

Appellate Stays and Bonds

by Raymond T. (Tom) Elligett, Jr., and Judge John M. Scheb

The purpose of an appellate stay is to maintain the status quo in the lower tribunal while an appeal proceeds. In many instances, a stay pending review may be essential to effective relief on appeal. A stay is not required, however, for appellate review.

Applications for Stays

An initial application for a stay is by motion in the trial court or the administrative body that rendered the order being appealed.¹ Pursuant to Fla. R. App. P. 9.310(b)(1) and (2), certain stays are discretionary, while others are of right. Where a stay is discretionary and is granted by the lower tribunal, that tribunal has considerable latitude in determining conditions attached to the stay.² Review of orders on stays is by motion in the appellate court.³

Stays of Proceedings in Money Judgments

Executions on money judgments are stayed during the 10-day period for serving post-trial motions and until determination of such motions.⁴ The filing of the notice of appeal does not automatically stay trial proceedings or execution on a final money judgment. Rule 9.310(b) requires filing a motion or bond. Thus, a party who intends to stay a judgment by posting a bond should arrange to have a bond in place at the time the trial court rules on the post-trial motions.

A party does not have to post a bond to appeal a money judgment.⁵ The trial court cannot require a

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party to post a bond.⁶

If the appellant does not stay a monetary judgment, the appellee/judgment creditor may execute on the judgment during the appeal. If the judgment is reversed, the appellant is entitled to have its property restored to it by the appellee.⁷ But the appellant who does not post a bond runs the risk that at the time of reversal the appellee may no longer have the money and may be judgment proof.⁸

Appeal Bond Mechanics

Rule 9.310(b)(1) provides that money judgments are automatically stayed upon the posting of a bond in the amount of the judgment plus twice the yearly statutory interest rate on the amount on which the

party has an obligation to pay interest. Rule 9.900(h) contains a form:

The principal is the party against whom the judgment has been entered, and the surety is the insurance company that is guaranteeing payment, if the principal does not pay. The party posting the bond should attach a power of attorney to the bond, showing that the person signing on behalf of the surety has authority to bind it to the bond. Rule 9.310(c)(1) requires a bond with an authorized surety or cash deposited in the clerk's office, and gives the lower tribunal continuing jurisdiction to determine the actual sufficiency of any such bond.

No Discretion in Amount

Despite Rule 9.310(b)'s wording suggesting a party may obtain a stay by a motion or bond, as Rule 9.310(b)(1) makes clear, a money judgment may be stayed only by posting a bond in the specified amount. The trial court does not have discretion to grant a stay of a monetary judgment by motion, or to decrease or increase the amount of the bond.⁹

Stays in Other Proceedings

When the order appealed is not for the payment of money, the appellant must move for a stay in the lower court. The lower court may set appropriate conditions upon the granting of such a stay.¹⁰ Where the judgment provides other relief in addition to money damages, the automatic stay provision of Rule 9.310(b)(1) does not apply. The trial

court may make posting a bond a condition of a stay in its Rule 9.130(a) determination.¹¹

If a petition for a common law writ of certiorari is involved, F.S. §59.13 provides for entry of a stay by the

circuit court. However, a stay pending discretionary review from a district court to the Florida Supreme Court can be granted only by the district court of appeal or the Supreme Court.¹²

(h) CIVIL SUPERSEDEAS BOND.

(TITLE OF COURT)

CASE NO: _____

_____,)

Plaintiff,)

)

v.)

CIVIL SUPERSEDEAS

)

BOND

_____,)

Defendant.)

_____)

We, _____ as Principal, and _____ as Surety, are held and firmly bound unto _____ in the principal sum of \$_____, for the payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

The condition of this obligation is: the above-named Principal has entered an appeal to the _____ (court) to review the _____ (judgment or order) entered in the above case on __, (date) and filed in the records of said court in book __ at page __.

NOW THEREFORE, if the Principal shall satisfy any money judgment contained in the judgment in full, including, if allowed by law, costs, interest, and attorneys' fees, and damages for delay in the event said appeal is dismissed or said judgment is affirmed, then this obligation shall be null and void; otherwise to remain in full force and effect.

Signed on _____ (date), at _____ (place).

/s/ _____

Principal

Signed on _____ (date), at _____ (place).

/s/ _____

Surety

* * * *

Agreed Stays

Parties should consider conferring to determine if they can agree to a stay without a bond or disputed motion hearing. If the appellate court reverses the judgment, the cost of the appeal bond is a recoverable appellate cost.¹³ If the judgment creditor has no concerns over the judgment debtor's ability to pay at the conclusion of the appeal, the creditor may want to stipulate that it will not execute during the appeal. In either event, counsel should confirm by letter the client's instructions, pointing out the potential cost award for a bond, as well as the risk of nonrecovery if the debt becomes uncollectible and there is no bond.

Automatic Stays for Public Bodies

The filing of a notice of appeal by a public body or public officer acts as an automatic stay pending review (except in criminal cases) when a public body or public officer takes an appeal in an official capacity. An exception allows an automatic stay for only 48 hours in public records and public meeting cases. On motion, the lower tribunal or appellate court may impose conditions or vacate these stays.¹⁴

Stays in Appeals from Administrative Agencies

A petition for review of administrative agency does not stay enforcement of an agency decision. But if the agency suspends or revokes a license, a stay is granted as of right upon reasonable conditions, unless the appellate court, on petition of the agency, determines that a stay would constitute a probable danger to the health, safety, or welfare of the state.¹⁵ An appellant seeking a stay from an administrative order should apply to the agency. Review of the agency's decision is by motion filed in the appellate court.¹⁶

Termination of Stays

Rule 9.310(e) provides that the stay automatically terminates when the appellate court issues its mandate. Consequently, if the losing party intends to seek further review,

it must move the appellate court to stay issuance of its mandate. Denial of the stay is reviewable by motion to the appellate court in which the losing party will be seeking further review.¹⁷

Payment of Judgment

Generally, when a judgment debtor voluntarily pays the judgment, the debtor's appeal becomes moot and is subject to dismissal. But questions can arise as to whether a debtor's payment is voluntary and falls within the general rule.¹⁸

Stays in Nonfinal Appeals

Rule 9.130(f) provides that in the absence of a stay during the review of a nonfinal order, the lower tribu-

nal may proceed with all matters, including trial and final hearing, except that the lower tribunal may not render a final order disposing of the cause pending such review. Case law suggests an additional limitation: Regardless of whether a stay is entered, "the subsequent proceedings in the lower court may not interfere with the power of the appellate court to make its jurisdiction effective with respect to the interlocutory order on appeal."¹⁹

Bankruptcy Stays

More recent Florida decisions hold that the automatic bankruptcy stay operates to stay appeals in all cases in which the bankruptcy debtor was a defendant, even those appeals

taken by the debtor.²⁰

Stays in Federal Proceedings

Fed. R. Civ. P. 62 addresses federal court stays for appeals. Rule 62(a) provides the same 10-day "grace" period for execution as Fla. R. Civ. P. 1.550(a). Rule 62(b) permits the party moving for a new trial or other relief to obtain a further stay (beyond the 10 days) at the discretion of the district court and upon such conditions for security of the adverse party as are proper. Thus, unlike the Florida procedure, the motion itself does not toll execution beyond the 10-day period.

Also unlike Florida procedure, the federal rules do not specify an

amount for a supersedeas bond. Normally a court will require that the amount of the bond include the whole amount of the judgment, costs on appeal, and interest.²¹ Counsel should confer to see if the parties can agree to the bond amount. Fed. R. App. P. 8(a) requires that an appellant ordinarily seek a stay pending appeal from the district court first, or show that applying to the district court is not practicable.

Fed. R. Civ. P. 62(d) provides for a stay pending appeal upon the appellant's giving a supersedeas bond. "The stay is effective when the supersedeas bond is approved by the court." *Id.* Fed. R. Civ. P. 62(c) addresses injunctions during appeal.

Conclusion

Parties' decisions over posting bonds and obtaining stays may overshadow an appeal. A judgment debtor who fails to post a bond and obtain a stay may find that a judgment creditor has executed on the judgment; hence, there will be little practical chance of recovering the funds if the debtor prevails on appeal a year later. A creditor may find the debtor's ability to pay has dissipated during the appeal. □

¹ See FLA. R. APP. P. 9.310(a). Unless otherwise indicated, all references are to the Florida Rules of Appellate Procedure.

² See *Cerrito v. Kovitch*, 406 So. 2d 125, 126 (Fla. 4th D.C.A. 1981).

³ See FLA. R. CIV. P. 9.310(f).

⁴ See FLA. R. CIV. P. 1.550(a).

⁵ E.g., *Campbell v. Jones*, 648 So. 2d 208, 209 (Fla. 3d D.C.A. 1994).

⁶ E.g., *Palm Beach Heights Dev. and Sales Corp. v. Decillis*, 385 So. 2d 1170, 1171 (Fla. 3d D.C.A. 1980).

⁷ See *Sundie v. Haren*, 253 So. 2d 857, 858 (Fla. 1971); *American Bankers Life Assurance Co. of Fla. v. Williams, Salomon, Kanner & Damian*, 399 So. 2d 365, 366 (Fla. 3d D.C.A. 1981).

⁸ See *Ronette Communications Corp. v. Lopez*, 475 So. 2d 1360, 1361 (Fla. 5th D.C.A. 1985).

⁹ See *Campbell*, 648 So. 2d at 209; but see Rule 9.310 committee's notes regarding insurers' obligations on interest.

¹⁰ See FLA. R. CIV. P. 9.310(a).

¹¹ See *Pabian v. Pabian*, 469 So. 2d 189, 190 (Fla. 4th D.C.A. 1985).

¹² See *Robbins v. Pfeiffer*, 407 So. 2d 1016, 1017 (Fla. 5th D.C.A. 1981).

¹³ See FLA. R. CIV. P. 9.400(a)(3).

¹⁴ See FLA. R. CIV. P. 9.310(b)(2). The

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automatic stay for a public body that seeks review of a decision should be vacated only under the most compelling circumstances. *State, Dep't of Env'tl Protection v. Pringle*, 707 So. 2d 387, 390 (Fla. 1st D.C.A. 1998).

¹⁵ See FLA. STAT. §120.68(3).

¹⁶ See FLA. R. CIV. P. 9.310(f).

¹⁷ *Id.*

¹⁸ *Compare Frank Silvestri Invs., Inc. v. Sullivan*, 486 So. 2d 20 (Fla. 5th D.C.A. 1986) (appeal dismissed where party paid after foreclosure stay entered), with *Reserve Ins. Co. v. McPeak*, 181 So. 2d 662 (Fla. 1st D.C.A. 1966) (payment of a judgment after execution and levy is made is not a voluntary payment so as to deprive the payor of his right of appeal), and *Main Street Indus., Inc. v. K-Mart Corp.*, 710 So. 2d 771 (Fla. 4th D.C.A. 1998) (party forfeited its right to appeal when it paid the appellee pursuant to the circuit court's order to enforce a settlement, instead of paying the money into the registry of the court or obtaining a stay by posting a bond).

¹⁹ *Waltham A. Condominium Ass'n v. Village Management, Inc.*, 330 So. 2d 227, 234 (Fla. 4th D.C.A. 1976).

²⁰ See *Taylor v. Barnett Bank of No. Cent. Florida, N.A.*, 737 So. 2d 1105, 1105-06 (Fla. 1st D.C.A. 1998); *Crove Group, Inc. v. Garner*, 691 So. 2d 1089, 1089 (Fla. 2d D.C.A. 1993). *But cf. Home America, Inc. v. T & J Paving, Inc.*, 544 So. 2d 1076, 1077 (Fla. 2d D.C.A. 1989) (automatic stay does not operate where debtor was plaintiff).

²¹ See *Poplar Grove Planting and Refining Co., Inc. v. Bache Halsey Stuart, Inc.*, 600 F.2d 1189, 1191 (5th Cir. 1979).

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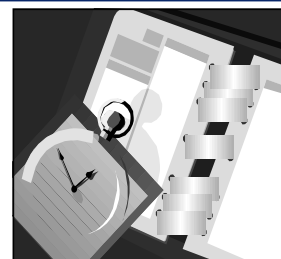
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This column is submitted on behalf of the Appellate Practice Section, Benedict P. Kuehne, chair, and Jacqueline E. Shapiro, editor.

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• • •

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- | | |
|--|---|
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- | | |
|--|--|
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