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**Feb 24 2023**

**SC Court of Appeals**

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM YORK COUNTY  
Court of Common Pleas

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Teasa K. Weaver, Master-in-Equity

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C.A. No.: 2020-CP-46-00549  
Appellate Case No. 2022-001650

LB PARK, LLC .....Respondent,

v.

San Juan Holdings, Bret Osborne, the trustee; Brett Osborne as Trustee of San Juan Holdings; Ryan Powell; and John Doe and Mary Roe, representing all unknown persons having or claiming to have any right, title, or interest in or to, or lien upon, the real estate described as 250056 Timberlake Drive, York County, South Carolina, TMS 643-10-01-023, their heirs and assigns, and all other persons, firms, or corporations entitled to claim under, by or through the abovenamed Defendant(s), and all other persons or entities unknown claiming any right, title, interest, estate in, or lien upon, the real estate described as 25056 Timberlake Drive, York County, South Carolina, TMS 643-10-01-023 ..... Defendants.

of whom Ryan Powell is the .....Appellant.

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**RETURN TO “SUPERSEDEAS SURETY (BOND)”**

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LB PARK, LLC (“LB Park” or “Respondent”) submits this return in response to the “Supersedeas Surety (Bond)” submitted by Ryan Powell on February 17, 2023.<sup>1</sup> This Court denied Powell’s most recent supersedeas petition by order dated February 9, 2023, citing Rule 241(b)(4), SCACR, and S.C. Code Ann. § 18-9-170.

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<sup>1</sup> LB Park incorporates by reference its opposition filed on December 8, 2023 and February 9, 2023 to Powell’s previous supersedeas requests.

The trial court provided for a stay in this matter under the following circumstances:

In the event that Powell appeals any ruling in this Final Order and as requested by Plaintiff at the hearing, the Court finds that there is no automatic stay applicable and the Property must be delivered to the Plaintiff. *See generally* Rule 261, SCACR. The ordered relief will only be stayed if Powell provides the bond required by S.C. Code Ann. § 18-9-170, which provides in relevant part:

If the judgment appealed from direct the . . . delivery of possession of real property, the execution of the judgment shall not be stayed unless a written undertaking be executed on the part of the appellant, with two sureties, to the effect that during the possession of such property by the appellant he will not commit or suffer to be committed any waste thereon and that if the judgment be affirmed he will pay the value of the use and occupation of the property from the time of the execution of the undertaking until the delivery of possession thereof pursuant to the judgment, not exceeding a sum to be fixed by a judge of the court by which judgment was rendered and which shall be specified in the undertaking.

S.C. Code Ann. § 18-9-170.

The Court finds that a bond in the amount of \$180,000.00 is appropriate. This amount is based on a monthly rental value of \$3,000 per month for a period of five years.

(Order at 23-24). Those conditions have yet to be met by the Appellant.

The “Supersedeas Surety (Bond)” submitted by Ryan Powell does not comply with the statute or the trial court’s order. It is not a bond. There is no mention of any amount. Nor is there any “written undertaking” with “two sureties.” Nor is there any agreement that “if the judgment be affirmed he will pay the value of the use and occupation of the property from the time of the execution of the undertaking until the delivery of possession thereof pursuant to the judgment.”

A surety is:

1. Someone who is primarily liable for paying another’s debt or performing another’s obligation; specif., a person who becomes a joint obligor, the terms of the undertaking being identical with the other obligor’s, and the circumstances under which the joint obligation is assumed being such that, if the joint obligor becomes required to pay anything, he or she will be entitled to complete reimbursement. . . .

A surety differs from a guarantor, who is liable to the creditor only if the debtor does not meet the duties owed to the creditor; the surety is directly liable. Cf. guarantor.

2. A formal assurance; esp., a pledge, bond, guarantee, or security given for the fulfillment of an undertaking.

SURETY, Black's Law Dictionary (11th ed. 2019). By way of example, "Surety bonds are a credit instrument that provides financial and performance guarantees in a contract. In essence, if one party, known as the principal, fails to fulfill a contractual obligation to another party, referred to the obligee, then the surety promises to pay the obligee a set amount." [www.zurichna.com](http://www.zurichna.com), Website of Zurich American Insurance Company > Commercial Insurance > Surety, <https://tinyurl.com/mrjk5n8u>, last accessed 2/23/2023.

Powell has not offered anything that would constitute a written undertaking with two sureties. There is no agreement to pay any funds by any party. Instead, Powell has offered a vague statement "guaranteeing The Property will not be wasted while this appeal is pending." Nothing about this "Guarantee To Not Waste Property" amounts to any enforceable commitment to pay any obligation, much less a "bond in the amount of \$180,000.00" as directed by the trial court. Nor is there any reference to the statute's requirement that the Appellant and two sureties commit that "if the judgment be affirmed he will pay the value of the use and occupation of the property from the time of the execution of the undertaking until the delivery of possession thereof pursuant to the judgment[.]"

The intent of the statute is to provide security to the respondent in exchange for allowing appellant to remain in possession of the property in question for the duration of the appeal. Nothing about the "Supersedeas Surety (Bond)" serves to protect LB PARK, which has gone without payment since receiving title to the property in question on January 7, 2019.

Powell has not complied with the trial court's order or S.C. Code Ann. § 18-9-170. There is no basis for a stay in this matter. LB PARK asks that the "Supersedeas Surety (Bond)" be rejected immediately.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.

*s/ Sarah P. Spruill*

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*Attorneys for Respondent*

*LB PARK, LLC*

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of whom Ryan Powell is the .....Appellant.

**PROOF OF SERVICE**

I certify that I have served *Respondent's Return to "Supersedeas Surety (Bond)"* on all parties of record by depositing a copy of the same in the United States Mail, postage prepaid, on February 24, 2023, addressed to:

Ryan Powell  
25056 Timberlake Drive  
Fort Mill, SC 29708

Stacey Carberry

Stacey Carberry, Legal Assistant  
HAYNSWORTH SINKLER BOYD, P.A.  
864.240.3223

**HAYNSWORTH  
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February 24, 2023

**VIA EMAIL**

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

Re: LB Park, LLC v. San Juan Holdings (2)  
Appellate Case No. 2022-001650

Dear Ms. Kitchings:

This firm represents the Respondent LB Park, LLC in the above matter. Enclosed for filing, please find *Respondent's Return to "Supersedeas Surety (Bond)"* together with our Proof of Service for the same.

If you have any questions, please give me a call. Thank you for your assistance in this matter.

Sincerely,

HAYNSWORTH SINKLER BOYD, P.A.



Sarah P. Spruill

SPS/sac  
Enclosures

cc: Ryan Powell (via U.S. Mail)