

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
ERIE COUNTY

Kathleen Demery, Executor of  
the Estate of Mary G. Baluk, etc., et al.

Court of Appeals No. E-11-027

Trial Court No. 20070CV00926

Appellees

v.

Lucinda Baluk, Executor of the  
Estate of George M. Baluk

**DECISION AND JUDGMENT**

Appellant

Decided: June 23, 2011

\* \* \* \* \*

Jonathan F. Sobel, for appellees.

Christopher M. Marinko and Carl J. Kamm III, for appellant.

\* \* \* \* \*

PER CURIAM, J.

{¶ 1} The matter is before the court on the April 29, 2011 motion for stay of execution filed by defendant-appellant Lucinda Baluk, Executor of the Estate of George

M. Baluk. Appellant requests, pursuant to App.R. 7, that this court stay the enforcement of the trial court's March 8, 2011 judgment entry. Appellees have opposed the motion.

{¶ 2} Under R.C. 2505.09, a stay of execution of a judgment may be obtained by complying with the Appellate Rules of Procedure and executing a supersedeas bond in an amount not less than the amount of the cumulative total for all claims covered by the final order, judgment, or decree and interest involved. App.R. 7(B) also provides that the granting of a stay may be conditioned upon the filing of a bond or other security.

"Determining the need for the bond and its amount are discretionary matters which will not be overturned by the appellate court absent a showing of an abuse of discretion."

*Bibb v. Home S. & L. Co.* (1989), 63 Ohio App.3d 751, 752.

{¶ 3} On March 8, 2011, following a bench trial, the trial court entered judgment in favor of appellees regarding appellant's breach of a fiduciary duty in the administration of the estate of Mary G. Baluk. The court awarded appellees \$314,857, plus interest, and ordered that appellant's entire interest in the estate of Mary G. Baulk be forfeited and that any distributions received be "repaid up to the amount of the judgment granted to Plaintiffs \* \* \*."

{¶ 4} On April 1, 2011, appellant requested that the trial court stay execution of the judgment pending appeal. Appellant proposed a supersedeas bond in the form of a \$230,836.18 cash deposit which, according to appellant, represented the judgment amount reduced by the \$84,020.82 amount that was forfeited. Appellees opposed the motion arguing that appellant incorrectly calculated the amount by subtracting rather than

adding the forfeited sum to the judgment. Appellees further argued that a cash bond would not adequately secure the judgment. On April 20, 2011, the trial court denied the motion finding that "neither the type of security offered nor the amount constitutes 'adequate' security within the meaning of Ohio Civil Rule 62(B)."

{¶ 5} Appellant now requests that this court either stay the execution of judgment upon the tender of the cash security proffered before the trial court or specify the nature and terms of security sufficient to support a stay. Appellees assert that the correct security amount is, at minimum, \$398,877.82 but that the amount may be higher due to a pending determination regarding attorney fees, ongoing discovery, and interest. Appellees request that the supersedeas bond be no less than \$550,000.

{¶ 6} On May 3, 2011, this matter was remanded to the trial court for a determination of appellees' request for attorney fees. On May 25, 2011, the trial court awarded attorney fees in the sum of \$10,112.48.

{¶ 7} Upon review of the memoranda of the parties, we find that a stay in this appeal shall be granted upon the appellant's posting of a bond in the amount of \$408,990.30 which represents the sum of the amount awarded in the court's March 8, 2011 judgment entry, and the May 25, 2011 attorney fees award. Pursuant to R.C. 2505.11, either cash or bond may be filed with the clerk to secure the stay. The trial court clerk shall notify this court when the bond has been posted.

MOTION GRANTED.

Peter M. Handwork, J.

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JUDGE

Mark L. Pietrykowski, J.

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JUDGE

Thomas J. Osowik, P.J.  
CONCUR.

\_\_\_\_\_  
JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:  
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.