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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRIAN DAWE; FLAT IRON
MOUNTAIN ASSOCIATES, LLC,
formerly known as FLAT
IRON MOUNTAIN ASSOCIATES,
a Partnership,

Plaintiffs,

v.

NO. CIV. S-07-1790 LKK/EFB

O R D E R

CORRECTIONS USA, a California
Corporation; CALIFORNIA
CORRECTIONAL PEACE OFFICERS'
ASSOCIATION, a California
Corporation; JAMES BAIARDI,
an individual; DONALD JOSEPH
BAUMANN, an individual,

Defendants.

AND CONSOLIDATED ACTIONS &
RELATED COUNTERCLAIMS

Defendants Corrections USA, CCPOA, Biardi, and Baumann move
to allow posting of alternative security for a \$4.9 million
judgment awarded to plaintiffs. Defendants seek to submit as
security four pieces of real property with an aggregate value as
determined by their appraiser of \$6,202,500. For the reasons stated

1 herein, defendants' motion is granted in part, but subject to
2 further conditions.

3 **I. Background**

4 On April 25, 2011, this court entered an order modifying a
5 jury verdict for plaintiffs, ECF No. 574. Pursuant to that order,
6 the total amended judgment in this matter is \$4,959,815. Of this
7 amount, \$4,574,815 is against CCPOA, \$328,001 is against CUSA,
8 \$25,001 is against Baumann, and \$32,001 is against Bairdi. Although
9 this judgment is apportioned among the defendants, CCPOA seeks to
10 post security for the entirety of the judgment. Def.s' Mot. 2, ECF
11 No. 603. On May 18, 2011, defendants filed a notice of appeal. ECF
12 No. 579.

13 Pursuant to stipulations approved by this court, execution of
14 judgment is currently stayed.

15 **II. Standard**

16 Fed. R. Civ. P. 65(d) permits an appellant to obtain a stay
17 of enforcement of judgment by posting a superseas bond. Local
18 Rule 151(d) states "when required, a supersedeas bond shall be
19 125 percent of the amount of the judgment unless the Court
20 orders otherwise." District courts have inherent discretionary
21 authority in setting supersedeas bonds. Rachel v. Banana
22 Republic, Inc., 831 F.2d 1503, 1505 (9th Cir. 1987). The purpose
23 of the bond is to protect the appellees from the risk of a later
24 uncollected judgment, and to compensate appellees for any loss
25 resulting from the stay of execution. Id.; See also United
26 States v. Uptergrove, 2008 U.S. Dist. LEXIS 101944 (E.D. Cal.

1 2008).

2 **III. Analysis**

3 Although Fed. R. Civ. P. 62 provides for the posting of a
4 supersedeas bond, district courts have discretion to "allow
5 other forms of judgment guarantee." International Telemeter,
6 Corp. v. Hamlin International Corp., 754 F.2d 1492, 1495 (9th
7 Cir. 1985). The burden is on the moving party to objectively
8 demonstrate reasons for a departure from Rule 65(d)'s
9 supersedeas bond requirement, Bemo USA Corp. v. Jake's Crane,
10 Rigging & Transp. Int'l Inc., 2010 U.S. Dist. LEXIS 122688 (D.
11 Nev. 2010), and a departure should only be granted if the
12 superseades bond requirement "would irreparably harm the
13 judgment debtor and, at the same time, such a stay [without
14 bond] would not unduly endanger the judgment creditor's interest
15 in ultimate recovery," Cayuga Indian Nation of N.Y. v. Pataki,
16 188 F. Supp. 2d 223, 254 (N.D. N.Y. 2002). See also Bolt v.
17 Merrimack Pharms. Inc., 2005 U.S. Dist. LEXIS 46591 (E.D. Cal.
18 2005) ("the burden is on the appellant to demonstrate the
19 reasons for departing from the usual requirement of a full
20 security supersedeas bond." (Internal citations omitted.)

21 Plaintiffs assert that "the Eastern District appears to
22 recognize only two instances where the exercise of [the court's
23 authority to waive bond is warranted." Pls.' Opp'n. 6. Those two
24 instances, according to plaintiffs, are (1) where the
25 defendant's ability to pay is so plain that the cost of the bond
26 would be a waste of money, and (2) where the requirement is

1 impracticable because it would force appellant into bankruptcy
2 or paralyze the business. Pls.' Opp'n (quoting Bolt v. Merrimack
3 Pharms. Inc., 2005 U.S. Dist. LEXIS 46591 (E.D. Cal. 2005)).
4 Although those are certainly instances in which a court is
5 likely to waive the bond requirement, Local Rule 151(d) grants
6 the court wide equitable discretion to depart from the normal
7 bond requirement. In fact, in Bolt, Judge Shubb indicated that
8 he would allow a form of surety other than a bond in the full
9 amount of the judgment, even though the defendants did not meet
10 the criteria set forth above. Id. at *12 ("Defendant is thus not
11 entitled to a stay without posting supersedeas bond. In the
12 event that defendant does follow through with its pledge to file
13 such a bond to stay execution of judgment, the bond must be in
14 the full amount of the judgment, as described below, *unless*
15 *defendant proposes some other form of surety acceptable to the*
16 *court.*" (emphasis added)).

17 **A. Whether requiring a superseades bond would cause irreparable**
18 **harm or undue burden on defendants**

19 In this case, defendants claim that posting a superseades
20 bond would not only impose an undue burden on CCPOA, but also
21 that it is "essentially impossible" for CCPOA to do. To support
22 this assertion, defendants submit the declaration of CCPOA's
23 chief operations officer and general counsel David Sanders. Mr.
24 Sanders' reply declaration names five surety companies from whom
25 he attempted to get a bond. All of them required liquid
26 collateral of 100% of the amount of the bond, which CCPOA does

1 not have. Sanders Reply Decl., ECF No. 608-1.

2 Although defendants have not stated the amount of bond that
3 they could obtain, given CCPOA's current liquid assets,
4 defendants stated in their papers and at hearing that CCPOA is
5 currently setting money aside, which they plan to use to pay the
6 judgment if their appeal is ultimately unsuccessful. Defendants
7 stated at the hearing that there is \$500,000 currently set
8 aside, and that CCPOA intends to add \$500,000 per quarter to
9 this account.

10 The court finds that defendants have demonstrated that
11 requiring a superseadas bond in the amount of 125% of the
12 judgment would impose an undue hardship on defendants because
13 that requirement would deprive defendants of the ability to
14 appeal their case.

15 **B. Whether waiver of the bond requirement would unduly endanger**
16 **plaintiff's interest in ultimate recovery**

17 If departure from the usual bond requirement is warranted
18 because of undue hardship to plaintiffs, any alternative
19 security should "furnish equal protection to the judgment
20 creditor." Poplar Grove Planting & Refining Co. v. Bache Halsey
21 Stuart, Inc., 600 F.2d 1189, 1191 (5th Cir. La. 1979).

22 Plaintiff argues that the four properties offered by
23 defendant do not furnish protection equal to that of a bond,
24 since the value of the properties is tied to a "volatile" real
25 estate market. In the case of the most valuable property, which
26 functions as CCPOA's headquarters, plaintiffs argue that, if it

1 became necessary to execute on the security, plaintiffs would
2 only be able to extract value from the building by renting it to
3 defendants, especially in light of the monument to California
4 Peace Officers affixed to the property. Pls.' Opp'n 8.
5 Plaintiffs' argument, in essence, is "if the property is not
6 good enough security for the bonding companies, why is it good
7 enough for us?"

8 The court concludes that the real property offered by
9 defendants, without more, do not provide adequate security to
10 plaintiffs. In order to provide adequate security to plaintiffs,
11 the court will require defendants to augment the property with
12 cash deposits.

13 **IV. Conclusion**

14 For the forgoing reasons, the court ORDERS as follows:

15 [1] Defendant's motion to post alternative security,
16 ECF No. 603, is GRANTED with conditions.

17 [2] In addition to the four recorded deeds of trust
18 already submitted to the Clerk of court, defendants
19 SHALL deposit security in the amount of \$500,000
20 within fourteen (14) days of the issuance of this
21 order, pursuant to the procedures set forth in Local
22 Rule 151.

23 [3] Defendants SHALL make quarterly deposits in the
24 amount of \$500,000 as security with the Clerk, until
25 the amount of cash deposited reaches 125% of the total
26 judgment.


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[4] Once the amount of cash deposited with the Clerk is equal to 125% of the total judgment, defendants may request for the deeds of trust for the four pieces of real property to be returned to CCPOA.

[5] The stay of execution is continued until further of this court.

IT IS SO ORDERED.

DATED: August 31, 2011.


LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT