

AFFIRMED and Opinion Filed June 24, 2020



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-19-01228-CV

**TEXAS SOCCER FOUNDATION, Appellant
V.
STING SOCCER FOUNDATION, Appellee**

**On Appeal from the 193rd Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC- 17-07441**

MEMORANDUM OPINION

Before Chief Justice Burns, Justice Whitehill, and Justice Molberg
Opinion by Chief Justice Burns

Sting Soccer Foundation (Sting) appeals from the trial court's judgment awarding specific performance of a contract for sale of property that it has rented from Texas Soccer Foundation (TSF) for many years. TSF filed a motion asking the trial court to set a nominal bond that would not cause it substantial economic harm. On February 6, 2020, the trial court signed an order setting the bond at \$128,076, an amount equal to twelve months' rent on the property. TSF asks this Court to review the order and reduce the amount of the bond to a nominal amount less than \$1,000.

On any party's motion, we may review the sufficiency or excessiveness of the amount of security and the trial court's exercise of discretion in setting the amount of security. *See id.* 24.4. We review a trial court's determination of the amount of security for an abuse of discretion. *See Imagine Automotive Group, Inc. v. Boardwalk Motor Cars, LLC*, 356 S.W.3d 716, 718 (Tex. App.—Dallas 2011, no pet.).

As a rule, a judgment debtor is entitled to supersede the judgment pending appeal, thereby suspending its enforcement. TEX. R. APP. P. 24.1(a) & (f). Appellate rule 24.2 sets forth the amount of bond for different types of judgments. For a money judgment, the amount of bond must equal the sum of the compensatory damages awarded in the judgment, interest for the estimated duration of the appeal, and costs awarded in the judgment but must not exceed the lesser of fifty percent of the judgment debtor's net worth or \$25 million. *See id.* 24.2(a)(1). When the judgment is for the recovery of an interest in real property, the amount must be at least the value of the property interest's rent or revenue. *See id.* 24.2(a)(2)(A). When the judgment is for something other than money or an interest in real property, the trial court must set a bond that will adequately protect the judgment creditor against loss or damage that the appeal might cause. *See id.* 24.2(a)(3).

If an appellant moves to reduce the bond, the trial court must lower the amount of security after conducting a hearing if it finds that posting the security will cause the judgment debtor substantial economic harm. *See id.* 24.2(b). Whether or not an

appellant is likely to suffer substantial economic harm is a question of fact that we review for abuse of discretion. *See Ramco Oil & Gas, Ltd. v. Anglo Dutch (Tenge) L.L.C.*, 171 S.W.3d 905, 918 (Tex. App.—Houston [14th Dist.] 2005, no pet.). Factors to consider in assessing whether posting a bond will result in substantial economic harm include: (1) the cost of obtaining the bond; (2) the availability of sufficient assets to cover that cost; (3) the availability of other sources from which the judgment debtor could secure funds to obtain the bond; (4) the judgment debtor’s ability to borrow the funds; (5) the impact on the judgment debtor arising from the sale of assets sufficient to obtain the bond; and (6) the likelihood that selling assets to obtain the bond will result in the insolvency of the judgment debtor. *See id.* at 917.

In its motion to set the bond, TSF asked the trial court to set the bond “[p]ursuant to Tex. R. App. P. Rules 24(a)(2) [a judgment for an interest in property] and 24(b) [an amount that will not cause substantial economic harm].” It asserted that it had no income other than the rents which it used to pay the mortgage on the property. TSF stated it “would suffer substantial economic harm if deprived of the monthly rents.” TSF now argues for the first time that the trial court should have set the bond pursuant to rule 24.2(a)(3) when the judgment is for something other than money or an interest in property. Sting asserts this Court should affirm the trial court’s order because TSF failed to satisfy its burden of proof to show the current bond would cause TSF substantial economic harm. We agree.

In its motion to set the bond, TSF made the conclusory statement that a supersedeas bond in excess of a nominal amount would cause it substantial economic harm. It was TSF's burden to demonstrate the alleged substantial economic harm to the trial court. TSF did not present any evidence of the factors for a trial court to consider in determining whether a bond would cause TSF substantial economic harm in its motion to set the bond or at the hearing on the motion. Thus, it failed to meet its burden. *See Ramco Oil & Gas*, 171 S.W.3d at 920 (no abuse of discretion in not lowering bond where judgment debtor failed to prove substantial economic harm).

Because TSF failed to meet its burden to establish setting a bond in excess of a nominal amount would cause it substantial economic harm, we conclude the trial court did not abuse its discretion in setting the bond at \$128,076. We affirm the trial court's order.

/Robert D. Burns, III/
ROBERT D. BURNS, III
CHIEF JUSTICE

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