

SUPERSEDEAS AND BEYOND: STAYING ENFORCEMENT OF FINAL JUDGMENTS

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This paper provides a high-level overview of supersedeas but focuses primarily on issues relevant to determining the amount necessary to stay execution of a monetary judgment under Texas and federal law.¹

The paper first discusses the recent debtor-friendly revisions to Texas law governing supersedeas. Among other things, those changes allow judgment debtors with a net worth of under \$10 million to secure a money judgment using “alternative security” in “a value sufficient to secure the judgment.” Tex. Civ. Prac. & Rem. Code § 52.007; Tex. R. App. P. 24.2(e). These new provisions require courts to address two questions in assessing whether to approve alternate security: (1) is the judgment for *money*; and (2) what amount is “sufficient” to secure the judgment? With those discrete questions in mind, the paper first offers a roadmap for how courts have determined whether a judgment is (1) “for the recovery of money,” (2) “for the recovery or property,” or (3) an “other judgment.” Tex. R. App. P. 24.2(a). The paper then addresses methods for calculating the amount of security the judgment debtor must post. Although there is no caselaw interpreting a “sufficient” value under section 52.007, existing caselaw setting the amount of supersedeas for money judgments under section 52.006 provides a guide.

Finally, the paper outlines the procedures for staying the execution of a federal judgment, with particular attention to key departures from Texas law, federal courts’ approaches to alternate security, and practical considerations for litigants in federal court.

¹ Supersedeas is a seemingly discrete topic that expands as it is examined. This paper does not purport to cover the topic comprehensively. For that, the seminal resource is Elaine Carlson, *Supersedeas and Stays in State and Federal Court*, State Bar of Texas (May 2021).

I. The Purpose of Supersedeas

To prevent a judgment creditor from enforcing a judgment pending appeal, the judgment debtor may “supersede” the judgment by posting security in an amount agreed to by the parties or set by statute or court order.

A party need not supersede a judgment to pursue its right to appeal, but doing so protects the interests of both parties during the pendency of the appeal. As the Fifth Circuit has explained:

The purpose of a supersedeas bond is to preserve the status quo while protecting the non-appealing party’s rights pending appeal. A judgment debtor who wishes to appeal may use the bond to avoid the risk of satisfying the judgment only to find that restitution is impossible after reversal on appeal. At the same time, the bond secures the prevailing party against any loss sustained as a result of being forced to forgo execution on a judgment during the course of an ineffectual appeal.

Poplar Grove Planting and Refin. Co. v. Bache Halsey Stuart, Inc., 600 F.2d 1189, 1190–1191 (5th Cir. 1979).

Meanwhile, the Supreme Court of Texas has explained that Texas’s supersedeas scheme is “protective of debtors, consistent with deep, populist Texas traditions” and underscored that it reflects “the importance of the right to a meaningful appeal.” *In re Longview Energy Co.*, 464 S.W.3d 353, 359 (Tex. 2015, orig. proceeding).²

² Beginning in 1940, supersedeas bonds were governed by Texas Rule of Civil Procedure 364. *Id.* at 358 & n.18. The rule fixed an exact amount for a supersedeas bond: the amount of the judgment plus interest and costs. Then, in 1985, Pennzoil Company obtained a \$10.53 billion judgment against Texaco. Texaco was unable to post the massive \$13 billion bond the rules then demanded and was forced into bankruptcy before the case settled. *Id.* at 358.

In 1989, the Texas Legislature reacted to the *Pennzoil* situation by passing a new statute to regulate supersedeas bonds. It displaced Rule 364 and gave a trial court discretion to reduce the bond amount. *Id.*

“In 2003, the Legislature moved further toward protecting money judgment debtors” by specifying the amount of a supersedeas bond, including caps on that amount. *Id.* As the Texas Supreme Court explained, the 2003 reforms “reflected a new balance between the judgment creditor’s right in the judgment and the dissipation of the judgment debtor’s assets during the appeal against the judgment debtor’s right to meaningful and easier access to appellate review.” *In re Nalle Plastics Family LP*, 406 S.W.3d 168, 170 (Tex. 2013) (citation and alteration omitted). “These changes in supersedeas may be seen as more protective of debtors, consistent with deep, populist Texas traditions. They may also be seen as respecting the importance of the right to a meaningful appeal. Either way, first the Court,

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First appeared as part of the conference materials for the 34th Annual Conference on State and Federal Appeals session "Supersedeas and Post-Judgment Proceedings"