

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI**

**CIVIL ACTION NO. 2006-TS-00218**

**RONALD J. RAGLAND, SR.**

**APPELLANT**

**VS.**

**THE TUPELO REDEVELOPMENT  
AGENCY**

**APPELLEE**

**ON APPEAL FROM THE CIRCUIT COURT OF LEE COUNTY, MISSISSIPPI**

---

**BRIEF OF APPELLANT/CROSS-APPELLEE TUPELO REDEVELOPMENT AGENCY**

---

**ORAL ARGUMENT REQUESTED**

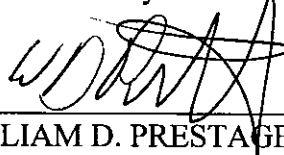
**GUY W. MITCHELL, III MSB# [REDACTED]  
WILLIAM G. ARMISTEAD, SR. MSB # [REDACTED]  
WILLIAM D. PRESTAGE MSB # [REDACTED]  
Attorneys for Appellant/Cross-Appellee TRA  
Post Office Box 7120  
Tupelo, MS 38802  
(662) 842-3871**

### **CERTIFICATE OF INTERESTED PARTIES**

The undersigned counsel of record for Appellant, Tupelo Redevelopment Agency, certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Tupelo Redevelopment Agency, Appellant/Cross-Appellee
2. Ronald J. Ragland, Sr. d/b/a/ Ragland Engineering  
and Ragland Construction, Plaintiff in underlying action/Cross-Appellant
3. The Gray Corporation, Inc., Appellee/Cross-Appellant
4. Shawn and Renee Gray, Principals of The Gray Corporation, Inc.
5. Eugene Hill, Principal of The Gray Corporation, Inc.
6. The Hartford Fire and Insurance Company, Co-Defendant in underlying action
7. Thomas W. Prewitt, Attorney for Ronald J. Ragland, Sr., d/b/a Ragland  
Engineering and Ragland Construction
8. Samuel C. Kelly, Former Attorney for The Gray Corporation, Inc. and The  
Hartford Fire and Insurance Company (allowed to withdraw as counsel following  
trial)
9. Ron A. Yarbrough, Former Attorney for The Gray Corporation, Inc. and The  
Hartford Fire and Insurance Company (allowed to withdraw as counsel following  
trial)
10. Sean B. Akins, Appellate Attorney for The Gray Corporation, Inc.
11. Guy W. Mitchell, III, Attorney for Tupelo Redevelopment Agency
12. William G. Armistead, Sr., Attorney for Tupelo Redevelopment Agency
13. William D. Prestage, Attorney for Tupelo Redevelopment Agency

14. Honorable Thomas J. Gardner, III, Lee County Circuit Court Judge

A handwritten signature in black ink, appearing to read 'W.D. Prestage', is written over a horizontal line.

WILLIAM D. PRESTAGE

Attorney of Record for Tupelo Redevelopment  
Agency

## **TABLE OF CONTENTS**

CERTIFICATE OF INTERESTED PARTIES .....	i
TABLE OF CONTENTS.....	iii
TABLE OF AUTHORITIES.....	v
STATEMENT OF THE ISSUE.....	1
STATEMENT OF THE CASE.....	2
I.    Course of Proceedings and Disposition in Court Below.....	2
II.   Statement of Facts.....	4
SUMMARY OF THE ARGUMENT.....	7
ARGUMENT.....	10
A.    The Circuit Court of Lee County, Mississippi acted properly in denying Ragland’s motion to direct the clerk to pay him money TRA paid into the court’s registry.....	10
I.    Mississippi Rule of Appellate Procedure 8 contemplates TRA’s payment of judgment proceeds into court as sufficient security for a stay of execution of a money judgment pending appeal.....	10
II.   Mississippi public policy favors economic development and TRA’s right to satisfy and cancel a judgment lien while still protecting its right to an appeal.....	13
III.  Judicial estoppel is inapplicable to the current situation, as TRA has not changed its position with regard to the money judgment at issue.....	13
B.    The trial court’s actions caused Ragland to suffer no harm and provided adequate protection to “the prevailing party” while removing the judgment lien against TRA and allowing the funds paid into the court to be used as security during appeal.....	14
C.    The Circuit Court did not err in finding that TRA satisfied the requirements for posting an Appeal Bond by paying the entire money judgment against it into the registry of the court and posting a bond equal to 25% of the judgment against it.....	16
CONCLUSION.....	19
CERTIFICATE OF SERVICE.....	21

CERTIFICATE OF FILING.....	22
----------------------------	----

## **TABLE OF AUTHORITIES**

### **CASES**

- Anderson v. T.G. Owen & Son, Inc.,  
231 Miss. 633, 97 So. 2d 369 (Miss. 1957).....11, 12
- Cohn v. Lehman,  
93 Mo. 574, 6 S.W. 267, 271 (1887).....15, 16
- Currie v. Bennett,  
111 Miss. 228, 71 So. 324 (Miss. 1916).....16
- Deal v. Wilson,  
922 So. 2d 24 (Miss. Ct. App. 2005).....9
- In re The Estate of Taylor,  
539 So. 2d 1029, 1031 (Miss. 1989) .....9, 16
- Grayson v. Harris,  
58 So. 775 (Miss. 1912).....15
- Jones v. State,  
746 So. 2d 297 (Miss. 1999).....15
- Richardson v. Cornes,  
903 So. 2d 51 (Miss. 2005).....13
- Yazoo & Miss. Valley R. Co. v. Adams,  
78 Miss. 977, 30 So. 44 (Miss. 1901).....15

### **RULES**

- Mississippi Rule of Appellate Procedure 8 .....10, 11, 14

## **STATEMENT OF THE ISSUES**

1. Whether the Circuit Court of Lee County, Mississippi acted properly in denying Ronald J. Ragland's Motion to direct the clerk to pay him the money paid into the court's registry for satisfaction of judgment by the Tupelo Redevelopment Agency.
2. Whether the trial court's actions caused Ragland to suffer no harm and provided adequate protection to "the prevailing party" while removing the judgment lien against TRA and allowing the funds paid into the court to be used as security during appeal.
3. Whether the Circuit Court properly found that TRA satisfied the requirements for posting an Appeal Bond by paying the entire money judgment against it into the registry of the court and posting a bond equal to 25% of the judgment against it.

## STATEMENT OF THE CASE

### **I. Course of Proceedings and Disposition in Court Below**

Preliminarily, it is to be noted that the Tupelo Redevelopment Agency (“TRA”) is also an Appellant in this cause and has already filed its Appellant’s Brief with this court pertaining to issues separate from those raised herein.<sup>1</sup>

This case involves disputes pertaining to construction of the Tupelo Fairgrounds Redevelopment Project (hereinafter “Project”). This suit originated with a Complaint brought by sub-contractor W. G. Construction, Inc., against prime contractor The Gray Corporation, Inc., (hereinafter “Gray”) and the Hartford Fire and Insurance Company (hereinafter “Hartford”) as the surety on the bond for the project. [Record (hereinafter “R”) 10 – 19]. Subsequently, Ronald J. Ragland, Sr., d/b/a Ragland Engineering and Ragland Construction (hereinafter “Ragland”) intervened as a party Plaintiff against Gray and Hartford for work performed on the project by Ragland which allegedly went unpaid by Gray.<sup>2</sup> [R. 42 – 47]. Thereafter, Gray filed a Third-Party Complaint against The Tupelo Redevelopment Agency (hereinafter “TRA”) alleging that TRA was liable to indemnify Gray for Ragland’s claim and that TRA was liable to Gray for an equitable adjustment of the contract balance. [R. 120 – 166].

On July 26, 2005, trial began and was concluded on August 5, 2006, with the twelve person jury rendering a verdict that Gray and Hartford were liable to Ragland in the amount of \$850,551.32. [Transcript (hereinafter “T”) 1305]. Further, the jury returned a verdict that Gray was entitled to recover on its claim against TRA in the amount of \$258,118.00. [T. 1306]. The trial court entered its final judgment on November 2, 2005. [R. 1362-64].

---

<sup>1</sup> TRA’s Appellant Brief was filed in the Supreme Court of the State of Mississippi No. 2006-TS-00218 on June 30, 2006. As such, TRA’s Appellee Brief herein will seek to address only those portions of the record which are germane to the issues raised by Ronald J. Ragland (“Ragland”) herein.

<sup>2</sup> Ragland was the lone Plaintiff at the time of trial as W. G. Construction, Inc., dismissed with prejudice its claims against Gray and Hartford. [R. 192 – 194].



On December 13, 2005, TRA made an *Ore Tenus* motion seeking an Order to reflect that TRA's payment of the judgment proceeds against it in favor of Gray plus accrued interest into the court's registry would satisfy and cancel the judgment against TRA, thereby removing the judgment lien upon all of TRA's property, real, personal or mixed. [R. 1502]. Accordingly, the trial court ordered that the judgment against TRA in favor of Gray in the principal sum of \$258,118.00 plus all accrued interest to be satisfied and cancelled, thereby removing the judgment lien upon all of TRA's property. [R. 1502-1503]. On December 29, 2005, Ragland filed a Motion to require the Circuit Clerk to pay Ragland the funds TRA paid into the court. [R. 1504-1508]. Thereafter, TRA filed a Motion to Stay execution of money judgment proceeds paid into the court by The Tupelo Redevelopment Agency pending appeal and to allow Tupelo Redevelopment Agency's payment of judgment into the court's registry to serve as sufficient security for appeal or allow Tupelo Redevelopment Agency to secure a supersedeas bond in an amount no greater than 25% of the judgment against it on January 6, 2006. [R. 1552-1556]. An Amended Final Judgment was entered by the trial court to reflect the jury's verdict on January 12, 2006. [R. 1563-1565]. Further, the trial court entered an order on January 17, 2006 denying Ragland's motion to require the clerk of the court to deliver funds paid into the court by TRA and that TRA may satisfy the requirements for posting an appeal bond by posting a bond equal to 25% of the judgment suffered by it as TRA had already paid 100% of the judgment suffered by it into the court's registry. [R. 1572-1573]. It is from this order that Ragland now appeals.

## **II. Statement of Facts**

On or about October 22, 2000, TRA entered into a general contract with Gray for the construction of the Tupelo Fairgrounds Redevelopment Project ("Project"). Gray in turn retained the services of Ragland to serve as its subcontractor for the electrical engineering portion of the project [T. 505]. Ultimately, Ragland filed suit against Gray for work performed on the project which allegedly went unpaid by Gray. [R. 42-47]. Thereafter, Gray filed a Third-Party Complaint against TRA alleging that TRA was liable to indemnify Gray for Ragland's claims and that TRA was liable to Gray for an equitable adjustment of the contract balance. [R. 120-166].

This matter went to trial before a twelve person jury on July 25, 2005 with a jury returning a verdict on August 5, 2005 finding in Ragland's favor against Gray in the amount of \$850,551.32 and a verdict jointly and severally against Hartford and Gray in the amount of \$619,173.32. [R. 1272]. Further, the verdict reflected the jury's finding in favor of Gray's Third Party Complaint against TRA in the amount of \$258,118.00. Id.

As a result of the court's entry of final judgment on November 2, 2005, the judgment role of Lee County, Mississippi reflected a judgment lien against all of TRA's property situated in Lee County, Mississippi in accord with Mississippi law. See Miss. Ann. § 11-77-191. TRA, being a public agency of the City of Tupelo, oversees redevelopment of certain properties including functions such as land acquisition, construction and infrastructure building and maintenance. [T. 1071]. A substantial development feature for the City of Tupelo was the redevelopment of an area in downtown Tupelo known as the Fairpark District. The Fairpark District, serving as a demonstrable improvement to the commercial and community success of the City of Tupelo, has been driven through the labors of TRA. During the pendency of the judgment roles reflecting a judgment lien on all of TRA's property, property situated in Lee

County, several sales of lots located within the Fairpark District were scheduled to be closed. Because the prospective purchasers of the real estate lots were demanding immediate consummation of their offers to purchase said real estate properties, TRA faced the problematic issue of being unable to convey clear title to its real property situated in Lee County due to the judgment lien arising from this matter. As the City of Tupelo, via its agency TRA, could not fail to re-coup the public money already utilized for the development of the project or squander its chances for economic development of the Fairpark District, it was willing to pay the judgment amount against it in favor of Gray into the court's registry in order to have the judgment liens against its property satisfied and cancelled. This was effected by court order directing that upon payment by TRA of the judgment plus accrued interest, the enrolled judgment against TRA was to be satisfied and cancelled. [R. 1502].

After Ragland filed a motion asking the court to direct the clerk to pay him the funds paid into the court's registry by TRA, TRA filed a responsive motion to stay execution of the judgment proceeds paid into the court and to allow such proceeds to serve as the entire or a portion of the supersedeas as security for TRA's appeal. [R. 1552]. Finding in favor of TRA's motion to stay execution of judgment proceeds paid into the court, the court's intention was that "the status quo be maintained so as to protect the right of TRA to appeal and to further protect the right of Ragland until such time as the Supreme Court this day has rendered its opinion in the event of an appeal." [R. 1572-1573].

TRA timely filed its Notice of Appeal on February 1, 2006. [R. 1574]. Further, TRA secured an Appeal Bond in the amount of 25% of the judgment against it and in favor of Gray to thereby satisfy the court's ruling that TRA's payment of the entire judgment proceeds plus accrued interest in the court's registry plus a 25% appeal bond would serve as sufficient security for TRA to pursue an appeal in this matter. [R. 1582-1587].

Any settlements and/or other agreements by and between Ragland and other parties to this litigation do not affect TRA's legal right to pursue an appeal in this matter.

## SUMMARY OF THE ARGUMENT

The sum and substance of Ragland's argument that he should have been paid the money deposited by TRA into court is an illogical rant having absolutely ☐no legal justification. Ragland would have this Court believe that by TRA paying into the court's registry the judgment proceeds ☐and thereby having the judgment lien satisfied ☐and cancelled that Ragland was somehow prejudiced ☐or lost his security. However, TRA has provided something far better than a judgment lien on property situated in Lee County ☐or the security of a mere supersedeas bond to protect the interests of the judgment creditor during the course of this appeal. Instead, there is cash in an interest bearing account reflective of 100% of the entire judgment amount plus interest against TRA along with a bond in the amount of 25% over the judgment amount to serve as security ☐and protect the holder of the judgment against TRA in this matter, which is Gray ☐and ☐not Ragland.

By paying the judgment proceeds into court in order to enable TRA to convey clear title for time sensitive real estate closings, TRA did ☐not waive or abandon its right to appeal the judgment against it. Through its paying of the judgment proceeds into court to allow economic development for the Fairpark District, TRA did ☐not relinquish the judgment proceeds to either Gray ☐or Ragland ☐but rather to the court. Ragland argues that TRA "did ☐not even hint that it was going to appeal." In response, TRA is unaware of any requirement to notify other parties of its intentions before the time to file a notice of appeal has run. Further, TRA was in the untenable position of facing real estate closings where time was of the essence to secure the deals ☐and the usual security of posting an appeal bond in the amount of 125% of the judgment would ☐not have removed the judgment liens from the judgment roles of Lee County, Mississippi to enable TRA to properly consummate the real estate closings. Further, TRA is ☐not controlling the judgments

paid into the court as the court now has authority to direct use of said funds. However, TRA is entitled to rely on said funds as security for pursuing an appeal in this matter.

Ragland argues that when parties litigate there is the "expectation that if they win, they get something when they win." Even if Ragland has properly perfected a complete interest in "Gray's winnings" and the "sureties interests" this in no way abrogates the legal right of TRA to pursue an appeal.<sup>3</sup> Ultimately, Ragland has suffered no more harm or prejudice by TRA's depositing 100% of the judgment proceeds into the court's registry and its securing of a supersedeas bond in the amount of 25% of the judgment amount versus TRA having posted an appeal bond for 125% of the judgment amount.

. The prevailing party's interest in the lower court's judgment against TRA was more than adequately secured by TRA's paying the entire judgment plus interest into the registry of the court. Further, it would be against public policy if TRA was placed in the position of having to choose between removing a judgment lien which would adversely affect necessary economic development and pursuing legitimate issues on appeal arising from construction contract disputes. The lower court correctly found that TRA's actions met the requirements for posting an appeal bond. Ragland has not shown that he has suffered any harm above what he would have suffered had TRA simply posted a supersedeas appeal bond for 125% of the judgment amount. If TRA had simply posted a single bond in order to stay execution of the money judgment against it, Ragland would be in the exact same position (having yet to gain actual possession of any money judgment against TRA) as it is today. Ragland's interests as a judgment creditor have been adequately secured by TRA's actions. The lower court's holdings denying Ragland's request for immediate possession of the money TRA paid into the court's

---

<sup>3</sup> Ragland's brief makes much ado about having purchased any right Gray and/or Hartford may have to the Third Party Judgment amount of \$258,118.00 without taking into account the possibility that said amount may be reduced partially or totally as a result of other issues raised on appeal herein. In sum, Ragland may have perfected his interest in the sums, if any, ultimately owed by TRA to Gray and/or Hartford, but Ragland does not yet have a perfected interest in the judgment proceeds paid into the court by TRA.

registry and finding that TRA has satisfied the requirements for posting an appeal bond should be affirmed.

## ARGUMENT

A. **The Circuit Court of Lee County, Mississippi acted properly in denying Ragland's motion to direct the clerk to pay him the money TRA paid into court's registry.**

I. **Mississippi Rule of Appellate Procedure 8 contemplates TRA's payment of judgment proceeds into court as sufficient security for a stay of execution of a money judgment pending appeal.**

Because TRA intended to perfect an appeal upon entry of the Amended Final Judgment, it relied upon Mississippi Rules of Appellate Procedure 8(a) which provides that the "appellant shall be entitled to a stay of execution of a money judgment pending appeal if the appellant gives a supersedeas bond payable to the opposite party, with two or more sufficient resident sureties, or one or more guaranteed surety companies authorized to do business in this State in a penalty of 125% of the amount of the judgment appealed from, conditioned that the appellant will satisfy the judgment complained of and also such final judgment as may be made in the case." M.R.A.P. 8(a). As stated by the Mississippi Court of Appeals in Deal v. Wilson, 922 So. 2d 24, 29 (Miss. Ct. App. 2008), "[p]rocurement of a supersedeas bond is the means by which an unsuccessful litigant seeks a stay of execution of a judgment appealed from." However, the "general purpose of such a bond is to effect the absolute security of the party affected by the appeal." In re The Estate of Taylor, 539 So. 2d 1029, 1031 (Miss. 1989). Furthermore, the "amount of a supersedeas bond should be sufficient to protect the Appellee in his judgment; therefore, it should insure the payment of the judgment and interest, and any waste that could occur pending the appeal." Id.

Accordingly, TRA requests that this Court determine that the judgment proceeds paid into the Circuit Court's registry by TRA and the supersedeas bond in the amount of 25% of the judgment against it constitute sufficient security for the money judgment in favor of the Appellee in this matter as required under M.R.A.P. Rule 8(a) to stay execution of a money judgment pending an appeal.



¶ As noted in the comment to M.R.A.P. 8:

If the appellant seeks a stay on any basis other than by posting a 125% bond to supersede a money judgment, the appellant must apply to the trial Court for a stay. In determining whether to grant a stay, the trial Court should endeavor to protect the prevailing party. The purpose of a supersedeas bond is to preserve the status quo while protecting the judgment creditor's rights pending appeal....

If an appellant seeks relief from the full bond requirement, the trial Court must, upon notice and hearing find that good cause justifies a departure from the usual bond requirements. At the hearing, the burden to provide a secure alternative to the required bond rests on the judgment debtor.

In the instant case, TRA is merely attempting to preserve the "status quo" of the judgment proceeds during the pendency of an appeal. The prevailing party in this lawsuit having priority to the judgment proceeds paid into the Court by TRA, whether it be Ragland ☐ Gray ☐ Hartford, is more than protected by having 100% of the actual judgment amounts in cash in an interest bearing account which can be readily dispersed upon the resolution of an appeal.

The fact that TRA used the procedural mechanism of paying the judgment amount into the Lee County Circuit Court registry to remove the judgment lien on ☐ of TRA's property situated in Lee County to thereby effectuate time sensitive closings of various real estate properties does ☐ prejudice Ragland, Gray, ☐ Hartford.

Ragland would have this court believe that TRA's action of paying the judgment proceeds unto court to effectuate removal of a judgment lien in order to sell property with clear title is somehow at odds with its ability to rely on said amount paid into court for use as security on appeal. If TRA indeed intended to give up any interest in the funds at issue then it would have paid said judgment amounts directly to the prevailing party ☐ ☐ into the court for safe keeping.

TRA's decision to pay the judgment amount into the registry of the court was motivated solely by the need to proceed with time-sensitive real estate closings which would have been hindered by an outstanding judgment. TRA would have been heavily damaged if the judgment lien would have remained. Ragland's position seems to be that TRA's only two options are to pay him the judgment or post a supersedeas bond of 125% of the judgment. Such is not the case under Mississippi law. Rule 8 provides the trial court with the authority to grant a stay providing that the interests of the prevailing party are secure. By paying into the court's registry the entire judgment amount against it and procuring a bond making up 25% of the judgment, TRA has actually made the prevailing party's interest even more secure than it would be if TRA had simply posted a bond. Ragland's contention that the court cannot hold the money judgment in its registry pending the outcome of an appeal is ludicrous and unsupported by law.

Ragland cites in his brief the case of Anderson v. T.G. Owen & Son, Inc., 231 Miss. 638, 97 So. 2d 369 (Miss. 1957), to support his contention that he should be able to immediately "cash in" on the money paid into the court's registry by TRA. Ragland's brief quotes part of the Anderson case stating that Mississippi law provides "A satisfaction of a judgment, entered of record by the act of the parties, is prima facie evidence that the creditor has received payment of the amount of the judgment or its equivalent, and operates as an extinguishment of the debt and a bar to further proceedings. . . ." Id. at 370. Reading this partial quote leaves one to question what kind of further proceedings are barred by satisfaction of a judgment. The complete quote from Anderson provides that satisfaction of a judgment "operates as an extinguishment of the debt and a bar to further proceedings which continue on the theory that the judgment remains a subsisting obligation. . ." Id. at 370-371 (emphasis added). We have no such proceeding in this case. The money plus appropriate interest has been paid into the court's registry removing any liens against TRA. The trial court then stayed execution on the money judgment pending appeal of this

action. Both these acts are in accord with Mississippi law ☐and<sup>2</sup> do ☐not<sup>3</sup> prejudice Ragland. Upon obtaining a judgment, one does ☐not<sup>4</sup> have an automatic right to collect that judgment as Ragland seems to assert, ☐but<sup>5</sup> merely has a right, as the prevailing party, to have his interest in that judgment secured while the appeal process runs its course.

**II. Mississippi public policy favors economic development ☐and<sup>6</sup> TRA's right to satisfy ☐and<sup>7</sup> cancel a judgment lien while still protecting its right to an appeal.**

Procedurally speaking, TRA only had one option in regard to the judgment against it since the real estate closings which would benefit the Tupelo community at large would have been adversely affected by an outstanding judgment lien against TRA. The only solution was to have the judgment lien removed from the judgment roles. Such a resolution could ☐not<sup>8</sup> be had by merely procuring a supersedeas bond. Instead, the judgment had to be satisfied as it was by TRA paying into the court's registry the money judgment against it. There is absolutely ☐no<sup>9</sup> law supporting Ragland's contention that the court does ☐not<sup>10</sup> have the power to retain that money during the appeal process. TRA has ☐no<sup>11</sup> interest in the money other than requesting that it stay in the court's registry pending the outcome of this appeal process. Ragland's interest is secure ☐and<sup>12</sup> TRA obtained the necessary benefit of removing the judgment lien ☐and<sup>13</sup> being able to go forward with the planned real estate transactions. Any other outcome would have severely prejudiced the City of Tupelo ☐and<sup>14</sup> gone against the general practice of making reasonable accommodations in an effort to promote public policy.

**III. Judicial estoppel is inapplicable to the issues raised by Ragland, as TRA has ☐not<sup>15</sup> changed its position with regard to the money judgment at issue.**

In its brief, Ragland states that "TRA was judicially estopped to say it was paying ☐and<sup>16</sup> then to say it was keeping." Ragland, p. 19. In fact, TRA is saying ☐no<sup>17</sup> such thing. TRA paid the money in question into the registry of the circuit court ☐and<sup>18</sup> has ☐not<sup>19</sup> reclaimed possession of the money in any way, despite what Ragland repeatedly proclaims. Ragland cites Richardson v.

Cornes, 903 So. 2d 51 (Miss. 2005), for the proposition that “because of judicial estoppel, a party cannot assume a position at one stage of a proceeding and then take a contrary stand later in the same litigation.” Judicial estoppel, however, is not applicable to the present situation. TRA did not pay the judgment against it into the registry of the trial court in order to have the judgment lien against it removed and then reclaim the money, as Ragland asserts. On the contrary, TRA paid the judgment against it to the court in order to secure the judgment creditor’s position during the pendency of this appeal while at the same time extinguishing the judgment lien against it.

TRA simply requested that any execution on the judgment which TRA has paid be stayed pending the outcome of this appeal. TRA has in no way subsequently exercised control over this money or used it to their benefit. Ragland’s theory is simply not a correct application of the doctrine of judicial estoppel. In Richardson, judicial estoppel was raised in order to prevent a party from taking the position that certain people were lawful beneficiaries during the pendency of a wrongful death suit [and] later filing a petition to disinherit several of the declared beneficiaries. [No] such “change in position” has taken place in the case *sub judice*, as TRA simply requested that the circuit court stay execution of the judgment which it had paid into the court’s registry. TRA is neither reclaiming the money [nor] taking a stand contrary to its previous position. Ragland’s assertion that the lower court’s ruling should be reversed based on the doctrine of judicial estoppel is inapplicable [and] should be disregarded by this Court.

**B. The trial court’s actions caused Ragland to suffer [no] harm [and] provided adequate protection to “the prevailing party” while removing the judgment lien against TRA [and] allowing the funds paid into the court to be used as security during appeal.**

While Ragland bemoans his perceived injustice by the court’s determination that the funds paid into the court [may] be used as security for TRA’s appeal, Ragland wholly fails to set forth any legal authority to support his position. While it is true that Ragland [may] have been

victorious at the trial level, that does nothing to extinguish the right of appeal by the other parties which may modify and/or change the outcome of the trial proceedings below.

In arguing the insufficiency of the security for TRA's appeal, Ragland poses the question to this Court of what should happen if the Supreme Court finds TRA liable for more money damages than that which was determined at the trial court level. Conversely, TRA poses the question to this Court of what would happen if TRA is determined to owe less or none of the money through the judgment against it at the trial court level. Under the latter scenario, should the funds residing in the court's registry be paid to Ragland prior to a determination by this appellate Court, then TRA would be faced with the onerous task of seeking to recoup the monies turned over to Ragland. Accordingly, the safest route for all parties concerned would be to abide by the trial court's ruling that the monies paid into the court by TRA should remain in the court's registry until such time as this Court has determined all issues on appeal herein.

Ragland's brief continually raises the allegation that he has suffered irreparable harm due to the fact that there it no longer possesses a judgment lien against TRA. Ragland argues that "... he has been forced to go forward in this post-judgment phase without the benefit of a judgment lien that was the procedural safeguard to ensure its payment." Ragland's Brief, p. 20. What does TRA's paying the entire amount of the judgment against it into the trial court's registry accomplish if it does not secure the judgment creditor's eventual payment if successful on appeal? Contrary to Ragland's contention, TRA has no present interest in or control over the "Fund" at issue. This money has been paid and is being held for the prevailing party's benefit upon completion of the appeal process just as a bond would function. Ragland claims to have suffered irreparable harm due to TRA's decision to actually pay the entire amount of the judgment against it into the court. If this does not secure payment, then what would? Would Ragland actually prefer to have a judgment lien and a bond rather than having its judgment

secured by having the actual money judgment paid into the court's registry? The payment of this judgment into the registry of the court obviously and sufficiently acts to "to preserve the status quo while protecting the judgment creditor's rights pending appeal" as stated in the comment to M.R.A.P. 8.

On one hand Ragland argues that TRA is somehow continuing to use the "Fund" to benefit its own purpose, while on the other hand acknowledging that "TRA did not retain any interest in the money it used to satisfy the judgment." Ragland Brief, p. 13. These arguments simply do not mesh. The trial court's stay of execution of a money judgment which has been granted pending this appeal is exactly what was intended by M.R.A.P. 8. TRA's payment of the entire money judgment into the trial court's registry and posting a supersedeas bond for an additional 25% has the exact same effect of protecting the prevailing party, even more so, than simply posting a supersedeas bond in the amount of 125% of the judgment against TRA. Ragland has suffered no irreparable harm and has been adequately protected as the "prevailing party", as he still would not have collected any money if his judgment had been secured solely by a supersedeas bond. Ragland's allegations are not founded in Mississippi law and should be wholly disregarded.

**C. The Circuit Court did not err in finding that TRA satisfied the requirements for posting an Appeal Bond by paying the entire money judgment against it into the registry of the court and posting a bond equal to 25% of the judgment against it.**

Ragland's brief states that "The lower court erred in permitting TRA to post a supersedeas bond in this case, but at the least, erred by letting TRA's funds serve to remove the judgment lien and also as an appeal bond." Ragland's Brief, p. 23. The money judgment which has been paid into the court's registry in this case is not an appeal bond, but has the same effect as far as securing the prevailing party's interest during the appeal process. Ragland correctly states that under Mississippi law, a supersedeas bond "does not destroy or dissolve liens or rights

acquired before the supersedeas was allowed.” Grayson v. Harris, 58 So. 775, 776-777 (Miss. 1912). Bonds do ☐not<sup>1</sup> extinguish judgment liens; actually paying the judgment into the court’s registry does. If TRA had merely posted a supersedeas bond of 125% of the judgment against it, the judgment lien would ☐not<sup>2</sup> have been removed from the records ☐and<sup>3</sup> TRA would ☐not<sup>4</sup> have been able to go through with its preexisting real estate obligations. This problem was solved simply when TRA, rather than posting such a bond, merely paid the money judgment ☐and<sup>5</sup> appropriate interest into the court (removing the judgment lien against it) ☐and<sup>6</sup> posted a bond for an additional 25%.

It is ☐not<sup>7</sup> a requirement that TRA post a supersedeas bond constituting 125% of the judgment against it in order to appeal, as Ragland seems to believe. In fact, according to Mississippi law, an appellant can satisfy the trial court’s judgment ☐and<sup>8</sup> take an appeal ☐without<sup>9</sup> giving a supersedeas bond at ☐all<sup>10</sup>. Jones v. State, 746 So. 2d 297, 300 (Miss. 1999); Yazoo & Miss. Valley R. Co. v. Adams, 78 Miss. 977, 985, 30 So. 44, 45 (1901) (“The statutory supersedeas operates only upon the process of the court; it stays execution, ☐and<sup>11</sup> that is its only office. In ☐all<sup>12</sup> other respects an appeal is as operative ☐without<sup>13</sup> as with a supersedeas.” (quoting Cohn v. Lehman, 93 Mo. 574, 6 S.W. 267, 271 (1887))). A defendant against whom a money judgment has been rendered ☐may<sup>14</sup> pay it ☐and<sup>15</sup> afterwards appeal. Currie v. Bennett, 111 Miss. 228, 71 So. 324 (Miss. 1916).

The purpose of a supersedeas bond is to ensure that a party affected by an appeal is sufficiently secure. In re Estate of Taylor, 539 So. 2d 1029, 1031 (Miss. 1989). It should insure the payment of the judgment and interest, and any waste that could occur pending the appeal. Id. If the appeal is affirmed, the appellee should be able to satisfy the payment of the judgment in full, together with costs, interest, and the damages for delay. Id. Such is the case before this Court. Ragland is secure in its judgment from the lower court. TRA has paid the entire money

judgment levied against it into the court along with interest and has posted a bond constituting an additional 25% of the judgment for additional security.

Moreover, it is important to note that although bonds are the typical means of giving an appellee this necessary security throughout the appeal process, the Court may also approve such security in the form of cash or property. Taylor, 539 So. 2d at 1031. The judgment may be secured in other ways such as the Court's taking possession of personal property or otherwise providing for a method to insure payment of the appellee's judgment. Id. This is exactly what has happened in the case *sub judice*. Ragland cannot claim that its interest in the judgment is not secure because the judgment has been paid and is in control of the trial court! This is more valuable than a bond. It almost seems as if Ragland wants TRA to pay the judgment against it and also obtain a supersedeas bond making up 125% of the judgment against it. Ragland argues that TRA is "appealing the trial Court decision by only posting 25% of the Judgment against it." Ragland Brief, p. 24. This is an absolute misapplication of the facts of this case. TRA has paid the judgment in whole in addition to posting the 25% bond. Ragland's interests are secure and his requested relief raised in this appeal should be denied.



## CONCLUSION

Ragland's argument that he should have been paid the money deposited by TRA into court has absolutely ☐no legal support ☐or justification. Ragland would have this court believe that by TRA's paying into the court's registry the judgment proceeds ☐and thereby having the judgment lien satisfied ☐and cancelled that Ragland was somehow prejudiced ☐or lost his judgment lien. However, Ragland holds something far better than a judgment lien on property situated in Lee County ☐or the security of a mere supersedeas bond. Instead, there are actual cash funds in an interest bearing account reflective of 100% of the entire judgment amount plus interest against TRA, along with a bond in the amount of 25% over the judgment amount to serve as security ☐and protect the holder of the judgment against TRA in this matter.

By paying the judgment proceeds into court TRA did ☐not waive ☐or abandon its right to appeal the judgment against it ☐and did ☐not hand over the judgment proceeds to any party, ☐but rather to the court. TRA has ☐no control over the judgment paid into the court as the court now has authority to direct use of said funds. However, TRA is entitled to rely on said funds as security for pursuing an appeal in this matter. Ragland has suffered ☐no more harm ☐or prejudice by TRA's depositing 100% of the judgment proceeds into the court's registry ☐and securing a supersedeas bond in the amount of 25% of the judgment amount than if TRA had posted an appeal bond for 125% of the judgment amount. Further, TRA should ☐not be faced with the untenable position of having to choose between removing a judgment lien in order to effect necessary economic development purposes ☐and pursuing legitimate issues on appeal arising from construction contract disputes.

Therefore, TRA requests that the Order denying Ragland's request to direct the Clerk to disburse the Fund to him ☐should be affirmed as well as the lower court's decision that TRA can


satisfy the requirements for posting an Appeal Bond by posting a bond equal to 25% of the judgment against it and paying the entire money judgment against it into the registry of the court.

Submitted, this the 7<sup>th</sup> day of December, 2006.

THE TUPELO REDEVELOPMENT AGENCY

By: 

GUY W. MITCHELL, III

MSB # 

WILLIAM G. ARMISTEAD, SR.

MSB # 

WILLIAM D. PRESTAGE

MSB # 

OF COUNSEL:

MITCHELL, MCNUTT & SAMS, P.A.  
105 S. FRONT STREET  
POST OFFICE BOX 7120  
TUPELO, MS 38802-7120  
(662) 842-3871

**CERTIFICATE OF SERVICE**


I, William D. Prestage, one of the attorneys for Tupelo Redevelopment Agency, do hereby certify that I have this day served a true and correct copy of the above and foregoing Brief of Appellant/Cross-Appellee Tupelo Redevelopment Agency, by depositing it in the United States Mail, properly addressed and first class postage prepaid as follows:

Thomas W. Prewitt, Esq.  
Post Office Box 2327  
Madison, MS 39130-2327

B. Sean Akins, Esq.  
Fortier & Akins  
108 E. Jefferson St.  
Ripley, MS 38663

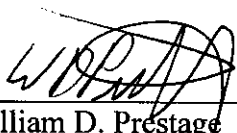
Honorable Thomas J. Gardner, III  
Lee County Circuit Judge  
Post Office Box 1100  
Tupelo, MS 38802-1100

Dated, this the 7<sup>th</sup> day of December, 2006.

  
\_\_\_\_\_  
William D. Prestage

**CERTIFICATE OF FILING**

I hereby certify that I have served via first-class, United States mail, postage prepaid, the original and three copies of the Brief of Appellant/Cross-Appellee Tupelo Redevelopment Agency and an electronic diskette containing the same on the 7th day of December, 2006, addressed to Ms. Betty W. Sephton, Clerk, Supreme Court of Mississippi, 450 High Street, Jackson, Mississippi 39201.

  
\_\_\_\_\_  
William D. Prestage