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Supersedeas on the Ground

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SUPERSEDEAS ON THE GROUND

By Alan Wright

I. Scope of this paper

Suspending enforcement of a judgment pending appeal can be a critical element of maintaining the status quo until the rights and obligations of the litigants can be sorted out on appeal. Very different supersedeas principles and rules apply in state and federal courts. This paper sets out the general supersedeas framework for state and federal appeals and discusses practical issues that may arise in the supersedeas process.

II. State Court Supersedeas and Judgment Enforcement

A. General Framework and Timing

The procedures for superseding enforcement of a judgment in Texas are set forth in Rule 24 of the Texas Rules of Appellate Procedure and in Chapter 52 of the Texas Civil Practice and Remedies Code. A judgment debtor may supersede a judgment by:

- (1) filing with the trial court clerk a written agreement with the judgment creditor for suspending enforcement of the judgment;
- (2) filing with the trial court clerk a good and sufficient bond;
- (3) making a deposit with the trial court clerk in lieu of a bond; or
- (4) providing alternate security ordered by the court.

TEX. R. APP. P. 24.1(a). Timely filing of one of the above alternatives (within 30 days after a timely filed motion for new trial is overruled) prevents the issuance of execution writs and orders. *See, e.g.*, TEX. R. CIV. P. 621a (postjudgment discovery); TEX. R. CIV. P. 627 (execution).

B. Amount of the Bond, Deposit or Security

1. Judgment for money

A supersedeas bond, deposit or security to suspend enforcement of a money judgment must equal “the sum of compensatory damages awarded in the judgment, interest for the estimated duration of the appeal, and costs awarded in the judgment.” TEX. R. APP. P. 24.2(a)(1). However, the amount must not exceed the lesser of (i) 50 percent of the judgment debtor’s current net worth, or (ii) 25 million dollars. TEX. R. APP. P. 24.2(a)(1)(A), (B). The appellant may obtain an order pursuant to Rule 24.2(b) for a lesser amount of security to “an amount that will not cause the judgment debtor substantial economic harm” if the court finds after notice and a hearing that “posting a bond, deposit, or security in the amount required by [Rule 24.2(a)] is likely to cause the judgment debtor substantial economic harm.” TEX. R. APP. P. 24.2(b).

The supersedeas bond must provide for postjudgment interest. A supersedeas bond that does not include interest is “patently ineffective.” *National Conv. Stores v. Martinez*, 784 S.W.2d 486 (Tex. App.--Houston [1st Dist.] 1989, no writ); *Cooper v. Bowser*, 583 S.W.2d 805, 807 (Tex. Civ. App.--San Antonio 1979, no writ) (motion to require additional bond granted). Courts frequently require the appellant to include in any supersedeas bond or deposit postjudgment interest for one to two years to cover the anticipated postjudgment interest during the appeal.

2. *Judgment for recovery of an interest in real or personal property*

The trial court must determine the type of security when the judgment is “for the recovery of an interest in real or personal property.” TEX. R. APP. P. 24.2(a)(2). If the property interest is real, the amount of security must be at least “the value of the property interest’s rent or revenue.” TEX. R. APP. P. 24.2(a)(2)(A). If the property interest is personal, the amount of the security must be at least “the value of the property interest on the date when the court rendered judgment.” TEX. R. APP. P. 24.2(a)(2)(B).

3. *Judgment for something other than money or an interest in property*

The scope of the trial court’s authority to permit or deny supersedeas of a judgment that does not award money damages or an interest in real or personal property is set out in Texas Rule of Appellate Procedure 24.2(a)(3), which states:

(3) Other Judgment. When the judgment is for something other than money or an interest in property, the trial court must set the amount and type of security that the judgment debtor must post. The security must adequately protect the judgment creditor against loss or damage that the appeal might cause. But the trial court may decline to permit the judgment to be superseded if the judgment creditor posts security ordered by the trial court in an amount and type that will secure the judgment debtor against any loss or damage caused by the relief granted the judgment creditor if an appellate court determines, on final disposition, that that relief was improper.

TEX. R. APP. P. 24.2(a)(3).

The foregoing language is mandatory. As a result, an appellant must be given the opportunity to preserve the status quo during its appeal. *Alpert v. Riley*, 274 S.W.3d 277, 297 (Tex. App.—Houston [1st Dist.] 2008, pet. denied); *see also In re City of Lancaster*, 220 S.W.3d 212, 216 (Tex. App.—Dallas 2007, orig. proceeding) (“[T]he right to supersede a judgment is absolute and not a matter within the trial court’s discretion.”), *op. supplemented on other grounds*, 228 S.W.3d 437 (Tex. App.—Dallas 2007, orig. proceeding); *City of Fort Worth v. Johnson*, 71 S.W.3d 470, 472 (Tex. App.—Waco 2002, no pet.) (per curiam) (trial court did not have discretion to deny supersedeas of non-monetary judgment); *Hawkins v. Twin Montana, Inc.*, 810 S.W.2d 441, 446 (Tex. App.—Fort Worth 1991, no writ) (“supersedeas is a matter of absolute right”) (citing *Houtchens v. Mercer*, 29 S.W.2d 1031, 1033 (Tex. 1930)).

The cases construing Rule 24.2(a)(3) and its predecessors make clear that the trial court may decline to permit the judgment to be superseded if the plaintiff posts a bond or deposit in an

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