

by operation of law 75 days after it was filed which would have been September 2, 2012. Defendant repeatedly asked the District Court to set a hearing but the Court Coordinator did not reply. Defendant was only notified last week by the Appeals Courts that it is deemed denied after 75 days. Because the District Court has denied Defendant's motion to stay the order, the Appeals court may rule on the issue.

Defendant previously filed an affidavit of indigence. Plaintiffs filed a contest as did the Court Reporter and District Clerk. Defendant won the affidavit of indigence hearing. Defendant requests that the Court permit them to proceed in forma pauperis and supersede the judgment without requiring security because Defendant doesn't have the funds for a bond, let alone a bond to cover a judgement to the tune of \$6,200,000. Under current law the maximum that can be requested for a bond is no more than 50% of the net worth of Defendant. Defendant stated in court and deposition that she has a negative net worth. Defendant seeks a temporary stay and writ of supersedeas from this Court pursuant to Texas Civil Practice & Remedies Code Section 52.006 and Rule 24 (a)(1)(A) of the Texas Rules of Appellate Procedure.

Reasons Why Writ Should issue

1. A Stay Is Necessary to Avoid Irreparable Harm and to Protect the Appellant's Right to a Meaningful Appeal.

The purpose of a writ of supersedeas is "to preserve the status quo pending the exercise of the appellate court's jurisdiction" and "is issued only to hold the matter in abeyance pending review." If this Court disagrees with the trial court, and determines that Appellant did not defame or breach a contract, allowing Appellee to take Appellant's only means of support and all financial ability to appeal in advance of that decision would deprive the Appellant of the benefit of its appeal. In short, allowing Appellees to take all financial means of support of Defendant before the appeal is resolved effectively

may render the appeal moot because Defendant will not be able to afford to continue the appeal. Defendant believes this is the true motivation of Plaintiffs in their recent filing of judgment in Los Angeles Superior Court. Previously they filed contest to affidavit of indigence so Defendant could not afford to appeal because she could not afford the \$4,000 minutes. The cost to file and enforce the judgement is probably 20x more than the \$400 balance in Defendant's bank account. Satisfying the judgment is obviously not the goal of Plaintiffs. Plaintiffs' sole goal is to destroy Defendant. A writ of supersedeas would avoid this harm and preserve the integrity of the Defendant's appeal.

By contrast, Plaintiffs face no irreparable harm if a stay is granted. If Plaintiffs ultimately prevail on appeal, they will obtain the relief ordered by this Court. The only harm they will suffer is a delay in taking probably \$400 from Defendant. Defendant has no assets, income or job and stated this in her response to post trial discovery requests made by Plaintiffs. Defendant had to spend all of her savings in the defense of the District Court case.

2. Defendant Is Likely To Succeed On The Merits.

The trial court erred as a matter of law in its interpretation and application of the laws regarding defamation, breach of contract, liquidated damages, attorney's fees, compensatory damages, and exemplary damages, resulting in the erroneous granting of judgment on the pleadings in favor of Plaintiffs.

There is, then, a reasonable likelihood that the Defendant will prevail on her appeal. In addition, as other courts have recognized, "split in authority" or "difference of opinion" among courts, demonstrating that "reasonable jurists can disagree" on the question at issue, is sufficient to establish a "likelihood of success on the merits." Previously this court reversed the District Court's order denying Defendant's affidavit of indigence. This Court ruled that the District Court Judge William Brigham "abused his

discretion” by not allowing an indigent pro se out of state Defendant the ability to appear by phone causing her to lose by default. This Court has already recognized a difference of opinion with the District Court.

In Defendant’s attached amended motion for new trial, stay judgment, Defendant clearly shows in detail that Plaintiffs never proved the elements of defamation or breach of contract. In a very similar defamation case the Fifth Court of Appeals on July 25, 2011, Main v. Royall #05-09-01503-CV reversed a trial court’s order denying a motion for summary judgment. Plaintiff did not show the elements of defamation in that case just as Plaintiffs have not shown defamation in this case.

3. Defendant does not have the funds to post a bond

Defendant has stated in her affidavit of indigence, in deposition, in post trial discovery that her net worth is less than zero, she has no job and has about \$400 in cash. Plaintiffs contested Defendant’s affidavit of indigence hearing on October 31, 2012 in 352nd District court. Defendant prevailed and was declared indigent.

A. Texas Civil Practice & Remedies Code Section 52.006

As per TCPR Code Section 52.006 (b)(1) Notwithstanding any other law or rule of court, when a judgment is for money, the amount of security must not exceed the lesser of: (1) 50 percent of the judgment debtor’s net worth or (2) \$25 million. (Defendant’s net worth is less than zero.) (c) On a showing by the judgment debtor that the judgment debtor is likely to suffer substantial economic harm is required to post security in an amount required under Section (a) or (b), the trial court shall lower the amount of the security to an amount that will not cause the judgment debtor substantial economic harm. (d) An appellate court may review the amount of security as allowed under Rule 24, Texas Rule of Appellate Procedure, except that when a judgment is for money, the

appellate court may not modify the amount of security to exceed the amount allowed under this section. The Appeals Court can modify the amount of security.

B. Texas Rule of Appellate Procedure 24

Texas Rule of Appellate Procedure 24.2 provides: Amount of Bond, Deposit or Security (a) Type of judgment (1) For recovery of money. When the judgment is for money, the amount of the bond, deposit, or security must equal the sum of compensatory damages awarded in the judgment, interest for the estimated duration of the appeal, and costs awarded in the judgment. But the amount must not exceed the lesser of: (A) 50 percent of the judgment debtor's current net worth; or (B) 25 million dollars. Defendant has a zero net worth. 50% of zero is zero.

Motion for Temporary Stay

The Defendant respectfully applies to this Court for an order temporarily staying the enforcement of the June 14, 2012, 352nd District Court order that is the subject of this accompanying petition for writ of supersedeas, such order to be in effect until determination by this Court whether it shall enter its writ. In support of this application for a temporary stay, the Defendant references the arguments above showing that harm will be done to the Defendant if her only means of support is removed. Defendant argues that a bond in any amount is more than her net worth which is zero.

Attachments

Attached to this petition for consideration by this Court are a copy of the order sought to be stayed; the Defendant's notice of appeal; and Defendant's amended motion for new trial, objections to court order and to stay the order.

Prayer

WHEREFORE, the Defendant respectfully prays that this Court issue a

temporary stay of the enforcement of the 352nd District Trial Court's June 14, 2012 order pending this Court's ruling on the Defendant's petition for writ of supersedeas. The Defendant further prays that this Court issue its writ of supersedeas to the 352nd District Court, staying enforcement of its order, pending issuance of the mandate to this Court following its review and determination of the appeal now pending; and that the Defendant have such other relief as the Court may deem proper.

Respectfully submitted December 10, 2012,

Mary Cummins, Defendant Pro se
645 W 9th St, #110-140
Los Angeles, CA 90015-1640
Phone 310-877-4770
Email: mmmaryinla@aol.com

By:



Mary Cummins, Defendant Pro Se

CERTIFICATE OF SERVICE

I, Mary Cummins, hereby certify that a TRUE COPY of the above **PETITION FOR WRIT OF SUPERSEDEAS AND MOTION FOR TEMPORARY STAY** was served on the Plaintiffs' Attorney of record by FAX and by FIRST CLASS MAIL at
Randy Turner
Bailey & Galyen
1901 W. Airport Freeway
Bedford, TX 76021
Fax: 817-545-3677
this 10th Day of December, 2012



Mary Cummins, Defendant Pro se
645 W 9th St, #110-140
Los Angeles, CA 90015-1640
Phone 310-877-4770
Email: mmmaryinla@aol.com