

IN THE SUPREME COURT OF OHIO

WOODSIDE MANAGEMENT COMPANY, ET AL.	)	Case No. 2020-1109
	)	
APPELLEES,	)	Regular Calendar
	)	
V.	)	
	)	
ANDREW BRUEX, ET AL.	)	On Appeal from the Court of Appeals of Ohio,
	)	Ninth Appellate District (Case No. CA-29179)
APPELLANTS.	)	
	)	
	)	

**APPELLEES WOODSIDE MANAGEMENT COMPANY AND WOODSIDE LOGIC
CORP.'S RESPONSE TO APPELLANTS' MOTION TO STAY PENDING APPEAL**

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INTRODUCTION

Woodside Management Company and Woodside Logic Corp. respectfully request this Court to deny Appellants' motion to stay execution pending their jurisdictional appeal to this Court. Alternatively, to the extent this Court grant's Appellants' motion to stay, this Court should require Appellant Andrew J. Bruex to post a bond with this Court. This amount would be in addition to the bond already posted with the trial court that secures only the amount of the judgment itself and pre-judgment interest. An additional bond should be required as security for the post-judgment interest that has accrued since the trial court's judgment was entered, and that continues to accrue.

Judgment is Two Years Old and Interest Continues to Accrue

Nearly two (2) years passed between (1) the trial court's September 18, 2018 judgment awarding a total of \$251,959.10 to Woodside Management against Mr. Bruex, and (2) the Ninth District's August 12, 2020 decision affirming that judgment. During that time, \$23,230.07 in post-judgment interest has accrued.¹ Additional post-judgment interest continues to accrue during Appellants' effort to seek review by this Court, at the rate of approximately \$34.50 per day (applying the interest rate of 5% currently applicable). This results in an estimated total of \$6,210 for 6 months' of interest should this Court's consideration of Appellants' jurisdictional memorandum take 6 months from the date of the Ninth's District's August 12, 2020 decision. Accordingly, if this Court decides to exercise its discretion to grant a stay of execution of the

¹ The interest accruing between September 18, 2018 and August 12, 2020 is calculated with the State of Ohio Department of Taxation interest rates as follows:

Date of Judgment	Amount of Total Judgment	Days at 4% Interest	Days at 5% Interest	Interest Accrued on Judgment as of 8/12/2020
9/18/2018	\$251,959.10	104	588	\$23,230.07

Ninth District's mandate to Appellants, Woodside Management requests this Court require Mr. Bruex to post an additional bond of at least \$29,440.07 (\$23,230.07 plus \$6,210.00) to secure Woodside Management's accrued and continuing post-judgment interest.

PROCEDURAL HISTORY

Jury Found Damages and Trial Court Awarded Attorney's Fees

Appellants once again attempt to misrepresent the record regarding the jury verdict. In June 2017, a Summit County jury rendered a verdict in favor of Woodside Management on its breach of contract claim against Mr. Bruex, finding that Woodside Management had proven each element of its claim including damages. On July 20, 2017, as corrected on August 17, 2017, the trial court entered judgment in favor of Woodside Management and against Mr. Bruex on this breach of contract claim.

The trial court subsequently entered judgment awarding Woodside Management attorney's fees in the amount of \$243,121.64. The trial court also entered a judgment finding that Woodside Management is also entitled to statutory prejudgment interest on its attorney's fees award, in the amount of \$8,837.46. Pursuant to these judgments, Mr. Bruex owes to Woodside Management the sum of \$251,959.10, plus interest continuing to accrue.

Trial Court Order Posting of Bond on Attorney's Fees and Pre-Judgment Interest

Mr. Bruex filed a notice of appeal to the Ninth District. Mr. Bruex filed a motion with the trial court seeking a stay of execution of the judgment in favor of Woodside Management, pursuant to Civ. R. 62 and upon the posting of an adequate supersedeas bond. The trial court granted Mr. Bruex's motion for a stay; ordered Mr. Bruex to post a supersedeas bond in the amount of \$251,959.10. The trial court further ordered that upon the posting by Mr. Bruex of a bond in that amount, any action to execute upon or otherwise enforce the judgment in favor of

Woodside Management is stayed “pending the final disposition of [Mr. Bruex’s] appeal to the Ninth District Court of Appeals and further order of this Court.” Mr. Bruex filed a notice of posting of bond, and an Appeal Bond issued by West Bend Mutual Insurance Company in the amount of \$252,000.00.

Ninth District Affirmed Judgment and Denied Motion to Stay Mandate

On August 12, 2020, the Ninth District affirmed the judgment in favor of Woodside Management against Mr. Bruex. Accordingly, on August 19, 2020, Woodside Management filed in the trial court a currently pending Motion to: (1) Lift October 30, 2018 Stay on Execution; and (2) Enforce Liability of Surety on Bond. After fully briefing that motion in the trial court, Mr. Bruex filed a motion to stay with the Ninth District. On September 14, 2020, the Ninth District denied Mr. Bruex’s motion to stay, noting that the requested relief was available under S.Ct.Prac.R. 7.01(A)(3). Immediately after this denial, on September 15, 2020, Mr. Bruex filed with this Court another motion to stay, again asking for an ongoing stay without having to post any additional supersedeas bond.

LAW AND ARGUMENT

Woodside Management should be permitted to enforce its judgment against Mr. Bruex. Contrary to Civ.R. 62 motions to stay execution of judgment, a stay under Rules 4.01(A)(2) and 7.01(A)(3) of the Rules of Practice of the Ohio Supreme Court is not mandatory. *See* S.Ct.Prac.R. 4.01(A)(2); S.Ct.Prac.R. 7.01(A)(3); *cf.* App. R. 27 (“A stay of execution of the judgment mandate pending appeal may be granted upon motion, and a bond or other security may be required as a condition to the grant or continuance of the stay.”). In his motion, Mr. Bruex offers no reason why the Court should exercise its discretion to grant a stay. He argues, at page 3 of his motion, that “the trial court and appellate court erred,” and assumes that the Court

will exercise jurisdiction over his appeal and correct that alleged error. However, this Court does not accept mere error cases. These arguments and assumptions are not grounds for a stay that would continue to delay Woodside Management's right to collect on its judgment, and a fruitless appeal will only add time and accrue more interest before Woodside Management can collect.

An Additional Bond is Required to Protect Appellees' Interest

This Court, if it decides to grant Mr. Bruex's request for a stay, will then have the discretion to determine what bond or security will be required as a condition of the stay of the appeals court mandate. S.Ct.Prac.R. 4.01(A)(2). On this point, Mr. Bruex argues that the \$252,000 bond he posted in the trial court should be deemed "adequate security," which ignores entirely the interest accruing since the trial court's judgment on appeal was entered two years ago. At a minimum, any further stay – which will further delay Woodside Management's right to collect on its judgment – should be conditioned on the posting of an additional bond that **fully** covers the additional damage to Woodside Management occasioned by such delay. Indisputably, statutory interest has accrued on the \$251,959.10 judgment between September 18, 2018 and the date of the Ninth District's decision, August 12, 2020 – specifically, \$23,230.07.

Interest will continue to accrue while Mr. Bruex seeks review in this Court, calculated as set forth above (approximately \$34.50 per day). Mr. Bruex is liable for all of this interest, Woodside Management is entitled to collect it from him, and the current bond does not fully secure that payment obligation. Thus, an additional bond in the amount of \$29,440.07 should be required upon Mr. Bruex as security for the accrued interest through this Court's decision on whether to exercise jurisdiction over Mr. Bruex's appeal. *See, e.g., 1994-N1 Ohio Assocs., L.P. v. Planet Earth Entm't*, 108 Ohio App. 3d 383, 387, 670 N.E.2d 1049, 1051 (1995) (requiring additional bond for stay of appeals court mandate).

CONCLUSION

This Court should deny Appellants' motion to stay pending appeal. If this Court decides in its discretion a stay is necessary, Woodside Management requests this Court require Mr. Bruex to obtain additional security of at least \$29,440.07 to cover the post-judgment interest from September 18, 2018 and August 12, 2020 and during Mr. Bruex's effort to seek review in this Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served via email transmission, on this 24th day of September, 2020 on:

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