IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

WOLFE FOREIGN AUTO, INC. and MARK WOLFE, Individually,	)	
Appellants/Defendants,	)	
v.	)	C.A. No. CPU6-11-002277
ROBERT B. GROOMS and AMY PLUMMER	)	
Appellees/Plaintiffs.	)	

Submitted August 24, 2012
Decided September 27, 2012

James D. Griffin, Esquire, Attorney for Plaintiffs
John F. Brady, Esquire, Attorney for the Defendants

ORDER

Appellants filed this Motion for Release of Supersedeas Bond on July 2, 2012. At the Court's request, the parties filed briefs on August 23, 2012. After considering the parties' submissions, the Motion is denied.

Procedural History

On October 5, 2010, Robert Grooms and Amy Plummer (hereinafter "Appellees") filed suit in the Justice of the Peace Court seeking $2,710.00 in damages arising from the sale of a "lemon" vehicle. On September 16, 2011, the Justice of the Peace Court entered a money judgment in favor of the Appellees. On September 30, 2011, Wolfe Foreign Auto, Inc. and Mark Wolfe (hereinafter "Appellants") filed an appeal with this Court. The Commissioner set, and Appellants posted a supersedeas bond in the amount of $2,710.00 to stay the judgment of the Justice of the Peace. After a hearing on Appellees' Motion to Dismiss for which Appellants failed to appear, on February 22, 2012, the appeal was dismissed by the Court.

No further action was taken with regard to the posted supersedeas bond until July 2, 2012, when Appellants filed a motion for its return.

Discussion

The bond posted is this matter was required and set in accordance with Court of Common Pleas Civil Rule 62(c), which provides:

> ... in any civil action in which an appeal is taken from a lower court to the Court of Common Pleas, the Court of Common Pleas may, upon motion of the appellant, stay execution on the judgment appealed from and may as a condition of such stay require the appellant to post a supersedeas bond with surety or cash deposit. The amount of supersedeas bond or cash deposit shall be sufficient to pay the amount of judgment appealed from plus interest and court costs.[1]

"The primary purpose of the security, or supersedeas bond, is to protect the appellee from losing the benefit of the judgment through the delay or ultimate non-performance by the appellant."[2]

The Court dismissed the appeal due to Appellants' failure to appear and defend the motion, under 10 *Del. C.* **§ 9574(b)**. That section provides:

> If after entering an appeal, the appellant neglects to prosecute it, or fails to comply with any rule, or makes other default, so that in a like case, in any other suit in Court, a nonsuit, non pros., or judgment by default would be entered, the Court shall dismiss the appeal, and remit the record to the justice, and give judgment for the respondent for costs; whereupon the justice shall strike off the appeal.[3]

Appellants contend that, with the dismissal of the appeal, this Court now lacks jurisdiction to take further action in the matter, and therefore must return the supersedeas bond to Appellants. Appellees contend that since the purpose of the bond is to preserve the Appellees' benefit of the judgment below pending the appeal, the Court should remit the bond to them.

Although Appellants are correct that generally, the dismissal of an appeal divests the appeal court with any further jurisdiction over a matter, the answer to this procedural conundrum is found in 10 *Del.C.* **§ 9573, the companion statute to § 9574. That statute provides, in pertinent part, that "[w]henever**

[1] Ct.Com.Pl.Civ.R. 62(c).
[2] DiSabatino v. Salicete, 681 A.2d 1062, 1066 (Del. 1996).
[3] 10 *Del. C.* **§ 9574(b)**.

an appeal is struck off, the justice shall, upon application of the creditor, issue execution upon the judgment with the costs on the appeal added, *against both defendant and sureties,* as provided in §§ 9547 and 9548 of this title, respecting other sureties of record."[4] **(*Emphasis added.)* It is thus clear that, when an appeal is dismissed, the appellee may execute against the appeal surety posted by the appellant. Here, the surety was the cash supersedeas bond posted in the amount of the judgment below. In *Bayly v. Betts*[5], a third party personally signed as surety for the appellant's appeal. When the appeal was struck and the judgment below reinstated, the appellee executed against the property of the surety in Justice of the Peace Court. The Supreme Court affirmed the execution against the surety in Justice of the Peace Court, even though no judgment was entered against the surety in that Court.**[6]

If a third party appeal surety remains subject to execution on a stricken appeal, then a cash appeal bond posted on a stricken appeal also remains subject to execution. Since, however, the dismissal of the appeal returns the judgment in, and jurisdiction over this matter to the Justice of the Peace Court, the supersedas bond likewise must be returned to the Justice of the Peace Court, and there will be subject to execution by the Appellees.

Conclusion

For the foregoing reasons, Appellants' motion for return of supersedeas bond is **DENIED.** The bond shall be remitted to the Justice of the Peace Court for further proceedings.

IT IS SO ORDERED this _____ day of September, 2012.

Kenneth S. Clark, Jr.
Judge

[4] 10 *Del.C.* § 9573 (a).
[5] 493 A.2d 302 (Del. 1985)
[6] *Id.* at 304.