**Not For Publication**

**IN THE SUPREME COURT OF THE VIRGIN ISLANDS**

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| **HORACIANA J. ROJAS, ET AL.,**<br>Appellants/Plaintiffs,<br><br>v.<br><br>**TWO/MORROW IDEAS ENTERPRISES, INC. d/b/a CHUCK KLINE WATER SERVICES and LANDER G. ALFRED,**<br><br>Appellees/Defendants. | **S. Ct. Civ. No. 2008-071**<br><br>Re: Super. Ct. Civ. No. 557/1999 |

On Appeal from the Superior Court of the Virgin Islands
Considered and Filed: January 22, 2009

**BEFORE:** **RHYS S. HODGE**, Chief Justice; **MARIA M. CABRET**, Associate Justice; and **IVE ARLINGTON SWAN**, Associate Justice.

**ORDER OF THE COURT**

**PER CURIAM.**

**THIS MATTER** originally came before the Court on appeal from an order of the Superior Court dated August 1, 2008. On August 27, 2008, A. Jeffrey Weiss d/b/a A.J. Weiss & Associates ("Appellant"), who represented the plaintiffs at the trial level, filed a notice of appeal purporting to appear as the sole appellant in this matter.[1] Essentially, Appellant's notice of appeal challenges the trial judge's decision to decrease the contractually agreed upon contingency fee award while ruling upon his clients' Petition for Approval of Settlement on Behalf of Minor Children.

Appellant filed a Motion for Stay Pending Appeal on November 10, 2008. Pursuant to Supreme Court Rule 8(b), Appellant requests that we stay the Superior Court's August 1, 2008

[1] Although this case is captioned with the plaintiffs as Appellants and the defendants as Appellees, the notice of appeal was filed by plaintiffs' counsel on his own behalf, not on behalf of the plaintiffs.

order and October 22, 2008 Amended Order, which was entered subsequent to Appellant filing his notice of appeal. As required by Rule 8(b), Appellant first sought a stay in the trial court, but his request was denied on October 22, 2008. In essence, Appellant's motion requests a stay of the trial court's orders to ensure that the settlement proceeds are not distributed to the plaintiffs before his right to the contractually agreed upon contingent fee is determined on appeal.

On November 21, 2008, this Court granted Appellant a partial, temporary stay of the trial court's orders until this Court had the opportunity to consider and rule upon Appellant's Motion to Stay. In the same order, this Court required Appellant to show cause, in writing, why he has standing to appeal the trial court's August 1, 2008 order on his own behalf. Appellant submitted his response on December 5, 2008, arguing that he meets the minimum constitutional requirements for standing and citing to case law suggesting that an attorney may appeal an order in his own name in certain circumstances.[2]

Although this Court is not an Article III court, Article III's requirement that a litigant have standing to invoke a court's authority has been incorporated into Virgin Islands jurisprudence. *See Dennis v. Luis*, 741 F.2d 628, 630 (3d Cir. 1984). To meet the minimum constitutional requirements necessary to establish standing, a litigant must demonstrate (i) an actual or threatened injury that (ii) can be traced to the challenged action and is (iii) capable of judicial redress. *Valley Forge Christian College v. Americans United for Separation of Church and State*, 454 U.S. 464, 472, 102 S.Ct. 752, 70 L.Ed.2d 700 (1982).

[2] This Court notes that Appellant has mischaracterized the holdings of multiple cases cited in his brief. For instance, though Appellant cites *In re: Cendant Corp. Prides Litigation*, 243 F.3d 722 (3d Cir. 2001) for the proposition that a "non-party to settlement in [a] class action has standing to appeal [an] award of attorney's fees," the appellant in *Cendant Corp.* was a party to the settlement agreement. Likewise, Appellant presents *In re: Licht and Semonoff*, 796 F.2d 564 (1st Cir. 1986), a case which dealt with an appeal of a sanctions order, as a case holding that an "attorney may appeal [an] attorney's fee award in his own name." This Court reminds Appellant that authorities cited in a court filing should stand for the stated proposition and that accompanying parenthetical explanations should accurately reflect the holding of the case.

Multiple appellate courts have held that an attorney has standing to appeal an adverse attorney's fees award in his own name. *See, e.g., Dietrich Corp. v. King Resources Co.*, 596 F.2d 422, 424 (10th Cir. 1979); *Angoff v. Goldfine*, 270 F.2d 185, 186 (1st Cir. 1959). Likewise, this Court finds that Appellant has met these minimum requirements for standing, since the Superior Court's orders, which this Court is capable of reversing, have reduced Appellant's contingent fee. This Court recognizes that some courts have questioned the propriety of allowing an attorney to maintain such an appeal in his own name without the consent of his clients. *See, e.g., Willis v. Government Accountability Office*, 448 F.3d 1341, 1344 (Fed. Cir. 2006). However, the failure of Appellant's clients to object to Appellant's appeal mollifies such concerns. *See Gonter v. Hunt Valve Co., Inc.*, 510 F.3d 610, 614-15 (6th Cir. 2007); *Mather v. Board of Trustees of Southern Illinois University*, 317 F.3d 738, 741 (7th Cir. 2003). Accordingly, this Court finds that Appellant has standing to appeal the Superior Court's orders and shall consider the merits of Appellant's Motion for Stay Pending Appeal.

To determine whether a litigant is entitled to a stay pending appeal, this Court considers: (1) whether the litigant has made a strong showing that he is likely to succeed on the merits; (2) whether the litigant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceedings; and (4) where the public interest lies. *See Hilton v. Braunskill*, 481 U.S. 770, 776, 107 S.Ct. 2113, 2119, 95 L.Ed.2d 724 (1987). The first of these factors is ordinarily the most important. *See Garcia-Mir v. Meese*, 781 F.2d 1450, 1453 (11th Cir. 1986). However, a movant may also have his motion granted upon a showing of a "substantial case on the merits" when "the balance of equities, as determined by the other three factors, clearly favors a stay." *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977). In particular, an appellate stay

maintaining the status quo "is appropriate when a serious legal question is presented, when little if any harm will befall other interested persons or the public and when denial of the order would inflict irreparable injury on the movant." *Id.* at 844.

We find that the balance of the equities clearly favors a limited appellate stay of the Superior Court's orders. Appellant has presented a serious legal question and set forth a non-frivolous argument that it was improper for the trial court to alter the terms of Appellant's retainer agreement with his adult clients when the only matter before the court was a motion to approve a settlement agreement for five minor children. Likewise, Appellant has demonstrated that disbursing the disputed funds may result in irreparable injury if Appellant prevails on appeal but is subsequently unable to recover his fees from his clients. Similarly, delaying disbursement of the disputed funds until this appeal is resolved will not substantially injure Appellant's clients or other parties. Finally, the public interest favors parties to honor valid contractual agreements. *American Standard, Inc. v. Meehan*, 517 F. Supp. 2d 976, 990 (N.D. Ohio 2007). However, these factors are not met with respect to the settlement proceeds that do not represent the amount in controversy on appeal, for the disposition of Appellant's appeal would not alter which individuals are entitled to those funds. Accordingly, we stay the trial court's orders only with respect to the disputed $12,820.27.[3]

The premises having been considered, it is hereby

**ORDERED** that Appellant's Motion for Stay Pending Appeal of the trial court's August 1, 2008 and October 22, 2008 orders is **GRANTED IN PART** and **DENIED IN PART**; and it is further

[3] This sum represents the difference between the amount of costs and attorney's fees originally sought by Appellant ($19,066.27) and the amount actually awarded to Appellant in the trial court's October 22, 2008 Amended Order ($6,246.00).

**ORDERED** that the Superior Court **MAY NOT DISBURSE** the sum of the settlement proceeds that represents the amount in controversy on appeal, namely the sum of **Twelve Thousand Eight Hundred and Twenty Dollars and Twenty-Seven Cents ($12,820.27)**; and it is further

**ORDERED** that copies of this Order be served on the Clerk of the Superior Court and parties' counsel.

**SO ORDERED** this 22nd day of January, 2009.

**ATTEST:**
**VERONICA J. HANDY, ESQ.**
**Clerk of the Court**