

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

)	
CONNIE L. GATES, Individually)	
and as Administratrix of the Estate of)	
GORDON EDWARD GATES,)	
)	
Plaintiff)	
)	C.A. No. 05C-05-043 RRC
v.)	
)	
TEXACO, INC.,)	
)	
Defendant)	
)	

Submitted: April 22, 2008
Decided: May 2, 2008

Upon Defendant Texaco Inc.’s Motion to Stay Execution of Judgment
Pending Appeal Without the Requirement of a Bond.
DENIED.

ORDER

Roger D. Landon, Esquire, and Philip T. Edwards, Esquire, Murphy &
Landon P.A., Wilmington, Delaware, Attorney for Plaintiff

Katharine L. Mayer, Esquire, and Daniel M. Silver, Esquire, McCarter &
English, LLP, Wilmington, Attorney for Defendant

COOCH, J.

This 2nd day of May, 2008, upon consideration of Defendant's Motion to Stay Execution of Judgment Pending Appeal Without the Requirement of a Bond, it appears to the Court that:

1. Defendant has filed an appeal in the Delaware Supreme Court from a judgment entered against it in this Court. In the instant motion, Defendant requests that this Court stay execution of that judgment pending its appeal, and further asks that the Court waive the requirement that Defendant post a supersedeas bond, since, Defendant asserts,

[t]o require [Defendant] to post a bond ... would be to regard form over substance, [since Defendant] is more than capable of satisfying the judgment. Moreover, the posting of a bond with surety would require [Defendant] to incur a substantial expense for a premium – an expense it could not recover regardless of the result of the appeal.¹

Plaintiff does not oppose Defendant's motion for stay of execution of judgment "to the extent that a supersedeas bond is posted by Defendant."²

Plaintiff asserts that a supersedeas bond is necessary to protect her interests in the judgment. Plaintiff requests this Court to require Defendant to post a supersedeas bond in the amount of \$3,415,270.46,³ or in the alternative,

¹ Def. Mot. to Stay..., at ¶ 10.

² Pl. Opp. To Def. Mot to Stay, at ¶ 1.

³ Plaintiff states that this amount represents the jury award, plus previously awarded costs, plus interest on this amount at the rate of 10% through an estimated pendency of appeal of two years. Pl. Opp. To Def. Mot to Stay, at ¶ 10.

deny Defendant's motion to stay execution of the judgment pending the appeal.

3. Superior Court Civil Rule 62(d) provides that “[s]upersedeas, and stay pending appeal, and supersedeas, stay and cost bonds shall be governed by Article IV, § 24 of the Constitution of the State of Delaware and by Supreme Court Rule 32(c).” Article IV, § 24 of the Constitution “establishes that on appeal no stay of proceedings will occur unless the appellant shall give ‘sufficient security to be approved by the court below,’”⁴ and Delaware Supreme Court Rule 32(c) provides that “a stay or injunction pending an appeal shall be granted upon filing and approval of sufficient security.”

The Delaware Supreme Court in *Blackwell v. Sidwell*, interpreting Article IV, § 24 of the Constitution of the State of Delaware, held that

there is no doubt that under the Constitution of this state no supersedeas in an appeal from a money judgment may be had unless a bond in the full amount of the money judgment is offered as security for the payment of the condemnation money. We regard our constitutional provision of such rigidity as to preclude the exercise by this court of any discretion in the premises.⁵

Thus, this Court does not have the discretion to waive the requirement of a supersedeas bond, and “sufficient security” is, at a minimum, the full

⁴ *Kontrol Automation, Inc. v. Chesapeake Hydro, Inc.*, 1989 WL 124897, at *2 (Del. Super.) (quoting Article IV, § 24 of the Constitution of the State of Delaware).

⁵ *Blackwell v. Sidwell*, Del. Supr., 126 A.2d 237, 239 (1956).

amount of the money judgment. Supreme Court Rule 32(c) provides that sufficient security

shall be presented to and approved or disapproved in the first instance by the trial court. The type, amount, and form of the security shall be determined in the first instance by the trial court, whose actions shall be reviewable by this Court. The security shall be filed with the clerk of the trial court who shall forthwith give notice thereof to the attorney for the appellee.

3. Accordingly, Defendant's motion to stay execution of judgment is granted if Defendant posts a supersedeas bond in the amount of \$2,857,763.68 (the amount of the jury award plus previously awarded costs) within 10 days of the issuance of this order.⁶

IT IS SO ORDERED.

oc: Prothonotary

⁶ See *Carlson v. Hallinan*, 2006 WL 1510759, at *2 (Del.Ch.) (considering ten days sufficient time to pay a judgment, and viewing that time as consistent with the automatic stay provision of Superior Court Civil Rule 62(a)).