

**COMMONWEALTH OF KENTUCKY  
FAYETTE CIRCUIT COURT  
FOURTH DIVISION**

**Civil Action No. 20-CI-00332**

*filed electronically*

**HAYNES PROPERTIES, LLC, et al.**

**PLAINTIFFS**

v.

**BURLEY TOBACCO GROWERS  
COOPERATIVE ASSOCIATION, et al.**

**DEFENDANTS**

**Settlement Class Representatives'  
Motion to, *inter alia*, Require an Appropriate *Supersedeas* Bond**

**NOTICE**

Please take notice that this Motion will be heard Friday, September 22, 2023, beginning at the hour of 10:00 a.m. or as soon thereafter as counsel may be heard.

**MOTION**

Plaintiffs / Settlement Class Representatives, through their attorneys (including Settlement Class Counsel), hereby move this Court to require that an appropriate *supersedeas* bond be given and if the Quarles Objector-Appellants will not, that they be required to pay for notice to electing Class members regarding any claim against funds to be distributed to them. Plaintiffs also request that the Quarles Objector-Appellants be required to pay the costs of the delay they have already caused in the distribution of \$853,773.55 to electing Class members. The Quarles Objector-Appellants should not be permitted to continue foisting on members of the Settlement Class the uncertainty, costs, and risks engendered by their appeal. In support of their Motion, Plaintiffs state as follows:

1. The Quarles Objector-Appellants filed a Notice of Appeal on June 26, 2023, from final and appealable Court orders denying motions by the W.H. Graddy and Associates firm and

its attorneys for an attorney-fee award. No *supersedeas* bond has been given by the Quarles Objector-Appellants, and no such bond has been approved by the Court or the clerk.

2. During the appeal, this Court retains original jurisdiction to “determine all matters relating to the right to file a supersedeas bond, the amount and sufficiency thereof, and the surety thereon.” RAP 63(C)(2).

3. This Court’s Order re Fund Disposition, entered August 4, 2023, became fully final on August 14, 2023. Per the Order:

- the payments and distributions directed therein are to be made as soon as feasible (§1); and
- \$855,773.55 is to be distributed by the Settlement Administrator to qualified, electing Class members (§6).

4. In the absence of an adequate *supersedeas* bond given by the Quarles Objector-Appellants, the 1881 electing Class members are entitled to distribution of a full share (\$453.89) as soon as feasible. Settlement Class Counsel and the Settlement Administrator were prepared to effect the distribution on August 18, 2023.

5. Attorneys Graddy and Friend, counsel for the Quarles Objector-Appellants, advised other parties’ counsel on August 17, 2023, of an intent to post a bond. They specified an intended bond amount below \$6000, which all other counsel expressly protested as insufficient.

6. At a noticed motion hearing on September 8, 2023, the Court ruled that the *supersedeas* bond (which was represented by the Quarles Objector-Appellants’ counsel to be in the works) be posted on or before Friday, September 15, 2023.

7. On September 15, 2023, attorney Friend filed a “Notice of Supersedeas Bond” referring to bonding “the \$99,325 in dispute in the appeal” and attaching a bond form filled out in the amount of **\$5950.50**, with Mr. Friend signing as principal and Mr. Graddy signing as surety

and stating that he is a Woodford County resident owning property whose net value is double the amount to be secured. For good measure, Mr. Friend failed to serve the Notice by email on other counsel or to list the names and addresses for mailed service on the unrepresented objectors.

8. There is no sign that the bond has been presented to or approved by the Court; therefore, there is no effective stay of the mandate to make a full distribution to each of the 1881 electing class members. *See* RAP 63(A)(1). The \$5950.50 amount is insufficient to pay even a fraction of the damages for the delay in distributing some portion of the \$855,773.55,<sup>1</sup> and withholding \$5950.50 from distribution today would be wasteful in that the costs to distribute it later will exceed that amount.

9. The Quarles Objector-Appellants and their counsel are flouting the Rules and this Court's orders, engaging in a pattern of unconscionable delay, and foisting on the electing Class members all the costs, uncertainty, and risks that they are causing. Plaintiffs request that the Quarles Objector-Appellants be given incentives to act promptly and with due regard for the interests of each electing Class member to be protected from any loss, damage, or diminution in the allotted share.

10. A *supersedeas* bond “maintains the status quo and protects the prevailing party’s interests.” *Stars Interactive Holdings (IOM) Ltd. v. Wingate*, 594 S.W.3d 181, 184 (Ky. 2020). “Filing a *supersedeas* bond ensures a successful appellee is compensated for damages ‘which otherwise would not have been suffered but for the appeal.’” *Strunk v. Lawson*, 447 S.W.3d 641, 651 (Ky. App. 2013) (quoting *Sotak v. Sotak*, 438 S.W.2d 490, 491 (Ky. 1969)).<sup>2</sup> The bond

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<sup>1</sup> This amount is less than one year’s interest at the 6% statutory rate on the “\$99,325 in dispute in the appeal,” which totals \$5959.50.

<sup>2</sup> The appellant (or stay proponent) bears the risk of uncertainty in the amount of resulting costs or damages when it is the stay “that prevents an exact determination....” *Brundige v. Sherwin-Williams Co.*, 551 S.W.2d 268, 271 (Ky. App. 1977) (injunction).

amount should be fixed at an amount such as will cover the amount remaining unsatisfied or the use and detention of identified property, together with costs, interest, and damages for delay. *See* RAP 63(B)(1)–(3).

11. If the Quarles Objector-Appellants do not give a supersedeas bond as provided in RAP 63 — in an amount to ensure that the electing Class members will be made whole from costs and damages caused by an unsuccessful appeal, presented and approved by a date certain fixed by the Court — then the 1881 electing Class members should be sent their entire shares forthwith. Neither appellants nor anyone benefiting from their appeal should have no right to later “claw back” any such share or portion thereof<sup>3</sup> unless, at the Quarles Objector-Appellants’ expense, notice is sent to each such Class member about the asserted claw-back claim, with the notice content and form directed or approved by the Court. The Court may require such notice to protect Class members and fairly conduct the action, by informing the electing Class of steps in the action and of claims about the extent of a fee-award judgment if there were a remand in the appeal. *See* CR 23.04(1)(b).

12. In addition, the Quarles Objector-Appellants must pay for the delay in the distribution of the full \$855,773.55, from August 18, 2018, to whenever the checks (for full or partial shares) are finally mailed out. It has already been more than four (4) weeks. At the statutory rate of 6% per annum, each week of delay equals \$1019.25. This damage from delay in the distribution should become due and payable from the Quarles Objector-Appellants at the time the checks are finally mailed out.

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<sup>3</sup> The Quarles Objector-Appellants may make such a claim, arguing by analogy: “[T]he party who executes on a judgment during the pendency of an appeal of the judgment does so at his or her own risk because, if the judgment is reversed, any benefits obtained by virtue of the execution must be restored to the adverse party.” *Elk Horn Coal Corp. v. Cheyenne Resources, Inc.*, 163 S.W.3d 408, 420 (Ky. 2005) (footnote 50 omitted).

WHEREFORE, Plaintiffs/Settlement Class Representatives respectfully request that the Court require an appropriate *supersedeas* bond and such other relief as may be necessary or useful to protect the interests of the Class.

Respectfully submitted,

/s/ Katherine K. Yunker

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served this 18th day of September 2023, upon counsel via the e-filing system and electronic mail and upon unrepresented persons via first class U.S. Mail, postage prepaid, as shown on the attached Service List.

/s/ Katherine K. Yunker

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