

1 as its own surety. will also not be able to pay the bond. *See Transamerican Natural Gas Corp.*
2 *v. Finkelstein*, 905 S.W.2d 412, 414 (Ct.App.Texas 1995); *Elliot v. Lester*, 126 S.W.2d 756, 758
3 (Ct. App. Texas 1939) (“The sole purpose of requiring an appeal or supersedeas bond must
4 therefore necessarily be to furnish security to the appellee in addition to the personal
5 responsibility of the appellant”); *Brown & Root, Inv. V. DeSautell*, 554 S.W.2d 764, 771
6 (Tex.Civ.App 1977)(a “sufficient surety” must be an entity or individual that is a legal entity,
7 separate from the judgment debtor and not a party to the suit, whose solvency and ability to pay
8 the judgment are established); *Smith v. 167th Street Walton Ave. Corp.*, 31 N.Y.S.2d 177, 179
9 (Sup. Ct. N.Y. 1941)(“on insurer’s undertaking or bond must be that of a person or surety
10 company **other than itself as the one principally bound**”)(emphasis added).
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13 Defendant notes that, unlike the appellant in *Elliot*, Defendant is a licensed surety in the
14 Commonwealth. Additionally, Defendant has a \$100,000 deposit with the Insurance
15 Commissioner and a \$20,000 deposit with the Court in connection with this case. Defendant
16 argues that these deposits provide additional and sufficient security. The Court disagrees with
17 this reasoning. A notary cannot notarize her own affidavits. A surety cannot act as its own
18 surety.

19 Defendant argues that Plaintiffs cannot object to the choice of surety because the posting
20 of a supersedeas bond is discretionary with the court. *See Dillion v. City of Chicago*, 866 F.2d
21 902, 904 (7th Cir. 1988); *Olympia Equipment Leasing Co.v. Western Union Telegraph Co.*, 786
22 F. 2d 794 (7th Cir. 1986); *Alexander v. Chesapeake, Potomac and Tidewater Books, Inc.*, 190
23 F.R.D. 190 (E.D. Va. 1999). Effectively, Defendant suggests that the court has the discretion to
24 allow an appellant to be its own surety.

25 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

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

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

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9 SO ORDERED this 20th day of December, 2006.

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13 JUAN T. LIZAMA, Associate Judge