

Cause No. 352-248169-10

**BAT WORLD SANCTUARY and
AMANDA LOLLAR,**

Plaintiffs,

vs.

MARY CUMMINS,

Defendant Pro se

§ **IN THE DISTRICT COURT**

§ **TARRANT COUNTY, TEXAS**

§ **352nd JUDICIAL DISTRICT**

MOTION FOR STAY OF FINAL JUDGMENT PENDING APPEAL

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant Mary Cummins respectfully asks for a stay pending appeal of the order signed by this court August 27, 2012. In support hereof, the Defendant shows the Court the following:

ARGUMENT AND AUTHORITIES

Whether this Court should stay the district court’s judgment pending appeal turns on four factors: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” Hilton v. Braunskill, 481 U.S. 770, 776 (1987). All four factors favor a stay. A movant need not show even a “probability” of success on the merits. See Ruiz v. Estelle, 650 F.2d 555, 565 (5th Cir. Unit A June 1981) (per curiam) (“If a movant were required in every case to establish that the appeal would probably be successful, the Rule would not require as it does a prior presentation to the district judge whose order is being appealed.”) It is enough for the movant to “present a substantial case on the merits when a serious legal question is

involved and show that the balance of the equities weighs heavily in favor of granting the stay." Id.

I. DEFENDANT WILL LIKELY PREVAIL ON THE MERITS.

The relief ordered by the district court is unlikely to survive appellate review. There are independent errors that require this Court to reverse parts or all of the district court's judgment in this case.

A. Plaintiffs did not show any of the elements of defamation, breach of contract, damages, malice or causation as per Appeal Briefs (Appellant's Appeal Brief¹, Appellees' Reply Brief², Defendant's Reply Brief³) and Amicus Briefs filed by attorney Paul Alan Levy of Public Citizen which has over 300,000 supporters worldwide with 14,000 in Texas⁴ and David Casselman attorney for The Cambodia Wildlife Sanctuary and Elephants in Crisis.org⁵ on behalf of Defendant Mary Cummins.

B. The Court's Ruling Violates the first Amendment by limiting freedom of speech. Defendant's reports to authorities were fair and privileged reports. Defendant spoke about an issue of public concern. Plaintiffs are public figures.

II. DEFENDANT WILL SUFFER IRREPARABLE INJURY ABSENT A STAY

Defendant will suffer irreparable injury absent a stay. Plaintiffs filed a sister state judgment in California and levied Defendant's only bank account leaving Defendant penniless. Defendant's bank account was levied weeks after she sent two rent payments to her landlord. Unbeknownst to Defendant her landlord was out of the country and did not cash the checks which amount to \$4,200. The Los Angeles County

¹ http://www.marycummins.com/mary_cummins_appeal.pdf

² http://www.marycummins.com/appellee_reply_brief.pdf

³ <http://www.marycummins.com/marycumminsreplybrief.pdf>

⁴ http://www.animaladvocates.us/cummins_amicus_brief.pdf

⁵ http://www.animaladvocates.us/mary_cummins_v_bat_world_sanctuary_amicus_letter.pdf

Sheriff currently is holding \$4,300 of Defendant's funds. If Plaintiffs take the \$4,300, Defendant will be two months behind on her rent and could be evicted which would cause permanent and irreversible damage to Defendant and her non-profit organization.

III. DEFENDANT'S IRREPARABLE INJURIES STRONGLY OUTWEIGH ANY HARM TO PLAINTIFFS

Plaintiffs will not be harmed in any way by a stay. Plaintiff Amanda Lollar has spun this case on the Internet to make her appear to be a "victim" of "defamation" when she is actually guilty of animal cruelty, neglect and violations of animal regulations. Amanda Lollar committed animal cruelty and was reported to authorities by Defendant. The main veterinarian for the USDA stated that "Amanda Lollar" "caused bats pain, suffering and death" (Exhibit 1). Lollar lost her USDA permit because she does not comply with the Animal Welfare Act (Exhibit 2). The Texas Parks & Wildlife Department stated that "Amanda Lollar" is not "an expert," "cannot treat bats with White Nose Syndrome," "cannot have an assurance colony," "none of her unreleasable bats are permitted," "she must defer to true bat experts Bat Conservation International and Fish & Wildlife Services," "she cannot exhibit bats," ... (Exhibit 3).

Because Lollar has spun this case in her favor on the Internet she is now making over \$250,000 a year when they were previously only making \$70,000. Plaintiff has already profited off the plight of Defendant and will not be harmed. The Appeal Brief was submitted September 10, 2013 and opinion should be released soon.

IV. A STAY IS IN THE PUBLIC INTEREST

Everything which Defendant stated was freedom of speech and in the public interest. Every word Defendant stated came from her fair and privileged reports to authorities. The Texas Citizens Participation Act was signed into law and effective immediately on June 17, 2011. Because Defendant was sued September 2010 Defendant was not able

to have this case dismissed under the new Act. To punish a citizen who legally had to report Amanda Lollar to authorities would not be in the public interest especially in light of the subsequent passage of the Texas Citizens Participation Act.

CONCLUSION

Defendant respectfully requests that this Court stay its order and final judgment pending appeal as it relates to the monetary judgement of the court order.

Respectfully submitted,

Mary Cummins, Defendant Pro se
645 W 9th St, #110-140
Los Angeles, CA 90015-1640
Phone 310-877-4770
Email: mmmaryinla@aol.com

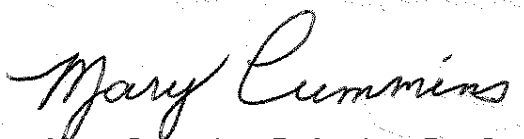
By:



Mary Cummins, Defendant Pro Se
December 9, 2013

CERTIFICATE OF CONFERENCE

Conference was held on the merits of this motion with Plaintiffs' attorney Randy Turner via email and agreement was not reached.



Mary Cummins, Defendant Pro Se
December 9, 2013

CERTIFICATE OF SERVICE

I, Mary Cummins, hereby certify that a TRUE COPY of the above **MOTION FOR STAY OF FINAL JUDGMENT PENDING APPEAL** was served on the Plaintiffs' Attorney of record by FAX and by FIRST CLASS MAIL at

Randy Turner
Bailey & Galyen
1300 Summit Ave. #650
Fort Worth, Texas 76102
this 9th Day of December 2013



Mary Cummins, Defendant Pro se
December 9, 2013

Cause No. 352-248169-10

**BAT WORLD SANCTUARY and
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Plaintiffs,

vs.

MARY CUMMINS,

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IN THE DISTRICT COURT

TARRANT COUNTY, TEXAS

352nd JUDICIAL DISTRICT

FIAT

Defendant's DEFENDANT'S MOTION FOR STAY OF FINAL JUDGMENT PENDING APPEAL was filed on December ____, 2013. Defendant requests that the foregoing be set for hearing.

IT IS THEREFORE ORDERED that a hearing before this court on said Motion be set for the _____ day of _____ at _____ a.m./p.m. in the 352nd District Court of Tarrant County, Fort Worth, Texas.

Date _____.

Judge Presiding

Cause No. 352-248169-10

**BAT WORLD SANCTUARY and
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IN THE DISTRICT COURT

TARRANT COUNTY, TEXAS

352nd JUDICIAL DISTRICT

DEFENDANT'S MOTION FOR TELEPHONIC HEARING

TO THE HONORABLE JUDGE OF SAID COURT:

Mary Cummins, Defendant Pro se, files this Motion for Telephonic Hearing, and in support shows the following:

1.

The hearing is for MOTION FOR STAY OF FINAL JUDGMENT PENDING APPEAL in the above styled cause filed December 9, 2013. Hearing date has not yet been set.

2.

Defendant resides in Los Angeles County, California and their appearance by telephone would be the most expedient method of resolving the issues for all parties involved. Defendant does not have the money to pay for airfare, motel to/from Texas. Defendant is also physically disabled making travel difficult.

3.

No party in this action will suffer any prejudice if Defendant appears telephonically.

WHEREFORE, Defendant respectfully requests that the Court grant this Motion for Telephonic Hearing.

Respectfully submitted,

Mary Cummins, Defendant Pro se
645 W 9th St, #110-140
Los Angeles, CA 90015-1640
Phone 310-877-4770
Email: mmmaryinla@aol.com
December 9, 2013

By: 

Mary Cummins, Defendant Pro Se

Cause No. 352-248169-10

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IN THE DISTRICT COURT

TARRANT COUNTY, TEXAS

352nd JUDICIAL DISTRICT

FIAT

Defendant's DEFENDANT'S MOTION FOR TELEPHONIC HEARING was filed on
December ____, 2013. Defendant requests that the foregoing be set for hearing.

IT IS THEREFORE ORDERED that a hearing before this court on said Motion be set
for the _____ day of _____ at _____ a.m./p.m. in the 352nd
District Court of Tarrant County, Fort Worth, Texas.

Date _____.

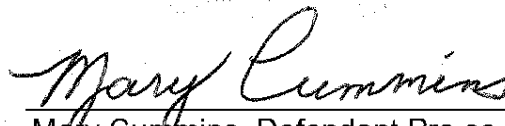
Judge Presiding

CERTIFICATE OF SERVICE

I, Mary Cummins, hereby certify that a TRUE COPY of the above **MOTION FOR TELEPHONIC HEARING** was served on the Plaintiffs' Attorney of record by FAX and by FIRST CLASS MAIL at

RANDY TURNER

Randy Turner
Bailey & Galyen
1300 Summit Ave. #650
Fort Worth, Texas 76102
December 9, 2013



Mary Cummins, Defendant Pro se
645 W 9th St, #110-140
Los Angeles, CA 90015-1640
Phone 310-877-4770
Email: mmmaryinla@aol.com