

IN THE SUPERIOR COURT FOR THE COMMONWEAL THE OF THE NORTHERN MARIANA IS

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS	
HIROSHI ISHIMATSU, BERNARDO A. HIPONIA, and SERAFIN ESPERANCILLA,) CIVIL ACTION NO. 02-0065-C))
Plaintiffs,))
vs. ROYAL CROWN INSURANCE CORP.,	ORDER GRANTING MOTION TO STRIKE
Defendant.	,))

This matter was last before the Court on December 19, 2006, on Plaintiffs' Motion to Strike Defendant Royal Crown Insurance's Supersedeas Bond and to require Defendant to obtain a new supersedeas bond. Alternatively, Plaintiffs oppose Defendant's Submission of its own supersedeas bond. David Banes appeared on behalf of Plaintiffs Ishimatsu and Esperancilla; Anthony Long appeared on behalf of Defendant Royal Crown Insurance, Inc.

Defendant filed a Notice of Appeal on November 6, 2006 appealing this Court's Judgment dated October 5, 2006. Pursuant to Com. R. Civ. Pro. 62(d), the Court ordered Defendant to post a bond of 110% of the Judgment

Defendant filed a Submission of Supersedeas Bond and Proposed Supersedeas Bond on November 18, 2006 for the Court's approval. The Bond was filed pursuant to Rule 62(d) of the Commonwealth Rules of Civil Procedure, in order that Defendant could obtain a stay of execution pending appeal.

Plaintiffs oppose the Supersedeas Bond on grounds that Defendant is the judgment debtor and cannot be its own surety. If Defendant cannot pay the judgment, Defendant, acting

Plaintiff also claims that Defendant has threatened Plaintiffs that no matter what happens they will never see one penny from this Judgment.

company **other than itself as the one principally bound"**)(emphasis added).

Defendant notes that, unlike the appellant in *Elliot*, Defendant is a licensed surety in the
Commonwealth. Additionally, Defendant has a \$100,000 deposit with the Insurance
Commissioner and a \$20,000 deposit with the Court in connection with this case. Defendant argues that these deposits provide additional and sufficient security. The Court disagrees with

as its own surety, will also not be able to pay the bond. See Transamerican Natural Gas Corp.

v. Finkelstein, 905 S.W.2d 412, 414 (Ct.App.Texas 1995); Elliot v. Lester, 126 S.W.2d 756, 758

(Ct. App. Texas 1939) ("The sole purpose of requiring an appeal or supersedeas bond must

therefore necessarily be to furnish security to the appellee in addition to the personal

responsibility of the appellant"); Brown & Root, Inv. V. DeSautell, 554 S.W.2d 764, 771

(Tex.Civ.App 1977)(a "sufficient surety" must be an entity or individual that is a legal entity,

separate from the judgment debtor and not a party to the suit, whose solvency and ability to pay

the judgment are established); Smith v. 167th Street Walton Ave. Corp., 31 N.Y.S.2d 177, 179

(Sup. Ct. N.Y. 1941)("on insurer's undertaking or bond must be that of a person or surety

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surety.

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Defendant argues that Plaintiffs cannot object to the choice of surety because the posting of a supersedeas bond is discretionary with the court. *See Dillion v. City of Chicago*, 866 F.2d 902, 904 (7th Cir. 1988); *Olympia Equipment Leasing Co.v. Western Union Telegraph Co.*, 786 F. 2d 794 (7th Cir. 1986); *Alexander v. Chesapeake, Potomac and Tidewater Books, Inc.*, 190 F.R.D. 190 (E.D. Va. 1999). Effectively, Defendant suggests that the court has the discretion to allow an appellant to be its own surety.

this reasoning. A notary cannot notarize her own affidavits. A surety cannot act as its own

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Defendant is correct in its assertion that the Court has discretion to allow the appeal to proceed with no supersedeas bond at all if justice so requires. In this case, however, the Court

determined that a supersedeas bond was appropriate. To allow Defendant to act as its own surety would effectively annul the Court's requirement of a supersedeas bond.

Defendant's offer of mortgaged property as a substitute for a bond does not solve the problem. In order to provide Plaintiffs with adequate security, a third-party surety is required. Accordingly, Plaintiff's motion to strike is GRANTED. Defendant is ordered to obtain a third-party surety and post a new supersedeas bond within ten days from this order.

SO ORDERED this 20^{th} day of December, 2006.

<u>/S/</u>
JUAN T. LIZAMA, Associate Judge