

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

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