

FILED
IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

GIBSON BROS., INC., et al.,

2022 JUN 13 P 2:42

Plaintiffs,

COURT OF COMMON PLEAS Case No.: 17CV193761
TOM ORLANDO

-vs.-

Judge: Hon. John R. Miraldi

OBERLIN COLLEGE, et al.,

Magistrate: Hon. Joseph Bott

Defendants.

**SUPPLEMENT TO MOTION TO ENTER JUDGMENT
AGAINST SURETY ZURICH AMERICAN INSURANCE COMPANY**

On May 27, 2022 Plaintiffs Gibson Bros., Inc. and Lorna J. Gibson, as the executor and representative of the Estate of David R. Gibson and the Estate of Allyn W. Gibson (collectively “the Gibsons”) filed a motion to enter judgment against the surety Zurich American Insurance Company, Bond No. 9280167 in the amount of \$36,118,518.87 plus \$4,331.19 per diem from the date of filing. The motion was electronically served on Oberlin’s counsel. To date, 17 days have passed and Oberlin has filed no response.¹ The motion is now ripe and the Court should grant judgment.

I. Oberlin Has Failed to Respond, and the Gibsons are Entitled to Judgment

At the time this Court issued its stay, it was staying execution of its own judgment. Since then, the Ninth District Court of Appeals has issued a subsequent mandate: “We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution.” *Gibson Bros., Inc. v. Oberlin College*, 9th Dist. Lorain Nos. 19CA011563, 20CA001632, 2022-Ohio-1079. Ohio Revised Code 2505.20 dictates

¹ Oberlin has, however, sent the Gibsons threatening correspondence apparently hoping to intimidate the Gibsons into abandoning the remedy they are entitled to rather than justifying their failure to appropriately seek the requisite additional stay.

the result: “[u]pon the affirmance of a final order, judgment, or decree by an appellate court, a judgment or order may be entered against the sureties on any supersedeas bond involved * * *.” R.C. 2505.20. And the Ohio Supreme Court locks the Court into carrying that result into effect: “; “A trial court may not vary the mandate of an appellate court, but is bound by that mandate.” *Transamerica Ins. Co. v. Nolan*, 72 Ohio St. 3d 320, 323, 649 N.E.2d 1229 (1995).” Appellate courts have affirmed judgment on the surety bond in identical circumstances. *Northern Ohio Sewer Contractors, Inc. v. Bradley Development Co., Inc.*, 8th Dist. Cuyahoga No. 87053, 2006-Ohio-1741, ¶ 16 (“As appellees failed to obtain another stay and post another proper supersedeas bond pending the appeal to the Supreme Court, the action was not stayed at the time of the trial court’s order and the judgment directing [the surety] to render payment to appellant was, and is, valid.”)

Statutory law, past precedent, and the mandate of the Ninth District all require immediate execution against Zurich’s bond.

II. The Court Need Not Wait for Zurich—It Agreed to Allow the Court to Enter Judgment “Immediately” Upon Demand, and Its Remedy is Against Oberlin

Zurich American Insurance Company (“Zurich”) has recently entered an appearance in this case and informally requested from the Gibsons an extension to respond to the Gibson’s motion. However, no response from Zurich is warranted. Zurich’s own commitment to this Court provided that judgment could be entered “immediately upon Plaintiff’s demand²:

² See Bond No. 9280167, filed July 30, 2019.

If the judgment against Defendants is affirmed and not paid by Defendants to Plaintiffs in full, along with all other amounts ordered during and/or following the appeal(s), immediately upon Plaintiffs' demand therefore, then the Surety agrees that judgment may be entered against it for the balance of all such amounts due from, but not paid by, Defendants. In no event, however, shall the Surety's obligation under this bond exceed the maximum aggregate penal sum of Thirty Six Million Three Hundred Sixty Seven Thousand Seven Hundred Eleven Dollars and 56/100 Cents (\$36,367,711.56).

SIGNED, SEALED AND DATED THE 30th day of July 2019.

Zurich agreed to allow the Court to execute immediately upon demand, and Zurich must now live up to its commitment. Other Courts have agreed that nothing more than notice is required before the Court enters judgment against the bond. Specifically, when the amount due on the judgment is readily ascertainable, no hearing is required, and due process is satisfied if the surety is given notice of the action against the bond. *See Lomas & Nettleton Co. v. Warren*, 11th Dist. Geauga No. 89-G-1519, 1990 WL 93138, *4 (June 29, 1990) (distinguishing between cases where a surety may have a right to participate during a hearing to determine damages and the situation where damages are ascertainable from the judgment and summary execution is warranted following notice to the surety).

If Zurich is dissatisfied with this result, its remedy is against Oberlin—the party Zurich chose to contract with—not in further delaying relief for the Gibsons.

CONCLUSION

The binding statutory and caselaw has been laid before the Court and remains unrefuted. The plain language of R.C. 2505.20, past precedent, and the mandate of the Ninth District Court of Appeals both authorize and require Zurich American Insurance Company to satisfy the judgment pursuant to Bond No. 9280167.

“[T]he integrity of procedural rules is dependent upon consistent enforcement because the only fair and reasonable alternative thereto is complete abandonment.” *Davis v. Immediate Medical Services, Inc.*, 80 Ohio St.3d 10, 15, 1997-Ohio-363, 684 N.E.2d 292. The Gibsons have presented every reason for this Court to promptly enforce the judgment entered by this Court nearly three years ago.

A chart calculating the judgment per diem and proposed order are attached for the Court’s convenience as Exhibits 1 and 2. There is no valid stay of execution of judgment remaining, and the Gibsons are entitled to judgment in accordance with the mandate from the Ninth District Court of Appeals.

DATED: June 12, 2022

Respectfully submitted,

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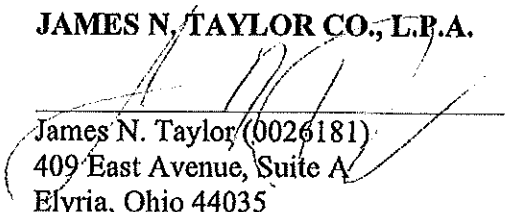
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A copy of the foregoing was served on June 12, 2022 by electronic means to the e-mail addresses identified below:

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Counsel for Plaintiffs

Date	Interest Rate	Interest	Total Owed
July 17, 2019			\$31,614,531.00
December 31, 2019	5% (167 days)	\$723,236.14	\$32,337,767.14
December 31, 2020	5% (one year)	\$1,580,726.55	\$33,918,493.69
December 31, 2021	5% (one year)	\$1,580,726.55	\$35,499,220.24
June 13, 2022	5% (per diem)	\$4,331.19	\$36,200,811.48
June 14, 2022	5% (per diem)	\$4,331.19	\$36,205,142.67
June 15, 2022	5% (per diem)	\$4,331.19	\$36,209,473.86
June 16, 2022	5% (per diem)	\$4,331.19	\$36,213,805.05
June 17, 2022	5% (per diem)	\$4,331.19	\$36,218,136.24
June 18, 2022	5% (per diem)	\$4,331.19	\$36,222,467.43
June 19, 2022	5% (per diem)	\$4,331.19	\$36,226,798.62
June 20, 2022	5% (per diem)	\$4,331.19	\$36,311,129.81
June 21, 2022	5% (per diem)	\$4,331.19	\$36,235,461.00
June 22, 2022	5% (per diem)	\$4,331.19	\$36,239,792.19
June 23, 2022	5% (per diem)	\$4,331.19	\$36,244,123.38
June 24, 2022	5% (per diem)	\$4,331.19	\$36,248,454.57
June 25, 2022	5% (per diem)	\$4,331.19	\$36,252,785.76
June 26, 2022	5% (per diem)	\$4,331.19	\$36,257,116.95
June 27, 2022	5% (per diem)	\$4,331.19	\$36,261,448.14
June 28, 2022	5% (per diem)	\$4,331.19	\$36,265,779.33
June 29, 2022	5% (per diem)	\$4,331.19	\$36,270,110.52
June 30, 2022	5% (per diem)	\$4,331.19	\$36,274,441.71

EXHIBIT

1

**IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO**

GIBSON BROS., INC., et al.,

Plaintiffs,

-vs.-

OBERLIN COLLEGE, et al.,

Defendants.

Case No.: 17CV193761

Judge: Hon. John R. Miraldi

**ORDER ENTERING JUDGMENT AGAINST ZURICH AMERICAN INSURANCE
COMPANY AS SURETY**

This matter came before the Court on Plaintiffs' Motion to Enter Judgment Against Surety Zurich American Insurance Company and Plaintiffs' Supplement to Motion to Enter Judgment Against Surety Zurich American Insurance Company.

On June 7, 2019 and June 13, 2019 the jury reached separate verdicts in the compensatory and punitive damage phases of the trial. On June 27, 2019, this Court entered judgment in favor of David Gibson for \$14,000,000.00, in favor of Allyn W. Gibson for \$6,500,000.00, and in favor of Gibson Bros., Inc. for \$4,549,000.00. On July 17, 2019, the Court awarded Plaintiffs an additional \$6,565,531.79 in attorney fees and litigation expenses.

Defendants appealed this Court's decision to the Ninth District Court of Appeals. This Court stayed execution on its judgment, conditioned on Defendants posting an adequate bond. On March 31, 2022, the Ninth District affirmed this Court's decision. The Ninth District's mandate instructed this Court as follows:

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Defendants have not obtained a stay of execution in any other court, and this Court must follow the mandate of the Ninth District by carrying the judgment into execution without delay.

As Defendants have not satisfied the judgment, Zurich American Insurance Company, through Bond No. 9280167, is obligated to satisfy the judgment against Defendants Oberlin College and Meredith Raimondo.

Judgment is hereby entered against Zurich American Insurance Company, as surety. Zurich American Insurance Company shall immediately pay Plaintiffs the amount of \$36,200,811.48 plus an additional \$4,311.19 per diem from June 13, 2022 until delivery of payment is made.

IT IS SO ORDERED.

HON. JOHN R. MIRALDI

Cc: All Parties
Zurich American Insurance Company