

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2014-000071  
Consolidated

02/01/2019

HONORABLE ROGER E. BRODMAN

CLERK OF THE COURT  
M. Corriveau  
Deputy

ROGER ASHKENAZI, et al.

DAVID A WEATHERWAX

v.

JOSEPH L BALDINO, et al.

ROBERT THOMAS SULLIVAN

STEVEN JOSEPH BROWN  
PAUL L BRUNO  
5835 N ECHO CANYON CIR  
PHOENIX AZ 85018  
P B, CO INC  
C/O PAUL BRUNO 3104 E  
CAMELBACK RD # 539  
PHOENIX AZ 85016  
KEITH L HENDRICKS  
JARED L SUTTON  
JAMES H TAYLOR  
DENNIS I WILENCHIK  
JUDGE BRODMAN

RULING ON MOTION TO SET SUPERSEDEAS BOND

On January 30, 2019, this Court held an evidentiary hearing on defendants' motion to set a supersedeas bond. The Court has previously entered a rule 54(b) judgment against defendants in the amount of nearly \$5.5 million (including attorneys' fees and pre-judgment interest).

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Presumptively, a supersedeas bond shall be set as the lesser of the following: 1) the total amount of damages, costs, attorneys' fees and prejudgment interest included in the judgment, excluding punitive damages; 2) 50% of the appellant's "net worth;" or 3) \$25 million. Ariz. R. Civ. App. Pro. 7(a)(4)(A). Here, the supersedeas bond would need to be set at nearly \$5.5 million unless the Baldinos can prove by the preponderance of the evidence a net worth of less than \$11 million.

In an argument raised for the first time at the evidentiary hearing, the Baldinos claimed that the \$5.5 million judgment should be included in an assessment of their "net worth." The Court rejects this argument. The purpose of the bond is to give the Baldinos an opportunity to challenge the judgment on appeal while providing security to the plaintiffs. The Court does not believe a challenged judgment is to be included in the assessment of "net worth" in setting the amount of the bond. Under the Baldinos' theory, they would need existing net worth of nearly \$16.5 million before they would be required to bond 100% of the judgment.

In a declaration advanced at trial, the Baldinos claim their net worth is \$3,425,948. *See* Exhibit 6. This is a slight change from the declaration provided by Mr. Baldino on January 15, 2019, where he estimated his net worth to be \$3,306,234. *See* Exhibit 18.

In general, the Court found the Baldinos to be credible witnesses in describing their net worth. The Court was not persuaded that the Baldinos omitted significant assets. Determining net worth is not a precise exercise, and valuations can reasonably be expected to include some substantial variations. Mr. Baldino's initial declaration was put together in a hurry, and the Court finds no persuasive evidence indicating that any inaccuracies in that initial declaration were intended to mislead the Court.

The Court will, however, make a few upward adjustments in the net worth. Given the date of the appraisal, the Court believes that the Paradise Valley home is more likely to be valued in the neighborhood of \$2-2.1 million, and the Forest Highlands home in the neighborhood of \$900,000-1 million. As a result, the Court will increase the real estate appraisal by \$350,000. In addition, the Court assigns a higher value to the jewelry than assigned by the Baldinos in the declaration. Based on the insured values, the Court increases the valuation by \$50,000.

Under Arizona law and bankruptcy law, debtors are entitled to certain exemptions that cannot be used to satisfy claims. In the declarations, the Baldinos have included these exemptions. The issue is whether "net worth" includes exempted assets. The Court believes it should, and that the term "net worth" should reflect what a third party creditor could collect

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against.<sup>1</sup> For example, A.R.S. § 20-1131 provides an exemption for life insurance policies for the benefit of a creditor's children. The Court found Mr. Baldino credible when he testified that the Baldinos have significant life insurance policies dedicated to trusts for the Baldinos' two disabled children. The Court finds that large life insurance policies in favor of the disabled children's trust are reasonable. The Court does not believe that the large surrender value of these life insurance policies (\$1,178,286) should be included within the Baldino's net worth for the purposes of calculating the bond. The Court has adopted the other exceptions listed by the Baldinos, including the \$150,000 homestead exemption found in A.R.S. § 33-1101.

In conclusion, the Court finds Mr. Baldino's declaration of net worth (Exhibit 6) to be credible with the exception of an increase of \$350,000 to the real property and an increase of \$50,000 to the Baldinos' personal property. Thus, for the purposes of establishing a bond and by the preponderance of the evidence, the Court finds the Baldinos' net worth to be \$3,825,000. The supersedeas bond is therefore \$1,912,500.

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1. In the event "net worth" does not include exemptions under Arizona and bankruptcy law, the net worth evaluation should be increased by \$1,360,000, and the bond by \$680,000.