

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



DIVISION ONE  
FILED: 04-15-2010  
PHILIP G. URRY, CLERK  
BY: GH

RANCHO DEL SOL, L.L.C., an ) No. 1 CA-SA 10-0055  
Arizona limited liability )  
company, )  
 ) DEPARTMENT A  
Petitioner, )  
 )  
v. ) Yuma County  
 ) Superior Court  
THE HONORABLE MARK W. REEVES, ) No. S1400CV0200500396  
Judge of the SUPERIOR COURT OF )  
THE STATE OF ARIZONA, in and for )  
the County of YUMA, ) **DECISION ORDER**  
 )  
Respondent Judge, )  
 )  
MICHAEL J. PERRY and MARY LOU )  
PERRY, husband and wife; JON M. )  
PERRY, a single man; GERALD W. )  
BRACK, II, and VANESSA L. BRACK, )  
husband and wife; MICHAEL )  
GARDNER, a single man; FRANCIS )  
X. IRR and MAUREEN A. IRR, )  
husband and wife, )  
 )  
Real Parties in Interest. )  
 )

The court, Presiding Judge Maurice Portley and Judges Lawrence F. Winthrop and Margaret H. Downie participating, has considered the special action petition of Rancho Del Sol, L.L.C. ("Petitioner"). For the following reasons, we accept jurisdiction and grant relief.

Petitioner entered contracts to sell five lots of real property to Real Parties in Interest ("Respondents"). When Respondents sought to close the purchases, however, Petitioner refused to perform as contracted. Respondents filed suit, seeking specific performance, costs, and attorneys' fees; they did not seek monetary damages or restitution. The superior court (the Honorable Judge Mark W. Reeves) entered judgment in favor of Respondents, ordering specific performance and awarding Respondents \$81,444.37 for their costs and attorneys' fees incurred. The court further ordered that Respondents could use the award as an offset against the total purchase price of the real property, thereby reducing Respondents' payments into escrow. Respondents timely deposited \$193,555.63 into escrow, reflecting the reduced amount of the purchase price of the lots.

Petitioner filed a notice of appeal and sought to stay execution of the judgment pending the appeal. As a condition precedent, the superior court ordered Petitioner to file a supersedeas bond in the amount of \$98,000, the amount specifically requested by Respondents. This amount appeared to approximate the amount of the award of costs and attorneys' fees, plus anticipated interest on that award for the projected life of the appeal. The court further ordered that documents for execution of the sale deposited by Petitioner with the court pursuant to Rule 62(f), Ariz. R. Civ. P., be released to escrow for purposes of closing the

transaction in the event Petitioner failed to timely file the supersedeas bond. Petitioner argues that the superior court erred in ordering Petitioner to file the supersedeas bond.

Petitioner has no adequate remedy by appeal to challenge the superior court's order requiring Petitioner to post the supersedeas bond. See generally Ariz. Rev. Stat. § 12-2101 (2003). Consequently, we may accept jurisdiction of Petitioner's special action petition. See Ariz. R.P. Spec. Act. 1(a); *Nataros v. Superior Court*, 113 Ariz. 498, 499, 557 P.2d 1055, 1056 (1976).

Under Rule 7(a)(1), ARCAP, except in circumstances not present here, "whenever an appellant entitled thereto desires a stay on appeal, he may obtain a stay by filing a supersedeas bond in the superior court in accordance with these rules." Rule 7(a)(2) further provides:

The bond shall be conditioned for the satisfaction in full of the judgment remaining unsatisfied, together with costs, interest, and any damages reasonably anticipated to flow from the granting of the stay including damages for delay, if for any reason the appeal is dismissed or if the judgment is affirmed, and to satisfy in full such modification of the judgment and costs, interest, and damages as the appellate court may adjudge and award, unless the superior court, after notice and hearing and for good cause shown, fixes a different amount or orders security or imposes conditions other than or in addition to the bond. In determining the amount of the bond, the court shall consider, among other things, whether there is security for the judgment, or whether there is property in controversy which is in the custody of the sheriff or the court.

"[T]he purpose of posting a supersedeas bond is to preserve the *status quo* pending appeal." *Bruce Church, Inc. v. Superior Court*,

160 Ariz. 514, 517, 774 P.2d 818, 821 (App. 1989) (citations omitted).

In this case, other than the contested sale, no portion of the judgment remains unsatisfied. Respondents have received the benefit of the award against Petitioner by having their payment into escrow reduced by the amount of the award. Further, because Petitioner's real property is effectively in the custody of the court, security exists for any remaining costs, interest, and damages reasonably anticipated to flow from the granting of the stay. Such costs, interest, and damages, if any, may be satisfied through a further offset of the purchase price obtained by partial refund of those monies placed into escrow by Respondents before their release to Petitioner. Accordingly,

**IT IS ORDERED** accepting jurisdiction of Petitioner's special action petition.

**IT IS FURTHER ORDERED** granting Petitioner's request for relief vacating that portion of the superior court's March 10, 2010 order requiring Petitioner to file a supersedeas bond as a condition precedent to the grant of a stay pending appeal.

**IT IS FURTHER ORDERED** denying any request for costs or attorneys' fees associated with this special action, without prejudice to reconsideration once the prevailing party has been determined on appeal.

**IT IS FURTHER ORDERED** that the clerk of this court provide a copy of this Decision Order to Don B. Engler of Don B. Engler, P.C., counsel for Petitioner; Daryl Manhart and Jessica Conaway of Burch & Cracchiolo, P.A., counsel for Respondents Michael J. and Mary Lou Perry, Jon M. Perry, Gerald W. Brack, II and Vanessa L. Brack, Michael Gardner, and Francis X. and Maureen A. Irr; and the Honorable Mark W. Reeves, a Judge of the Superior Court.

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/S/  
LAWRENCE F. WINTHROP, Judge