

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

GIBSON BROS., INC., et al.,

Plaintiffs,

-vs.-

OBERLIN COLLEGE, et al.,

Defendants.

2022 JUL 26 P 3:27

Case No. 17CV003761
COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

Judge: Hon. John R. Miraldi

Magistrate: Hon. Joseph Bott

REQUEST TO ENTER JUDGMENT OR FOR A HEARING ON MOTION TO ENTER
JUDGMENT
AGAINST SURETY ZURICH AMERICAN INSURANCE COMPANY

*“Justice delayed is justice denied’ may be an old adage,
but it undoubtably rings true.”*

*Adkins v. Commissioner of Social Security, S.D. Ohio No. 1:20-cv-745,
2021 WL 6134139*

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”) respectfully request that this Court schedule an oral hearing on or grant their Motion to Enter Judgment Against Surety Zurich American Insurance Company. The Ninth District Court of Appeals issued a mandate to the Trial Court which did not include a stay of execution. The delay in enforcing the unanimously affirmed judgment will result in irreparable harm to the Gibson family and their iconic bakery.

I. The Gibsons are at Imminent Risk of Going Out of Business

The Lorain County jury recognized that Oberlin’s conduct would have a detrimental impact on the Gibsons and their bakery for years to come. That is precisely why the jury awarded damages to compensate the Gibsons for the anticipated losses that were sure to follow. Unfortunately, the Gibsons have not yet received that compensation, yet are still laboring under

the stigma created by Oberlin's conduct.

Gibson's Bakery is a proud, 137-year-old, fifth-generation, family business. It has survived two World Wars, the Great Depression, and the Great Recession—but unless the Gibsons soon receive the judgment to which they are entitled, it may not survive the continuing consequences of Oberlin's malicious and tortious conduct. The continuing conduct of which the Gibsons have become aware and which has brought the Gibsons to their knees include the following: Oberlin College's authorized new student tour guides are still being heard to say don't shop at Gibsons Bakery when the tours pass in front of the store; neither the College, its administrators, nor its professors have resumed any ordering of the Gibson's products for College events; and notices still denigrating the Gibsons are posted in College buildings for students and their families to see.

Beginning with the College-supported business disruptions that are already in the record and continuing to the present, Dave Gibson and his surviving widow, Lorna, have been required to mortgage virtually all of their equity in their home and rental properties to remain viable. The various mortgages are a matter of public record and undoubtedly the Gibsons' financial distress is known to Oberlin College. Now, Lorna estimates that unless there is a substantial change in circumstances, the bakery may only survive for the next couple of months. As Ohio courts have observed: "Justice delayed is justice denied' may be an old adage, but it undoubtedly rings true." *Adkins v. Commissioner of Social Security*, S.D. Ohio No. 1:20-cv-745, 2021 WL 6134139. The Gibsons are in need of speedy justice and an end to Oberlin's delay tactics.

The Gibsons respectfully request an oral hearing or granting of their motion to enter judgment on Zurich American Insurance Company's supersedeas bond. Speedy relief is necessary for the preservation of their historic business and the lifetime work of generations of

Gibsons.

II. Oberlin Failed to Obtain A Stay Which Would Supersede the Ninth Appellate District's Mandate

The Ninth District's mandate was clear: "carry this judgment into execution." The Ohio Supreme Court has held "[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). It was incumbent on Oberlin to obtain a stay of that mandate from the Ninth District Court of Appeals if it desired to prevent execution. It did not. After the Ninth District affirmed this Court's judgment, Oberlin "would have needed to request, and been granted, another stay," and the failure to do means this Court is free to enter judgment against Zurich immediately. See *Northern Ohio Sewer Contractors, Inc. v. Bradley Development Co., Inc.*, 8th Dist. Cuyahoga No. 87053, 2006-Ohio-1741, ¶ 16. Oberlin cannot ignore requisite procedural requirements and then expect this Court to disregard the Ninth District's mandate.

The Gibsons request that this Court immediately enter judgment on Zurich's bond. In the alternative, the Gibsons request an oral hearing on their Motion to Enter Judgment Against Surety Zurich American Insurance Company.

Conclusion

After the verdict in June 2019, Oberlin College President Ambar issued this statement to the members of the Oberlin Community:

"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."

Reacting to the public challenge from President Ambar, the late David Gibson posted a video statement on the internet predicting:

"I believe they are sending a clear message to me and to my 91-year-old dad that

they will just wait us out.” David’s words may unfortunately be prophetic.

Some powerful defendants decide that the potential consequences of their reprehensible conduct are just a cost of doing business. The Lorain County jury, this Court, and the unanimous Court of Appeals have spoken; however, Oberlin and its bonding company are now trying to outlast the Gibsons, fulfilling their threat to delay justice as long as possible.

In contrast, the Gibsons have correctly completed every step necessary to properly execute on its judgment and collect on the surety bond in this case. The Ninth District Court of Appeals issued its mandate to this Court which requires execution of the judgment which was unanimously affirmed by the appellate court. All that is left is for Zurich to make the payment. The Gibsons respectfully request that this Honorable Court immediately either enter judgment on the supersedeas bond or alternatively hold a hearing on Plaintiffs Motion to Enter Judgment Against Surety Zurich American Insurance Company to afford the Gibsons just and timely relief. Proposed alternative orders are attached for the Court’s convenience.

DATED: July 26, 2022

Respectfully submitted,
PLAKAS | MANNOS

/s/ Lee E. Plakas

Lee E. Plakas (0008628)
Brandon W. McHugh (0096348)
Kristen S. Moore (0084050)
200 Market Avenue North
Suite 300
Canton, Ohio 44702
Telephone: (330) 455-6112
Facsimile: (330) 455-2108
Email: lplakas@lawlion.com
bmchugh@lawlion.com
kmoore@lawlion.com

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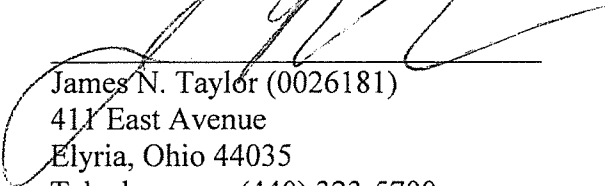
**KRUGLIAK, WILKINS, GRIFFITHS &
DOUGHERTY CO., L.P.A.**

per electronic consent

Terry A. Moore (0015837)
Jacqueline Bollas Caldwell (0029991)
Owen J. Rarric (0075367)
Matthew W. Onest (0087907)
4775 Munson Street, N.W.
P.O. Box 36963
Canton, Ohio 44735-6963
Telephone: (330) 497-0700
Facsimile: (330) 497-4020
Email: tmoore@kwgd.com
jcaldwell@kwgd.com
orarric@kwgd.com
monest@kwgd.com

-and-

JAMES N. TAYLOR CO., L.P.A.



James N. Taylor (0026181)
411 East Avenue
Elyria, Ohio 44035
Telephone: (440) 323-5700
Email: taylor@jamestaylorlpa.com

Counsel for Plaintiffs

PROOF OF SERVICE

A copy of the foregoing was served on July 26, 2022 by electronic means to the e-mail

addresses identified below:

Benjamin C. Sassé
Elisabeth C. Arko
TUCKER ELLIS LLP
950 Main Avenue, Suite 1100
Cleveland, OH 44113
benjamin.sasse@tuckerellis.com
elisa.arko@tuckerellis.com

*Attorneys for Appellants
Oberlin College and Meredith Raimondo*

Ronald D. Holman, II
Julie A. Crocker
TAFT STETTINIUS & HOLLISTER LLP
200 Public Square, Suite 3500
Cleveland, OH 44114-2302
rholman@taftlaw.com; jcrocker@taftlaw.com

*Additional Attorneys for Appellants/Cross-
Appellees, Oberlin College aka Oberlin
College and Conservatory, and Meredith
Raimondo*

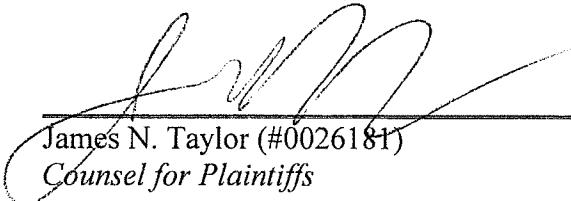
Jared W. Stone
Manier & Herod
1201 Demonbreun Street, Suite 900
Nashville, TN 37203
jstone@manierherod.com

*Attorney for Zurich American Insurance
Company*

Richard D. Panza
Matthew W. Nakon
Rachelle Kuznicki Zidar
WICKENS, HERZER, PANZA
35765 Chester Road
Avon, OH 44011-1262
RPanza@WickensLaw.com
MNakon@WickensLaw.com
RZidar@WickensLaw.com

Seth Berlin
Joseph Slaughter
BALLARD SPAHR LLP
1909 K St., NW, 12th Floor
Washington, D.C. 20006
berlins@ballardspahr.com
slaughterj@ballardspahr.com

*Additional Attorneys for Appellants/Cross-
Appellees, Oberlin College aka Oberlin
College and Conservatory, and Meredith
Raimondo*


James N. Taylor (#0026181)
Counsel for Plaintiffs