the cheese remains under Defendant’s control.

Plaintiff has a compelling interest in protecting the citizens of Missouri from harm that could result from Defendant’s formation a “private association” and the sale of its contaminated

product. In order to prevent this potential harm, Plaintiff should be allowed to proceed with the execution of the Court's judgment.

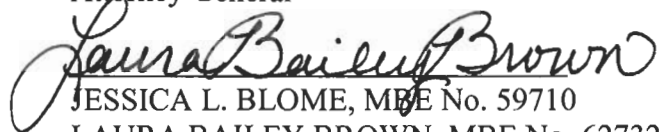
C. Even if this Court issues a stay, it should not do so without requiring Defendant post bond.

In the event that this Court is persuaded by Defendant's arguments for the issuance of a stay, the Court should not grant the stay without requiring Defendant post bond as provided by Missouri Court Rule 76.25. Under Rule 76.25, "the court may require the petitioner to provide a sufficient bond with adequate security approved by the court, conditioned upon the delivery of the property." Defendant should be required to post bond in an amount sufficient to cover any costs incurred by the Missouri State Milk Board in scheduling a time for destruction of the product and for procuring a waste company to denature, haul, and bury the contaminated cheese in a landfill.

WHEREFORE, Plaintiff respectfully asks this Court deny *Defendant's Petition to Stay Execution of the Court's February 23rd Judgment*. In the alternative, Plaintiff requests this Court order Defendant to post bond prior to staying the judgment's execution.

Respectfully submitted,

CHRIS KOSTER
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ATTORNEYS FOR PLAINTIFF


CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was delivered via email and first class mail, postage prepaid, this 7th day of March, 2011,

to:

Mr. Gary Cox
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Attorney for Defendant



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