

FILED
LORAIN COUNTY
2019 JUL 19 A 11:27
COURT OF COMMON PLEAS
TOM ORLANDO

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

GIBSON BROS., INC., *et al.*,

vs.

OBERLIN COLLEGE aka OBERLIN
COLLEGE AND CONSERVATORY,
et al.,

Defendants.

CASE NO. 17CV193761

JUDGE JOHN R. MIRALDI

MAGISTRATE: HON. JOSEPH BOTT

**PLAINTIFFS' RESPONSE IN OPPOSITION TO
DEFENDANTS' MOTION TO STAY EXECUTION OF JUDGMENT**

Plaintiffs¹ respond to Defendants² *Motion to Stay Execution of Judgment* filed on July 15, 2019. Should the Court grant Defendants' motion to stay execution of judgment, Defendants should first be required to post a bond in the amount of at least \$36,356,711.56, which equals the total amount of the judgments plus post-judgment interest.

Pursuant to this Court's Judgment Entries of June 27, 2019 and July 17, 2019, the current total of damages, attorney fees, and litigation expenses awarded against Defendants is \$31,614,531.79 plus court costs.

¹ "Plaintiffs" refers collectively to Gibson Bros., Inc. ("Gibson's Bakery"), David R. Gibson ("Dave"), and Allyn W. Gibson ("Grandpa Gibson").

² "Defendants" refers collectively to Defendant Oberlin College & Conservatory ("Oberlin College") and Meredith Raimondo ("Dean Raimondo").

I. Post-Judgment Interest is Automatic

Plaintiffs are entitled to post-judgment interest on the entire amount. See *Licking Hts. Local School Dist. Bd. of Edn. v. Reynoldsburg City School Dist. Bd. of Edn.*, 2013-Ohio-3211, 996 N.E.2d 1025, ¶ 30 (“Under the statute [R.C. 1343.03(A)], absent and agreement to the contrary, postjudgment interest is payable to the appellee as a matter of law.”); see also *State, ex rel. Shimola v. Cleveland*, 70 Ohio St.3d 110, 112, 637 N.E.2d 325 (1994) (R.C. 1343.03 automatically bestows a right to post-judgment interest as a matter of law). Post-judgment interest must be paid even if the party entitled thereto fails to request it³ or the trial court’s entry awarding judgment does not expressly order the losing party to pay it. *Licking Hts.* at ¶ 29, citing *Wilson v. Smith*, 85 Ohio App.3d 78, 80, 619 N.E.2d 90 (9th Dist.1993) (holding that post-judgment interest is awarded “automatically, as a matter of law”).

Ohio law provides that the supersedeas bond should be in an amount that is not less than the total of all claims *plus interest*:

Except as provided in section 2505.11 or 2505.12 or another section of the Revised Code or in applicable rules governing courts, an appeal does not operate as a stay of execution until a stay of execution has been obtained pursuant to the Rules of Appellate Procedure or in another applicable manner, and a **supersedeas bond is executed by the appellant to the appellee, with sufficient sureties and in a sum that is not less than, if applicable, the cumulative total for all claims covered by the final order, judgment, or decree and interest involved**, except that the bond shall not exceed fifty million dollars excluding interest and costs, **as directed by the court that rendered the final order, judgment, or decree** that is sought to be superseded or by the court to which the appeal is taken. That bond shall be conditioned as provided in section 2505.14 of the Revised Code.

O.R.C. § 2505.09 [emphasis added].

³ Plaintiffs *did* request such interest throughout its Complaint.

The judgment interest rate in 2019 is 5%. Therefore, if appeals of this case last just three years, the total amount of post-judgment interest that Defendants will have to pay is \$4,742,179.77 --- which is \$1,580,726.59 per year or \$4,330.76 per day.

II. Defendants Warn of a Very Long Battle

Since the jury's verdict, Oberlin College has given every indication that they are digging in for a long battle. For instance, Oberlin College President Carmen Twillie Ambar has broadcasted plans for an upcoming "lengthy and complex legal process" in her public statements:

To: Members of the Oberlin Community
From: President Carmen Twillie Ambar
Subject: Understanding Yesterday's Legal News
Date: June 14, 2019

Dear Members of the Oberlin Community,

By now many of you will have heard about the latest development in the Gibson's Bakery lawsuit, a jury's declaration of punitive damages against Oberlin. Let me be absolutely clear: This is not the final outcome. This is, in fact, just one step along the way of what may turn out to be a lengthy and complex legal process. I want to assure you that none of this will sway us from our core values. It will not distract, deter, or materially harm our educational mission, for today's students or for generations to come.

Defendants have already expressed that they will not accept the verdict of the Lorain County jury. They have also suggested that they will not accept any adverse decision by the Ninth District Court of Appeals and, instead, will ultimately proceed to the Ohio Supreme Court. The Supreme Court of Ohio's 2018 Statistical Summary⁴ shows that the time from filing a jurisdictional appeal to the Supreme Court until a full merit review by that Court averages 496

⁴ See Exhibit A, p. 12.

days.⁵ As such, a three-year period of appeals (through the Ninth District and Ohio Supreme Court) is a conservative timeframe for purposes of setting the appropriate post-judgment interest amount to be included in the bond requirement.

A stay of judgment execution is not automatic under Ohio law for private litigants. Defendants do not have some absolute right to a stay of execution. Should the Court decide, in its discretion under Civ. R. 62(A), that Defendants are entitled to bond off the execution of the judgment, then Plaintiffs request that the bond be set at \$36,356,711.56.

a. Defendants warn that they may be unable to pay the judgment by the end of their long battle.

The need for such bond is made clear by the College's own statements about its dire financial straits. If the College is to be believed, there is serious concern about its ability to pay this sizeable judgment three years from now. At trial, and in its recent filing, the College represented that there was only \$59.1 million of unrestricted endowment funds available to pay any dollar judgment and that \$10 million of those funds had *already* been committed to pay down the College's existing debt. [Trial Tr., June 12, 2019 at 95:13-21] There remains \$190 million of existing debt on the College's books. [*Id.*] The College has also testified that it has a significant operating deficit and that its deficit situation is not sustainable:

⁵ In 2018, it took the Court an average of 103 days to consider and dispose of jurisdictional appeals that are not accepted for full merit review. *Id.*

1 Q. Why is the college -- is the college's current
2 deficit situation sustainable?

3 A. It is not.

4 Q. Please explain to this jury why.

5 A. So it is not sustainable for any organization,
6 college, university, nonprofit, full profit entity to be
7 able to withstand continuous year-after-year shortfalls.
8 So that erodes at the ability to actually perform the
9 mission.

[Trial Tr., June 12, 2019 at pp. 86:1-6, 88:1-9]

The College also testified at trial that they have experienced a “significant” and “steady” decline of enrollment from 2014 to 2018. [Trial Tr., June 12, 2019 at 79:4-17] In describing their economic position, the College offered Exhibit N-33 at trial, which is its May 10, 2019 report entitled “One Oberlin: The Academic & Administrative Program Review Final Report.” [Trial Tr., June 12, 2019 at pp. 99-100] In that Report, the College describes its alleged financial hardships and warns about how many other private colleges have had to close due to financial difficulties:

While Oberlin's situation has unique elements, the pressures evident here are part of a larger trend affecting higher education institutions across the nation. With fewer sources of revenue and increasing demographic challenges, small, private institutions have been hit especially hard in recent years. The number of colleges that have been forced to close, merge, or make drastic cuts grows every month—including institutions that seemed to be financially stable even a few years ago. Some experts have predicted that as many as half of American colleges and universities will close in the next 15 years.⁹ Whatever the accuracy of such predictions, it is true that many financially challenged colleges have been unable to take action before the choices became destructive or undermining of mission.

[Ex. N-33, pp. 4-5]. Thus, we know that Oberlin College could attempt to continue using its available funds to pay down its other debts between now and the filing of a notice of appeal, thereby leaving less available to pay the judgment in this case. Additionally, Defendants have submitted numerous briefs raising practically verbatim arguments (their Motion for Summary Judgment, their Motion for Directed Verdict, and their Renewed Motion for Directed Verdict). Defendants' intent to file new motions, which will undoubtedly be based on rehashed arguments, should not delay their needing to post a bond.

Based on the foregoing, the Court should require Defendants to post a bond in the full amount of the judgment, including post-judgment interest, if the Court stays execution of the judgment. Said bond is required to provide full security to Plaintiffs, which is a requirement under the Civil Rules. Civ.R. 62(A) (“In its discretion **and on such conditions for the security** of the adverse party as are proper...”) (Emphasis added.)

III. Conclusion

In their motion for stay of execution, Defendants suggest that they will once again file numerous motions and then ultimately an appeal. For the reasons stated herein, should the Court grant Defendants' motion to stay execution, Plaintiffs respectfully request that Defendants first be required to post a bond in the amount of at least \$36,356,711.56.

Respectfully submitted,


s/ Owen J. Rarric

Terry A. Moore (0015837),
Jacqueline Bollas Caldwell (0029991)
Owen J. Rarric (0075367), and
Matthew W. Onest (0087907), of
KRUGLIAK, WILKINS, GRIFFITHS
& DOUGHERTY CO., L.P.A.
4775 Munson Street, N.W./P.O. Box 36963
Canton, Ohio 44735-6963
Phone: (330) 497-0700/Fax: (330) 497-4020
tmoore@kwgd.com; jcaldwell@kwgd.com;
orarric@kwgd.com; monest@kwgd.com

And

Lee E. Plakas (0008628)
Brandon W. McHugh (0096348)
Jeananne M. Ayoub (0097838)
TZANGAS PLAKAS MANNOS LTD.
220 Market Avenue South, Eighth Floor
Canton, OH 44702
Phone: (330) 455-6112/Fax: (330) 455-2108
lplakas@lawlion.com;
bmchugh@lawlion.com; jayoub@lawlion.com

And


James N. Taylor (0026181)
JAMES N. TAYLOR CO., L.P.A.
409 East Avenue, Suite A
Elyria, Ohio 44035
Phone: (440) 323-5700
taylor@jamestaylorlpa.com

ATTORNEYS FOR PLAINTIFFS

PROOF OF SERVICE

A copy of the foregoing was served on July 18, 2019, pursuant to Civ.R. 5(B)(2)(f) by sending it by electronic means to the email addresses identified below, to:

Ronald D. Holman, II
Julie A. Crocker
Cary M. Snyder
William A. Doyle
Josh M. Mandel
Taft Stettinius & Hollister LLP
200 Public Square, Suite 3500
Cleveland, OH 44114-2302
rholman@taftlaw.com;
jcrocker@taftlaw.com;
csnyder@taftlaw.com;
wdoyle@taftlaw.com
jmandel@taftlaw.com
*Co-Counsel for Defendants
Oberlin College aka Oberlin College and
Conservatory, and Meredith Raimondo*

Richard D. Panza
Matthew W. Nakon
Rachelle Kuznicki Zidar
Malorie A. Alverson
Wilbert V. Farrell, IV
Michael R. Nakon
Wickens, Herzer, Panza, Cook & Batista Co.
35765 Chester Road
Avon, OH 44011-1262
RPanza@WickensLaw.com;
MNakon@WickensLaw.com;
RZidar@WickensLaw.com
MAlverson@WickensLaw.com
WFarrell@WickensLaw.com
MRNakon@WickensLaw.com
*Co-Counsel for Defendants
Oberlin College aka Oberlin College and
Conservatory, and Meredith Raimondo*

s/ Owen J. Rarric 

Owen J. Rarric (0075367), of
KRUGLIAK, WILKINS, GRIFFITHS
& DOUGHERTY CO., L.P.A.
ATTORNEYS FOR PLAINTIFFS