

# Supersedeas 101 and Beyond

DBA Appellate Law Section  
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# Supersedeas 101

- Who?
  - Generally if you are a judgment creditor (the losing party)
  - Exceptions
    - Many governmental entities\*
    - Many governmental officials\*
    - Some subject-matter exemptions
      - Texas employment commission disputes
      - Executors and administrators of estates (unless personal capacity)
      - Guardians (unless personal capacity)
      - Election contests

# Supersedeas 101

- When?
  - It's never too soon
  - You are trying to stave off post-judgment collection and post-judgment discovery
  - Some remedies are available as soon as the judgment is signed
  - Your client may require time to pull together resources
  - The process of getting a surety and approval of a bond by the trial court clerk takes time

# Supersedeas 101

- What?
  - TRAP 24 establishes 4 methods
    - Private agreement
    - Supersedeas bond
    - Deposit in lieu of bond
    - Alternate Security “ordered by the court”

# Supersedeas 101

- How much?
  - It depends.
    - **Money Judgments**
      - Compensatory damages + post-judgment interest + court costs
    - **Property Judgments** – trial court must rule
      - Real property—must be at least the value of the property interest’s rent or revenue
      - Personal property—must be at least the value of the property interest
    - **“Other judgment”**—trial court must rule
      - Amount that adequately protects judgment creditor against loss or damage the appeal may cause
    - **Judgments for the government**—trial court must decide whether to suspend
    - **Conservatorship and custody judgments**

# Supersedeas 101

- **Money** Judgments
  - Compensatory damages
    - Includes amounts intended to compensate for actual losses
    - Does NOT include: exemplary damages, civil penalties, attorney's fees (unless they are awarded as damages), disgorgement damages, and *maybe* pre-judgment interest\*
  - Interest for the estimated duration of the appeal
  - Court costs

# Supersedeas 101

- **Property** Judgments (real or personal)
  - The amount of security must be at least:
    - the value of the property interest's rent or revenue, for **real property**
    - the value of the property interest on the date when the court rendered judgment, for **personal property**
  - If the judgment is one in a forcible entry and detainer suit, see Property Code Section 24.007.

# Supersedeas 101

- **Other** judgment
  - A judgment for something *other than* money or an interest in property
  - Trial court sets (1) the amount and (2) type of security
  - 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



# Supersedeas 101

- Form of the bond
  - Payable to the judgment creditor
  - Signed by the judgment debtor or the debtor's agent
  - Signed by sufficient surety or sureties
  - Properly conditioned
    - Surety pays if the debtor does not perfect appeal or the appeal is dismissed and debtor does not perform the judgment
    - Surety pays if the debtor does not perform an adverse judgment final on appeal
    - Property judgment: Surety pays if the debtor does not pay creditor the value of the property's rent or revenue during the course of the appeal

# Supersedeas 101

- Sureties
  - Legally separate from the judgment debtor and a non-party
  - “Sufficient” = able to discharge all of the damages and costs that may be awarded up to the amount of the bond
  - Signatory for the surety must have a valid power of attorney or corporate resolution
  - Authorized to do business in Texas
- How to find a surety
  - Dan Huckabay, Court Surety Bond Agency, Appeal Bond Specialist
  - [www.courtsurety.com](http://www.courtsurety.com)

# Supersedeas 101/201

- Approval

- “To be effective a bond must be approved by the trial court clerk.” TRAP 24.1(b)(2)
- What if the clerk doesn’t or won’t approve it?
  - Mandamus
    - See *Ruiz v. Watkins*, 701 S.W.2d 688, 691 (Tex. App.—Amarillo 1985, orig. proceeding); see also Tex. Gov’t Code § 22.221.
  - Do nothing??
- If the judgment creditor disagrees with some aspect of the bond, including the amount, the remedy is to file a motion with the trial court to challenge it.

# Supersedeas 201

- Modifying the amount for a **money** judgment
  - The amount may not exceed the lesser of (1) 50% of the judgment debtor's current net worth, or (2) 25 million dollars.
    - Net worth method:
      - File affidavit with complete and detailed information concerning assets and liabilities
      - Judgment creditor can file a contest and conduct discovery
      - At the hearing on the contest, the burden is on the judgment debtor
      - Trial court must issue an order stating the net worth and giving the basis for it
      - If additional security is ordered, enforcement is suspended to allow time to comply

# Supersedeas 201

- Pros and Cons of net worth method:
  - Cons:
    - Gotta show your cards
    - It may draw a challenge, resulting in expensive litigation and discovery
    - Might have to hire an expert to support net worth calculations
    - Frequently results in issuance of an injunction as to judgment debtor's expenditures
  - Pros:
    - Collection efforts are stayed while any challenge to net worth is undertaken
    - Maybe the judgment creditor doesn't file a challenge, or maybe if a challenge is filed, the net worth affidavit is sustained
    - Scope of discovery might be narrower. *See In re Potashnik*, 05-19-01188-CV (Tex. App.—Dallas Apr. 22, 2020, orig. proceeding)

# Supersedeas 201

- Lowering the amount of required security
  - Upon a finding that posting required security will cause the judgment debtor “substantial economic harm”
  - Lowered to an amount that will not cause judgment debtor “substantial economic harm”
  - “substantial economic harm” factors
    - Cost of the bond
    - Availability of sufficient assets to cover the cost
    - Availability of other sources from which debtor could secure funds for a bond
    - Judgment debtor’s ability to borrow funds for a bond
    - Impact on judgment debtor from having to liquidate assets to obtain a bond
    - Likelihood that liquidating assets for a bond will result in insolvency

# Supersedeas 201

- Review of supersedeas
  - On-going trial court jurisdiction to review changes in circumstances
    - The usual is need to increase bond amount due to post-judgment interest
  - Appellate review (by motion in the COA; mandamus at the supreme court)
    - Sufficiency or excessiveness of the amount of security
    - The sureties on the bond
    - The type of security
    - The decision whether to permit suspension
  - Abuse of discretion is the standard of review
  - Other orders can be made, such as a stay
  - If COA changes the security amount, there's an automatic 20-day stay

# Supersedeas 301

- Injunctions

- A trial court may enjoin a judgment debtor from dissipating assets or transferring assets to avoid satisfaction of the judgment
- The court may not make an order that interferes with the judgment debtors use, transfer, conveyance, or dissipation of assets in the normal course of business
- Must be evidence that the debtor is likely to dissipate or transfer assets



# Supersedeas 401

- Resolving the supersedeas post-appeal
  - Reversal of TC judgment releases the bond or other security
  - Affirmance of TC judgment, dismissal of the appeal, and failure to perfect the appeal all result in exposure of the surety to liability should the judgment debtor fail to perform or pay the judgment
  - Reverse in part, affirm in part—it depends
  - Settlement—provide for the release of the surety and include that requested relief in the motion to dismiss the appeal

# Supersedeas 401

Appellate Court Judgment	Effect on Surety
Appeal dismissed	Surety liable
Judgment affirmed	Surety liable
Judgment modified and affirmed	Surety liable
Judgment vacated	Surety discharged
Judgment reversed and rendered	Surety discharged
Judgment reversed and remanded	Surety discharged
Judgment reversed and rendered in part, affirmed in part	Surety liable as to affirmed judgment
Judgment reversed and remanded in part, affirmed in part	Surety may be liable as to judgment affirmed

Source: McDonald & Carlson, TEXAS CIVIL PRACTICE § 30.48 (2021)

# Supersedeas 401

- Unresolved or open questions
  - Is the \$25 million cap on supersedeas for money judgments applied per judgment or per defendant?
  - Is prejudgment interest really not compensatory damages?
  - What other damage types may not qualify as “compensatory”?
  - Can you partially suspend a judgment?
  - If the trial court’s judgment is affirmed, must the judgment creditor make demand on the judgment debtor to pay before going after the surety?



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