The relief described hereinbelow is SO ORDERED.

SIGNED this 28th day of February, 2024.

Robert D. Berger
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

In re:

SEAN KRISTIAN TARPENNING,

Debtor.

Case No. 23-21455
Chapter 7

ORDER DENYING MOTION FOR STAY PENDING APPEAL

On December 7, 2023, the United States Bankruptcy Court for the Southern District of Ohio ordered that this case be transferred to the District of Kansas.[1] This matter comes before the Court on debtor Sean Tarpenning's *pro se* motion to stay all proceedings in the case while he appeals the transfer order to the Bankruptcy

[1] *See* ECF 94.

Appellate Panel for the Sixth Circuit.[2] The trustees for the Chapter 7 bankruptcy estates of US Real Estate Equity Builder LLC (Case No. 20-21358), US Real Estate Equity Builder Dayton LLC (Case No. 20-21359) and 1 Big Red LLC (Case No. 21-20044) object, arguing that Tarpenning's motion fails to satisfy any of the four factors that determine whether a stay should be granted.[3]

Fed. R. Bankr. P. 8007(e) permits a bankruptcy court to stay proceedings during the pendency of an appeal. In determining whether to do so, courts consider the following factors: (1) the likelihood that the party seeking the stay will prevail on the merits of the appeal; (2) the likelihood that the moving party will suffer irreparable injury unless the stay is granted; (3) whether granting the stay will result in substantial harm to the other parties to the appeal; and (4) the effect of granting the stay upon the public interest. *Lang v. Lang (In re Lang)*, 305 B.R. 905, 911 (B.A.P. 10th Cir. 2004). The burden is on the party seeking the stay to show that one is justified. *See In re Stewart*, 604 B.R. 900, 905 (Bankr. W.D. Okla. 2019) (quoting *Nken v. Holder*, 556 U.S. 418, 427 (2009)).

Tarpenning's motion makes one conclusory statement regarding factor (2): "A 341 hearing, non-evidentiary hearings and subsequent orders before the appeal is heard could cause irreparable harm to the Debtor."[4] But even if that statement is

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[2] ECF 127; *see In re Tarpenning*, Case No. 3:23-bk-31595, ECF 108 (Bankr. S.D. Ohio Dec. 18, 2023) (notice of election to 6th Circuit B.A.P.).

[3] ECF 161 (citing order docketed at ECF 94). The trustees for the Chapter 7 estates of USREEB, USREEB Dayton, and 1 Big Red appear by attorney Eric Johnson.

[4] ECF 127 ¶ 9.

true,[5] the "irreparable injury" factor is not satisfied by an unspecified *possibility* of such injury. *See Nken v. Holder*, 556 U.S. 418, 435 (2009) ("[S]imply showing some 'possibility of irreparable injury' fails to satisfy the second factor."). Because Tarpenning fails to satisfy the second factor of the test and has made no showing as to the other three, he has not satisfied his burden of showing that a stay is justified here. His motion for a stay pending appeal is therefore denied.

IT IS SO ORDERED.

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[5] Courts need not accept conclusory statements as true in determining whether a complaint states a claim for relief. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Of course, a motion is not a complaint. *Compare* Fed. R. Civ. P. 7(a) ("Pleadings") *with* Fed. R. Civ. P. 7(b) ("Motions and Other Papers"). It is, however, a contested matter—and bankruptcy courts may apply Fed. R. Civ. P. 12(b)(6) to contested matters via Fed. R. Bankr. P. 9014(c) and Fed. R. Bankr. P. 7012(b).