

**IN THE STATE COURT OF DEKALB COUNTY
STATE OF GEORGIA**

RACHEL ST. FLEUR, as Administrator of the Estate of EWELL YNOA, and wrongful death beneficiaries MORAIDA UBAREZ and FRANCISCO AURELIO, and XAVIER E. DIAZ, as Administrator of THE ESTATE OF GIOVAN L. DIAZ, by and through CRYSTAL RAMOS, as next friend of GIOVANA J. DIAZ, a minor child and wrongful death beneficiary,

Plaintiffs,

v.

SONY MUSIC HOLDINGS INC., and JOHNS DOE DEFENDANTS “1” through “13,”

Defendants.

CIVIL ACTION FILE
NO. 18A69571-1

**SONY MUSIC HOLDINGS INC.’S EMERGENCY MOTION FOR
SUPERSEDEAS**

By special appearance,¹ Defendant Sony Music Holdings Inc. (“SMHI”) moves the Court to stay enforcement of the December 15, 2022 judgment under O.C.G.A. §§ 15-6-9 and 15-7-43 until further order of the Court.

¹ By making a special appearance to file this motion to preserve its rights and avoid the impending execution of a judgment that SMHI intends to contest, SMHI specifically reserves and in no way intends to waive any objections it may have with respect to the jurisdiction of the Court (over the person of SMHI or otherwise), venue, or the sufficiency of process or service of process.

BACKGROUND

1. On December 15, 2022, following a default judgment and a trial on damages, the jury returned a verdict awarding the plaintiffs \$160 million in damages against SMHI. [*See* Dec. 15, 2022 Verdict].

2. That same day, the Court entered judgment upon the verdict, awarding the plaintiffs a staggering \$160 million in damages, plus post-judgment interest and court costs. [*See* Dec. 15, 2022 Judgment].

3. During the four-and-a-half year period that this case has been pending, SMHI was not provided notice of the motion for default judgment, the default judgment itself, the trial, the verdict, or the final judgment, even though service was effected on other parties. As a result, SMHI did not become aware of the entry of the judgment until December 20, 2022, after it had been publicized by the plaintiffs and reported in the news media. SMHI promptly retained the undersigned counsel on December 21, 2022, and SMHI and its counsel now are diligently reviewing the record in this case, evaluating SMHI's rights and obligations, and ascertaining how best to proceed in light of a \$160 million judgment entered in its absence. SMHI intends to file one or more post-judgment motions, or to take an appeal from the judgment, within the time permitted by law.

4. In accordance with O.C.G.A. § 15-6-9, SMHI respectfully requests that the Court issue an order granting supersedeas and staying enforcement of the judgment until further order of the Court. SMHI may suffer irreparable injury if

Plaintiffs are allowed to collect on the judgment before SMHI has had the opportunity to file and be heard on its post-judgment motions.

ARGUMENT

5. Neither execution upon a judgment nor any proceedings to enforce it may issue or commence until ten days following the entry of judgment. O.C.G.A. § 9-11-62(a). The purpose of this Code section “is to provide the party against whom a judgment has been entered the right to be free from execution and enforcement of the judgment for ten days in order to determine his future course of action, be it a post trial motion or an appeal.” *Landau v. Davis Law Group, P.C.*, 269 Ga. App. 904, 908 (2004) (holding trial court erred by ordering “at the time of the entry of its judgment that a writ of fieri facias shall be issued instantly”).

6. The filing of a motion for new trial acts as an automatic supersedeas and stays enforcement of the judgment, unless otherwise ordered by the court. O.C.G.A. § 9-11-62(b). The filing of a notice of appeal also serves as an automatic supersedeas, staying any enforcement of the judgment during the pendency of the appeal. O.C.G.A. § 5-6-46(a).

7. Trial courts also have authority and discretion to grant supersedeas generally, separate and apart from the automatic supersedeas that arises by operation of law. See O.C.G.A. § 15-6-9 (granting superior court judges authority to issues supersedeas); see also O.C.G.A. § 15-7-43(b)–(c) (“general laws and rules of practice, pleading, procedure . . . applicable to superior courts shall be applicable to and govern in the state courts” including “general laws applicable to the execution

and enforcement of judgments”). Thus, even absent automatic supersedeas under O.C.G.A. § 5-6-46(a) or § 9-11-62(b), nothing “preclude[s] an order of supersedeas by the trial court pursuant to its discretion under O.C.G.A. §§ 15-6-9 and 15-7-43.” *Scott v. Thompson*, 202 Ga. App. 746, 747 (1992) (holding trial court did not abuse discretion ordering supersedeas even though no notice of appeal had yet to be filed).

8. Where supersedeas has issued—whether by operation of law or by the general discretionary power of the court—any writ of fieri facias is rendered ineffectual, which negates the sheriff’s ability to levy upon the judgment debtor until the supersedeas dissolves. *See Landua*, 269 Ga. App. at 908; *Tanner v. Wilson*, 184 Ga. 628, 633 (1937) (“The general rule is that a supersedeas suspends all further proceedings in the suit in which the judgment superseded is rendered, such as are based upon and relate to the carrying into effect of that judgment.”). Therefore, should SMHI file a motion for new trial or a notice of appeal, or were the court to order supersedeas under O.C.G.A. § 15-6-9, then supersedeas would attach and SMHI would be protected against enforcement proceedings on the judgment during the pendency of such motion or appeal.

9. Here, under O.C.G.A. § 9-11-62(a), the plaintiffs could begin enforcing the judgment as early as December 25, 2022. But SMHI has additional time to file post-judgment motions or an appeal. *See generally* O.C.G.A. § 5-5-40 (motion for new trial due within 30 days of entry of judgment); O.C.G.A. § 5-6-38(a) (notice of appeal

due within 30 days of judgment); O.C.G.A. § 1-3-1(3) (providing for computations of time when a statutorily-imposed deadline falls on a weekend or legal holiday).²

10. For the following reasons, SMHI respectfully requests that the Court exercise its discretion and issue an order granting supersedeas so that SMHI may prepare its post-trial motions or appeal without fear that the December 15, 2022 Judgment will be enforced in the interim.

11. First, as SMHI expects to explain in its forthcoming motions, the Court lacks personal jurisdiction over SMHI in this case. Additionally, the judgment was entered in this case without notice to SMHI of the motion for a default judgment, the default judgment itself, the trial on damages, or the final judgment, which amounts to a denial of due process. That deprivation of SMHI's constitutional rights would only be exacerbated by execution on the judgment, and so a stay is necessary to avoid further deprivation of SMHI's rights.³

² In the event SMHI files a motion pursuant to O.C.G.A. § 51-1-3 (6) invoking the Court's inherent power to exercise its discretion to set aside or amend the Judgment before the end of the current term of court, SMHI would need to file that motion before the next term begins on or around January 2, 2023. *See Buckner v. Buckner*, 294 Ga. 705, 710 (2014) (“[T]he court’s inherent power, pursuant to OCGA § 15-1-3 (6), to exercise discretion to amend or set aside a judgment, which may be done for any meritorious reason, provided the motion to set aside is filed during the term in which the judgment was rendered.”); O.C.G.A. § 15-6-3 (37) (Stone Mountain Judicial Circuit terms of court).

³ This is all particularly problematic because SMHI would never have been subject to liability on the merits. As SMHI will show in its forthcoming motion to open default, plaintiffs mistakenly named SMHI as a defendant. SMHI (1) did not have any contractual relationship with Cousin Stizz, the artist performing at the concert where the subject shooting occurred, (2) had no involvement with the concert, and (3) is not the Sony entity engaged in the prerecorded music business. And, even if plaintiffs had sued the potentially “right” Sony entity (the entity that had a contractual relationship with the artist for his recording services), that record

12. Next, forcing SMHI to file perfunctory post-trial motions before or on the expiration of the 10-day automatic stay in O.C.G.A. § 9-11-62(a), simply to obtain supersedeas, would be unfairly prejudicial to SMHI, which only learned of the judgment on December 20, 2022 and did not retain counsel until December 21, 2022. It is unlikely that such motions could be adequately prepared given that SMHI needs time to review the official record in this case and any available transcripts in order to properly understand what transpired during this litigation. An order under O.C.G.A. § 15-6-9 would obviate the need for rushed, perfunctory motions that would unnecessarily waste the resources of the Court and the parties.

13. In sum, SMHI respectfully requests that the Court exercise its discretion and enter an order that preserves the status quo until SMHI can file motions that raise additional arguments for the Court's consideration or an appeal. Attached to this motion is a proposed order for the Court's consideration that enters supersedeas so as to stay enforcement of the December 15 judgment at least through and including January 17, 2022.

CONCLUSION

For the reasons explained above, the Court should exercise its discretion and enter an order granting SMHI supersedeas at least through and including January 17, 2022.

company did not plan, book, manage, receive any revenue from ticket sales, or supervise the artist's appearance or performance at that concert either.

Respectfully submitted this 23rd day of December 2022.

ALSTON & BIRD LLP

/s/ Keith Blackwell

Keith R. Blackwell
Georgia Bar No. 024493
Daniel F. Diffley
Georgia Bar No. 221703
Jason Rottner
Georgia Bar No. 678137
Fiona P. O'Carroll
Georgia Bar No. 442663
1201 W. Peachtree St., Suite 4900
Atlanta, GA 30309
Tel: 404.881.7000
Fax: 404.881.7777
keith.blackwell@alston.com
dan.diffley@alston.com
jason.rottner@alston.com
fiona.ocarroll@alston.com

*Counsel for Defendant Sony Music Holdings
Inc.*

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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that I have electronically filed the foregoing **MOTION FOR SUPERSEDEAS** with the Clerk of the State Court of DeKalb County through Odyssey E-File, which will automatically send electronic mail notification to all counsel of record.

This 23rd day of December, 2022.

/s/ Fiona P. O'Carroll

Fiona P. O'Carroll