

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

SPECIALTY FINANCE GROUP, LLC,

Appellee, Plaintiff, and Counter-Defendant,

v.

MINOR FAMILY HOTELS, LLC and
HALSEY MINOR,

Appellants, Defendants, and Counter-Plaintiffs,

v.

HOTEL CHARLOTTESEVILLE, LLC and
LEE DANIELSON,

Third-Party Defendants.

Civil Action No. 2009 EV006754F

AFFIDAVIT OF INDIGENCE

STATE OF VIRGINIA)
)
COUNTY OF NORFOLK) ss:

COMES NOW, Halsey Minor, Appellant in the above-captioned matter, being duly sworn, deposes and says:

1. I am an Appellant, Defendant, and Counter-Plaintiff in the above-referenced matter. I submit this affidavit, pursuant to O.C.G.A. § 5-6-47, for the purpose of declaring that I am financially unable to post the supersedeas bond set by the Court in order to maintain the

supersedeas obtained, pursuant to O.C.G.A. § 5-6-46, by virtue of the filing of a notice of appeal, and the payment of costs for appeal.

2. By Order dated April 12, 2011, this Court granted the motion and cross-motion of Appellee, Plaintiff, and Counter-Defendant, Specialty Finance Group, LLC (“SFG”) for summary judgment and directed entry of judgment against both Minor Family Hotels, LLC (“MFH”) and myself, personally, in the amount of \$12,165,121.40 (the “**Summary Judgment Order**”).

3. On or about May 12, 2011, MFH and I filed a notice of appeal of the Summary Judgment Order. That same day, this Court issued a judgment in favor of SFG in the amount of \$13,364,298.77, representing the \$12,165,121.40 that the Court determined was due on the underlying loan and \$1,199,177.35 in attorneys’ fees (the “**Judgment**”).

4. On or about May 19, 2011, MFH and I filed an amended notice of appeal of the Judgment. I am informed by my attorneys that the filing of the notice of appeal of the Judgment, along with the payment of costs of the appeal, served to stay enforcement proceedings against me (the “**Supersedeas**”).

5. Prior to entry of the Judgment, on or about September 1, 2010, MFH filed a Chapter 11 Bankruptcy petition in the United States Bankruptcy Court, Western District of Virginia, Lynchburg Division (the “**Bankruptcy Court**”).

6. Following entry of the Summary Judgment Order, on or about May 3, 2011, SFG moved the Bankruptcy Court for relief from the automatic stay, and prior orders of the Bankruptcy Court, seeking permission to move this Court to lift the Supersedeas. By Order

dated July 20, 2011, the Bankruptcy Court denied the portion of SFG's motion seeking permission to file a motion to lift the supersedeas that applied to MFH but granted SFG's motion for permission to file a motion to lift the supersedeas that applied to me.

7. In granting, in part, and denying, in part, SFG's motion for leave to file a motion to lift the Supersedeas in this Court, the Bankruptcy Court "emphasized that the order ... only authorizes SFG to file a motion in the Georgia Court to lift the supersedeas against Mr. Minor. This Court does not by this order imply that the motion should be granted or denied. Nor does this court make any determination as to whether SFG should be permitted, under Georgia law, to enforce the Judgment, if the motion is granted."

8. On or about July 26, 2011, SFG moved this Court to lift the Supersedeas as it applied to me or to require me to post an appeal bond in the amount of \$11,264,298.77 in cash or cash equivalent (the "**Supersedeas Bond Motion**").

9. In support of the Supersedeas Bond Motion, SFG relied on a March 2011 appraisal (the "**March Appraisal**"), which it commissioned, which ascribed an "as is" value of \$2.1 million to the hotel property that secures the Judgment.

10. My attorneys opposed the Supersedeas Bond Motion on the grounds, *inter alia*, that the hotel property which secures SFG's Judgment is worth in excess of the amount of the Judgment, or, at least, far more than the \$2.1 million value referenced in the March Appraisal, so that the amount of the supersedeas bond should be significantly lower than the amount requested by SFG.

11. On or about August 9, 2011, this Court issued an order, granting the Supersedeas Bond Motion and ordering that “the supersedeas resulting from the notice of appeal filed by Defendants Minor Family Hotels, LLC (“MFH”) and Mr. Minor shall be lifted as to Mr. Minor, and Plaintiff SFG is hereby permitted to enforce the judgment entered in this case (the “Judgment”), and otherwise exercise any rights and remedies that it may have against Mr. Minor with respect to the Judgment under Georgia law, without further action from this Court, PROVIDED, however, that if, within ten (10) calendar days of the date of this Order, Mr. Minor posts with the Clerk of the State Court of Fulton County a bond in the amount of \$11,264,298.77 in cash or a cash equivalent (the “Bond”) then the supersedeas shall remain in effect.”

12. On my behalf, my attorneys have contacted several bond brokerage companies that specialize in finding parties to underwrite appeal bonds, in order to determine what would be required to post the Bond. Uniformly, the bond brokers have advised that in order to post the Bond, a surety would require collateral between 100% and 150% of the amount of the Judgment, and that the collateral would need to be in the form of cash, marketable securities, or a letter of credit from a well-known bank. In addition, a surety would charge a fee between 1% and 4% of the bond amount. We have been advised that sureties will not accept private securities or real estate as collateral in issuing a bond. See email chain, dated August 17, 2011 between my New York counsel, Joshua Sivin, Esq. and Lourdes Scheel, a Senior Underwriter from the Hyde Agency, a bond brokerage firm, annexed hereto as Exhibit A and an email, dated August

18, 2011 from and Douglas L. Rieder, President and Principal of Sterling Risk Advisors to my counsel of record in this action, Scott Ratchick, Esq., annexed hereto as Exhibit B.

13. As reflected in the August 18, 2011 email from Douglas Rieder, Sterling Risk Advisors (“**Sterling**”) contacted four different surety companies, The Hartford, International Fidelity Insurance Company, Great American Insurance Company and Argonaut Insurance Company, and each of them confirmed that collateral in an amount of between 100% - 150% of the Bond amount in the form of cash or an irrevocable letter of credit would be required to post an appeal bond. In some instances, readily marketable securities can serve as collateral; however, since securities have market risk, the collateral percentage would need to be higher by 25%-50%, if using this option. See Exhibit B. Sterling has further advised that sureties will not accept private securities or real estate as collateral in issuing an appeal bond.

14. As reflected in the August 17, 2011 email from Lourdes Scheel of The Hyde Agency, in order to post the Bond, The Hyde Agency would require collateral of 125% of the amount of the Judgment, and that the collateral would have to be in cash, a letter of credit, or, in some instances, for a higher fee, marketable, publicly-traded securities. See Exhibit A.

15. JW Surety Bonds has also advised (verbally) that cash collateral in an amount of 100% of the Judgment is required to obtain the Bond.

16. My assistant has also contacted my primary bank, Sun Trust Bank, and they have advised her that in order to obtain a letter of credit for the Bond amount, they would require 100% cash collateral.

17. I currently have less than 1% of the cash that would be required to post the Bond, and I do not presently own any publicly traded securities.

18. Based upon the foregoing, I am financially unable to post the Bond, as I do not have sufficient cash or other liquid assets to serve as security for the Bond.



HALSEY MINOR

County/City of NORFOLK
Commonwealth/State of VIRGINIA
The foregoing instrument was acknowledged
before me this 18TH day of AUGUST,
2011, by:
HALSEY MINOR
(name of person seeking acknowledgement)
Notary Public [Signature]
My commission expires: 12-31-13

