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SUPERIOR COURT OF THE STATE OF ARIZONA
COUNTY OF MARICOPA

FIERCE INVESTMENTS, LTD.,

Plaintiff,

v.

**AZTEC COPPER INC., an Arizona
corporation;**

Defendants.

Case No.: CV2018-006866
Case No.: CV2019-005943

**DEFENDANT'S MOTION
PURSUANT TO RULE 7, ARCAP:
(1) TO STAY EXECUTION; AND
(2) TO SET SUPERSEDEAS
BOND**

(Assigned to the Honorable
Christopher Whitten)

Defendant Aztec Copper Inc. ("Aztec Copper") moves this Court pursuant to Rule 7, Arizona Rules of Civil Appellate Procedure ("ARCAP") to (1) stay execution of its Order of September 3, 2019, and (2) set an amount for a supersedeas bond to be posted by Defendant.

A Memorandum of Points and Authorities is filed concurrently with this Motion.

DATED this 17th day of September 2019.

STEPHEN C. RICH, PLLC

By /s/ Stephen C. Rich

Stephen C. Rich
3401 East Elwood, #101
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Attorneys for Defendant

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **Supersedeas Bond**

3 Rule 7(a)(1), ARCAP, provides that a supersedeas bond may be filed to stay
4 enforcement of a judgment so that an appeal may be pursued. It also provides that the
5 bond may be filed before or after filing a notice of appeal.

6 Rule 7(a)(2), ARCAP, provides that the amount of a supersedeas bond may be set
7 by stipulation or motion, and that filing of a motion with the superior court for a
8 supersedeas bond temporarily stayed enforcement of, or execution on, the judgment with
9 the same effect as described in Rule 7(b), ARCAP, until the superior court has either
10 denied the motion or set the bond amount and provided appropriate time for posting the
11 bond. Unless the motion is uncontested, the superior court must set a hearing on a motion
12 to set a bond.

13 Since the Court's judgment is not a monetary judgment or for recovery of
14 property, Rule 7(a)(6), ARCAP, governs the setting of the bond. This Rule provides that
15 if the judgment includes an injunction or relief other than an award of money or recovery
16 of an interest in property, the superior court must determine the amount of the bond, if
17 any, that the requesting party must post.

18 Rule 7(a)(6) further provides that subject to Rule 7(a)(9), the superior court should
19 consider the bond or other orders needed to adequately protect the adverse party against
20 losses or damages it is likely to suffer if the judgment is affirmed and to preserve the
21 status quo or the effectiveness of the judgment.

22 **Stay of Execution on Judgment**

23 Rule 7(b)(1) provides that if a party requesting a stay files a supersedeas bond as
24 ordered by the court, this Rule automatically stays enforcement of, and execution on, the
25 judgment. The stay remains in effects until issuance of the appellate court's mandate,
26 dismissal of the appeal or as otherwise ordered by the court.

27 **Appointment of Receiver**

28 The Court has appointed a receiver in this matter. Pursuant to Rule 62(a), Arizona Rules
of Civil Procedure ("ARCP") every judgment is stayed for 15 days following entry unless

1 the court orders otherwise. Likewise, Rule 62(d) provides that an interlocutory or final
2 judgment for an injunction or receivership is not stayed after being entered.

3 **THIS COURT'S RULING SHOULD BE STAYED**

4 According to Rule 7(a) ARCAP, once a party seeking to have the court set the
5 amount of a supersedeas bond files that motion for such in the superior court, a stay is
6 automatic until the court rules on the motion. The automatic 15 day stay of Rule 62,
7 ARCP, does not apply to a receivership. However, the automatic stay of Rule 7(a),
8 ARCAP, does apply.

9 The requested stay in this motion does not harm the Plaintiff as the Receiver has
10 not yet noticed an annual meeting. Waiting for the appeal to be completed doesn't
11 change the status quo. A supersedeas bond could insure that Plaintiff is protected.

12 **THE SUPERSEDEAS BOND SHOULD BE *DE MINIMUS* BECAUSE
13 PLAINTIFF HAS NO DAMAGES CAUSED BY A STAY OF THE JUDGMENT**

14 Rule 7(a)(6) provides that the considerations of the superior court in determining
15 the amount of the bond should be to protect the plaintiff from damage caused if the
16 judgment is affirmed and to preserve the status quo or the effectiveness of the judgment.
17 Here, if the judgment is affirmed, Plaintiff will experience no damage. In addition,
18 unless the appeal results in a reversal of the decision, the status quo and effectiveness of
19 the judgment are also preserved.

20 Given the lack of damage and the preservation of the status quo, any supersedeas
21 bond should be *de minimus*.

22 **CONCLUSION**

23 Once a party moves this court to set the amount for a supersedeas bond, the matter
24 is automatically stayed pending a ruling on that motion. This court is directed to set the
25 amount of the bond based upon protection of the adverse party against loss and damage
26 likely to be experienced if the judgment is ultimately affirmed on appeal. Likewise, the
27 court should take into account preservation of the status quo or the effectiveness of the
28 judgment.

Defendant Aztec Copper is not asking for any remedy other than a stay to allow
the Court of Appeals to consider the appeal. Accordingly, since there will be no damage

1 to Defendant, this court should set a bond amount that is *de minimus*.

2 DATED this 17th day of September 2019.

3 STEPHEN C. RICH, PLLC

4
5 By /s/ Stephen C. Rich

6 Stephen C. Rich
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10 ORIGINAL OF THE FOREGOING MAILED

11 This 17th day of September 2019 to:

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