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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

LAVEEN MEADOWS HOMEOWNERS'
ASSOCIATION, INC., an Arizona nonprofit
corporation,

Plaintiff,

vs.

CARLOS MEJIA, a married man, as his sole
and separate property; et al.,

Defendants.

No. CV2016-094391

**DEFENDANT'S MOTION TO SET
SUPERSEDEAS BOND AND STAY
ENFORCEMENT OF JUDGMENT**

(Comm. Margaret Benny)

Defendant Carlos Mejia ("Defendant"), through undersigned counsel, hereby moves to set the supersedeas bond in the amount of \$0.00 and stay enforcement of the Judgment signed by the Court on August 3, 2017 (and related rulings) pursuant to A.R.S. § 12-2108 and Rule 7 of the Arizona Rules of Civil Appellate Procedure ("ARCAP") pending appeal.¹ Defendant is entitled to a zero bond because no damages were awarded, he has no real net worth and he would suffer substantial harm (i.e., the loss of his home) if a zero bond was not required.

¹ At the outset, now that Judgment has been entered, this Court must immediately stay the Judgment pending resolution of this motion so as not to render this motion futile. *H.S. Hackin v. Superior Court (Pioneer Plumbing Supply, Co.)*, 102 Ariz. 93, 94, 425 P.2d 420, 421 (1967); *Allison v. Chatwin*, 99 Ariz. 99, 103, 407 P.2d 69 (1965); Arizona Appellate Handbook, Volume 1-A, 5th Edition §3.4.2.4.2.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. DEFENDANT IS NOT REQUIRED TO POST A SUPERSEDEAS BOND TO**
3 **STAY ENFORCEMENT OF THE JUDGMENT BECAUSE PLAINTIFF DID NOT**
4 **RECOVER A JUDGMENT FOR DAMAGES**

5 A.R.S. § 12-2108 provides the law for establishing bond amounts so that a defendant can
6 avoid execution of a judgment while the appeal is pending. It states:

7 12-2108. Preservation of right to appeal judgment without execution

8 A. If a plaintiff in any civil action obtains a judgment under any legal theory,
9 the amount of the bond that is necessary to stay execution during the course
10 of all appeals or discretionary reviews of that judgment by any appellate
11 court shall be set as the lesser of the following:

- 12 1. The total amount of damages awarded excluding punitive damages.
- 13 2. Fifty percent of the appellant's net worth.
- 14 3. Twenty-five million dollars.

15 B. Notwithstanding subsection A, if an appellee proves by clear and
16 convincing evidence that an appellant is intentionally dissipating assets
17 outside the ordinary course of business to avoid payment of judgment, the
18 court may require the appellant to post a bond in an amount up to the full
19 amount of the judgment.

20 C. Notwithstanding subsection A, if an appellant proves by clear and
21 convincing evidence that the appellant is likely to suffer substantial
22 economic harm if required to post bond in an amount required under
23 subsection A, the trial court may lower the bond amount to an amount that
24 will not cause the appellant substantial economic harm.

25 *See also ARCAP 7(a)(4).*

26 Prior to A.R.S. § 12-2108, ARCAP 7 required judgment debtors to post a bond for the
full amount of the "judgment." With the enactment of A.R.S. § 12-2108 and change in law, the
Arizona Legislature now only requires debtors to post the full "damages" as a bond and
creditors are not entitled to a bond for the full "judgment" unless they can prove by clear and
convincing evidence that the debtor is intentionally dissipating assets. *See A.R.S. § 12-*
2108(A)(1) and (B).

1 Black's defines "damages" as follows:

2 Damages, n. pl. Money claimed by, or ordered to be paid to, a person as
3 compensation for loss or injury <the plaintiff seeks \$8,000 in damages from
defendant>

4 Black's Law Dictionary, Eighth Edition, (2004). *See also, Frank Gahan, The Law of Damages I*
5 (1936) ("Damages are the sum of money which a person wronged is entitled to receive from the
6 wrongdoer as compensation for the wrong.").

7 The facts in the recent Court of Appeals decision in *City Center Executive Plaza, L.L.C.*
8 *v. Jantzen*, 237 Ariz. 37, 344 P.3d 339 (App. 2015) mirror the instant case. There, the
9 homeowners' association recovered a judgment reflecting a damages award of \$1.00 and an
10 attorneys' fees award of \$2,390,296.87. After the trial court ruled that the association was
11 required to post a bond in the staggering amount of the fee award, the Court of Appeals vacated
12 that ruling and required a \$1.00 bond by holding that attorneys' fees were not damages for
13 purposes of A.R.S. § 12-2108. *See also Ponderosa Plaza v. Siplast*, 181 Ariz. 128, 132, 888
14 P.2d 1315, 1319 (App. 1993); *Griswold v. State*, 8 Ariz. App. 361, 364, 446 P.2d 467 (App.
15 1968); *Jones v. Stanley*, 233 P. 598 (1925) (all discussing that "fees" are not "damages").

16 Here, the parties argued at length whether Plaintiff can foreclose Defendant's home
17 strictly on un-awarded attorneys' fees. As the Court will recall during the evidentiary hearing,
18 Defendant called the property manager to testify regarding the amounts owed to the Association.
19 On cross-examination, this witness confirmed that Defendant paid all possible assessments and
20 late charges that could have possibly been owed and all that remained to be collected was
21 attorneys' fees. Indeed, the Court entered a Judgment "in the principal amount of -\$2,152.08 (a
22 negative amount)" in Plaintiff's favor. Since Plaintiff was not awarded "damages" and was only
23 awarded attorneys' fees and costs, the Defendant is entitled to a zero bond. *City Center*
24 *Executive Plaza, L.L.C., supra; AOR Direct L.L.C. v. Bustamante*, 240 Ariz. 433, 437, ¶17, 380
25 P.3d 672, 677 (App. 2016) (Court stating that, "First, attorneys' fees are not damages.").

1 **II. DEFENDANT IS ALSO ENTITLED TO A ZERO BOND BECAUSE HE HAS NO**
2 **DISCERNABLE NET WORTH**

3 A.R.S. § 12-2108(A)(2) and ARCAP 7(a)(4)(B) both require the Court to enter a bond
4 that is half of Defendant's net worth. Mr. Mejia lives paycheck to paycheck. *See* Declaration of
5 Carlos Mejia ("Mejia Decl.") attached hereto as Exhibit A at ¶2. He has no significant assets or
6 investment accounts otherwise he would have liquidated them to avoid losing his home. Mejia
7 Decl. ¶3. Since Mr. Mejia has no discernable net worth, he is entitled to a bond that is 50% of
8 his net worth, which is zero.

9 **III. THE FACT THAT DEFENDANT STANDS TO LOSE HIS HOME**
10 **ESTABLISHES CLEAR AND CONVINCING EVIDENCE THAT HE WILL**
11 **SUFFER SUBSTANTIAL HARM IF A BOND IS REQUIRED**

12 A.R.S. § 12-2108(C) gives the Court discretion to lower the bond upon a showing of
13 substantial economic harm. If the Court requires Defendant to post a bond, he may lose his
14 home while his meritorious appeal is pending. Therefore, there is no doubt that Defendant will
15 suffer substantial harm if required to post a bond. *See* Mejia Decl. ¶4.

16 **IV. PLAINTIFF'S LIEN SECURES ITS JUDGMENT**

17 On the other hand, Defendant will not be harmed. Plaintiff already has a lien on
18 Defendant's home and its Judgment is secured if the Judgment is affirmed by the Court of
19 Appeals. Therefore, a bond is unnecessary.

20 **V. CONCLUSION**

21 Based upon the foregoing, Defendant respectfully requests that the bond amount be set at
22 zero and that execution of the Judgment be stayed pending appeal.

23 DATED this 17th day of August 2017.

24 DESSAULES LAW GROUP

25 By: /s/ Jacob A. Kubert
26 Jonathan A. Dessaulles
Jacob A. Kubert
Attorneys for Defendant

1 COPY filed electronically with
2 The Clerk of the Court
3 this 17th day of August, 2017

4 COPY of the foregoing mailed and e-mailed
5 this 17th day of August 2017, to:

6 Brian W. Morgan, Esq.
7 W. William Nikolaus, Esq.
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14 COURTESY COPY hand-delivered
15 this 17th day of August, 2017 to:

16 Commissioner Margaret Benny
17 MARICOPA COUNTY SUPERIOR COURT
18 Southeast Facility-3C
19 222 E. Javelina Ave.
20 Mesa, AZ. 85210-6234

21 /s/ Hilary Narveson
22 _____
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