

COURT OF APPEALS FOR THE FIFTH DISTRICT OF TEXAS AT DALLAS

EMF Swiss Avenue, LLC v. Peak's Addition Home Owner's Association, City of Dallas and Board of Adjustment for the City of Dallas

EMF Swiss Avenue · No. 05-17-01112-CV · Decided February 16, 2018

SUMMARY

The Texas Court of Appeals, Fifth District, denied Peak’s Addition Home Owner’s Association’s motion to review and increase the supersedeas security posted by EMF Swiss Avenue, LLC. The court concluded that the HOA failed to show the trial court abused its discretion in setting the security amount at \$150,000 and granted reconsideration of the court’s prior decision to defer the motion to the submissions panel.

CASE DETAILS

COURT	Court of Appeals for the Fifth District of Texas at Dallas
WRITING FOR THE COURT	Chief Justice Carolyn Wright; Justice Lang-Miers; Justice Stoddart
JURISDICTION	Texas
DECIDED	February 16, 2018
DOCKET	05-17-01112-CV
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from the 134th Judicial District Court of Dallas County and review of the trial court's supersedeas-security order.
STANDARD OF REVIEW	Abuse of discretion
PRECEDENTIAL VALUE	Published Texas appellate opinion
PARTIES	EMF Swiss Avenue, LLC v. Peak's Addition Home Owner's Association, City of Dallas, Board of Adjustment for the City of Dallas

TOPICS

- appellate procedure
- motion for reconsideration
- remedies
- civil procedure
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the appellate court should reconsider its decision to defer the HOA's motion to review security to the submissions panel.
2. Whether the trial court abused its discretion by setting supersedeas security at \$150,000 for a judgment involving something other than money or an interest in property.

HOLDINGS

1. The court granted the HOA's motion to reconsider its decision to defer the motion to the submissions panel.
2. The HOA failed to show that the trial court abused its discretion in setting the amount of security, so the court denied the requested relief.

KEY QUOTATIONS

“Because the trial court’s judgment is for something other than money or an interest in property, the trial court was required to determine the amount of security appellant EMF Swiss Avenue, LLC was required to post to supersede the judgment.”

“Having reviewed HOA’s motion to review security, we conclude HOA has failed to show the trial court abused its discretion in setting security.”

FACTUAL BACKGROUND

The underlying trial-court judgment was for something other than money or an interest in property. The trial court therefore determined the amount of security EMF Swiss Avenue, LLC had to post to supersede the judgment and set it at \$150,000. The HOA contended that the security should be increased to \$1,000,000 or recalculated based on the evidence.

PROCEDURAL HISTORY

The trial court entered a judgment for something other than money or an interest in property and, after a hearing, set the security required to supersede the judgment at \$150,000. Peak's Addition Home Owner's Association moved the court of appeals to vacate the supersedeas order and increase the security to \$1,000,000 or another amount supported by the evidence. After the appellate court deferred the motion to its submissions panel, the HOA sought reconsideration of that decision. The court granted reconsideration but denied the motion to review security.

DISPOSITION

other

CASES CITED

- Solar Soccer Club v. Prince of Peace Lutheran Church of Carrollton, 234 S.W.3d 814, 831 (Tex. App.—Dallas 2007, pet. denied)

OPINION

PER CURIAM.

Order entered February 16, 2018 In The Court of Appeals Fifth District of Texas at Dallas No. 05-17-01112-CV EMF SWISS AVENUE, LLC, Appellant V. PEAK'S ADDITION HOME OWNER'S ASSOCIATION, CITY OF DALLAS AND BOARD OF ADJUSTMENT FOR THE CITY OF DALLAS, Appellees On Appeal from the 134th Judicial District Court Dallas County, Texas Trial Court Cause No. DC-17-02532 OPINION Before Chief Justice Wright, Justice Lang-Miers, and Justice Stoddart Opinion by Chief Justice Wright Appellee Peak's Addition Home Owner's Association (HOA) filed a Motion to Review Security.

Because the trial court's judgment is for something other than money or an interest in property, the trial court was required to determine the amount of security appellant EMF Swiss Avenue, LLC was required to post to supersede the judgment. See TEX. R. APP. P. 24.2(3). Following a hearing, the trial court set that amount at \$150,000.

In its motion, HOA requests this Court to vacate the trial court's supersedeas order and increase the amount of security to \$1,000,000 or, alternatively, to determine some other amount of security based on the evidence presented to the trial court. See *id.* (security for judgments "for something other than money or an interest in property" must protect judgment creditor from loss or damage appeal might cause).

HOA subsequently filed its brief on the merits challenging our jurisdiction over this appeal. Because HOA's jurisdictional complaints are intertwined with the parties' positions regarding the proper damages model to be used in determining security, the Court deferred the motion to the submissions panel.

As a result, on February 12, 2018, the Clerk of the Court notified the parties of the Court's decision. HOA has filed a letter objecting to our decision to defer the motion to the submissions panel. We will construe the letter as a motion to reconsider that decision.

We grant HOA's motion to reconsider our decision to defer the motion. Having reviewed HOA's motion to review security, we conclude HOA has failed to show the trial court abused its discretion in setting security. See *Solar Soccer Club v. Prince of Peace Lutheran Church of Carrollton*, 234 S.W.3d 814, 831 (Tex. App.—Dallas 2007, pet. denied)(trial court has broad discretion in determining amount of security).

Accordingly, we deny the relief requested in HOA's motion to review security. /s/ CAROLYN WRIGHT CHIEF JUSTICE

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