

IN THE CHANCERY COURT FOR LEWIS COUNTY
AT HOHENWALD, TENNESSEE

In re:

SENTINEL TRUST COMPANY

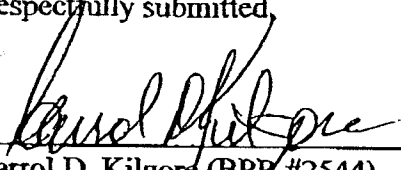
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No. 4781

Motion for Stay of Final Judgments Entered April 12, 2006
and Supporting Oaths

Pursuant to Rule 62, T.R.Civ.P., and Rule 18, T.R.App.P., Respondents Sentinel Trust Company, Danny N. Bates, and Respondent-Directors Clifton T. Bates, Howard H. Cochran, and Gary L. O'Brien respectfully move the Court to stay the enforcement of the aforementioned judgments pending disposition of the Respondents' appeals thereof, that such stay be granted without any requirement of bond for costs on the basis of the affidavits of poverty below, and that the Court rule upon this motion without requiring oral argument.

Respectfully submitted,

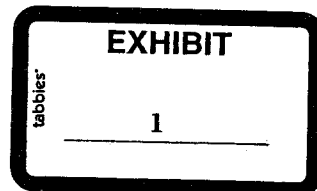


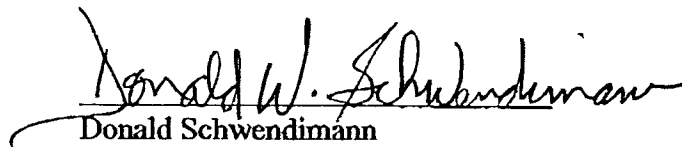
Carrol D. Kilgore (BPE #2544)
Attorney for Objecting Parties
95 White Bridge Road
Cavalier Bldg., Suite 509
Nashville, TN 37205-1427
(615) 356-7677

FILED
AT 12:01 O'CLOCK P.M.

MAY 03 2006

JANET WILLIAMS, CLERK & MASTER
BY Selena Wix





Donald Schwendimann
Local Co-Counsel
306 W. Main Street
P.O. Box 366
Hohenwald, TN 38462
931-796-1147

STATE of TENNESSEE)
)
COUNTY of LEWIS)

Personally appeared before me, a Notary Public for the above State and County, the undersigned Danny N. Bates, in his capacities as Controlling Stockholder, President, and Chairman of the Board of Directors of Sentinel Trust Company, who, after being duly sworn according to law, deposed and said:

1. The office building of Sentinel Trust Company in Hohenwald, Tennessee, was constructed at a cost of approximately \$1 million, and through my ownership of almost all the stock in said corporation, was indirectly my property; and the contents that are the property of Sentinel Trust Company are also indirectly my property due to my ownership of controlling stock in the said corporation; and I hold no property of value adequate to cover the hundreds of thousands of dollars involved in the appeal from the judgments Sentinel Trust Company and I are appealing. My home, which I had given to my wife, has been subjected by the Tennessee Department of Financial Institutions to a lien which makes it impossible for me to seek a loan from my wife through the use of said property as security. Further, some items of property within the said building are not the property of Sentinel Trust Company.

2. Hence, due to my poverty and that of the corporation of which I am the controlling stockholder, Sentinel Trust Company, I, Danny N. Bates, do solemnly swear that each of us is unable to bear the expenses of the appeal we are about to commence, and that the said corporation and I are justly entitled to the relief to be sought in said appeal, to the best of my belief and the belief of the said corporation.

3. Part of our belief in the justice of our cause—aside from the fact that the legal basis of our denial that the Commissioner is vested with the powers claimed and exercised by him, which

1. Each of us separately make oath that he is appealing the aforementioned orders solely in his capacity as a director of the said corporation and therefore as a fiduciary obligated to protect the interests of the said corporation, and each of us makes oath that he owns no interest in Sentinel Trust Company, holds no property of Sentinel Trust Company, and holds no assets to which Sentinel Trust Company has any claim, colorable or actual.

2. Hence, due to my lack of assets against which Sentinel Trust Company has any claim, and due to my lack of control, as such a fiduciary, of any assets other than my personal assets, and therefore due to poverty and that of the corporation of which we are the sole directors aside from Danny N. Bates, we, Clifton T. Bates, Howard H. Cochran, and Gary L. O'Brien do individually solemnly swear that each of us is unable to bear the expenses (from Sentinel assets) of the appeal we are about to commence, and that the said corporation we as its directors are justly entitled to the relief to be sought in said appeal, to the best of the belief of each of us.

Further, Affiants say not.

Clifton T. Bates
Clifton T. Bates, Affiant

Howard H. Cochran, Affiant

Gary L. O'Brien
Gary L. O'Brien, Affiant

Subscribed and Sworn to before
me this 2nd day of May, 2006, as to Clifton T.
Bates and Gary L. O'Brien.

Liz McClain
Notary Public



My commission expires: January 2009

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing motion (without signatures except for the undersigned and supporting brief were mailed this April 28, 2006, postage prepaid, to the following:

JANET M. KLEINFELTER, ESQ.
Financial Division
Attorney-General of Tennessee
425 Fifth Avenue, North
Nashville, Tennessee 37243

Graham Matherne, Esq.
Wyatt, Tarrant & Combs
2525 West End Avenue
Nashville, TN 37203-1423

Larry Stewart
Stokes, Bartholomew, Evans & Petree
424 Church Street, Suite 2800
Nashville, TN 37219

Diana M. Thimmig
Roetzel & Andress
1375 East Ninth Street
One Cleveland Center, Ninth Floor
Cleveland, OH 44114

David D. Peluso
106 East Main Street
Hohenwald, TN 38462

James S. Chase
John A. Decker
Hunton & Williams LLP
900 South Gay Street, Suite 2000
P.O. Box 951
Knoxville, TN 37901

James S. Hereford, Jr.
310 W. College Street
P.O. Box 802
Fayetteville, TN 37334-0802

John C. Herman
Duane Morris LLP
1180 West Peachtree Street, Suite 700
Atlanta, GA 30309

William B. Hubbard
Weed, Hubbard, Berry & Doughty
SunTrust Bank Bldg., Suite 1420
201 Fourth Avenue North
Nashville, TN 37219

WITH NOTICE: that the same will be heard at such date as may be agreed between the attorneys for Sentinel Trust Company, for the Commissioner of Financial Institutions, for the Receivers, and the Court, unless the Court will rule upon it without oral hearing.

Carroll Kilgore, by
Dorinda J. Hubbard

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Movants' Brief in Support of their Motion for Stay of Final Judgments Entered April 12, 2006
JANET WILLIAMS, CLERK & MASTER
BY Selena Wix

Every such motion as this addresses itself to the Court's sound judicial discretion, and Movants have requested that the Court rule upon this motion without oral argument unless the Court desires such argument or unless counsel for one of the respondents shall insist upon it.

Appeal is obviously essential in this case because it is the only possible way to prevent the Court's aforesaid judgments from becoming final. Attempted competent appellate representation¹ requires losing counsel to try to avoid absolute finality so as to prevent the block of *res judicata* from interfering with appellate review of prior final judgments upheld by the Court of Appeals, *In re: Sentinel Trust Company. Sentinel Trust Company v. Lavender*, 2005 Tenn.App.LEXIS 841 (December 29, 2005), and presently before the Supreme Court on Application for Permission to Appeal.

The sale of Sentinel's valuable building is particularly an approval judgment meriting

¹ In another factual situation, the U. S. Supreme Court said of the duties of counsel at the appellate level: "... Nominal representation on an appeal as of right . . . does not suffice to render the proceedings constitutionally adequate; a party whose counsel is unable to provide effective representation is in no better position than one who has no counsel at all." *Evatts v. Lucey*, 469 U.S. 387, 396, 105 S. Ct. 830, 836, 83 L. Ed. 2d 821 (1985).

appellate review, because the putative purchaser agreed to buy for \$450,000.00 a building designed particularly for financial institution uses and built at a cost of approximately \$1,000,000.00 (Motion, Bates Affidavit), such purchaser is chargeable with notice and is bound to have actual notice that the legality of the seizure and sale of the building has long been sincerely contested, and by "bidding" on a building whose sale was subject to court approval, such bidder became subject to any judgment this court or a reviewing court might make.

The procedural rules cited in the motion make it clear that a case may be appealed upon the pauper's oath, Rule 62, T.R.Civ.P., and Rule 18, T.R.App.P. These necessarily invoke the underlying statutory authority, T.C.A. § 20-12-127, which provides for filing a civil action "without giving security as required by law for costs and without the payment of litigation taxes . . ." upon filing the required oath of present inability to pay such amounts, with the effect that such oath "does not relieve the person filing the action from responsibility for the costs or taxes but suspends their collection until taxed by the court."

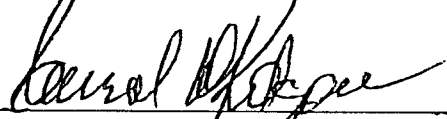
Although this speaks of filing a "civil action," the statute has always been construed as equally authorizing the filing of an appeal on the pauper's oath, *Scott v. Brandon*, 125 Tenn. 314, 143 S.W. 601 (1911); 1 TENN.JUR., *Costs*, §§ 12, 65. When the statute formerly denied the right to sue on the pauper's oath for some types of cases, such as defamation and malicious prosecution, unsuccessful parties even in those types of cases always have been entitled to appeal on the pauper's oath, *Heatherly v. Bridges*, 48 Tenn. 220 (1870). The object of this statute has always been to keep the courts open by putting the weak on the same level as the powerful in seeking justice before Tennessee's courts, *Fiske v. Grider*, 171 Tenn. 565, 106 S.W. 553 (1937). The oaths taken by these movants are clearly legally adequate, *Nicholson Co. v. Transcon Inv.*, 595 S.W.2d 474 (Tenn., 1980).

In urging the Supreme Court of Tennessee to grant Appellants the right to appeal from the judgment of the Court of Appeals referenced above, these movants said that "... the U. S. District Court declined to exercise jurisdiction solely because of comity respect for Tennessee, saying, in part, 'The higher appellate courts of Tennessee, and ultimately the United States Supreme Court, will be the final arbiters of the construction and interpretation of the Tennessee banking statutes at issue in this case.' *Sentinel Trust Co., et al., v. Lavender*, 2004 U.S. Dist. LEXIS 27259 at *29. That prediction cannot come true as to Tennessee courts unless this Court shall review this case and the

related cases.” The basis of this statement, as urged in the Application, was that no Tennessee court had yet applied the state’s law of statutory construction, based upon the rationale set out in the motion (Motion, p. 3, n. 1).

Hence, Movants respectfully submit that an order should enter permitting them to appeal in *forma pauperis* under the cited Rules and statute.

Respectfully submitted,



Carrol D. Kilgore (BPR #2544)
Attorney for Objecting Parties
95 White Bridge Road
Cavalier Bldg., Suite 509
Nashville, TN 37205-1427
(615) 356-7677

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing brief were mailed this April 28, 2006, postage prepaid, to all addressees listed in the Certificate of Service to the Motion supported by this brief.

