

STATE OF INDIANA) IN THE [REDACTED]
)SS:
COUNTY OF [REDACTED]) CAUSE NO.: [REDACTED]

[REDACTED])
)
Petitioner,)
)
v.)
)
[REDACTED])
Respondent,)
)
and)
)
[REDACTED])
Intervenors.)

VERIFIED RENEWED MOTION TO STAY ENFORCEMENT OF THE ORDER OF [REDACTED] AS TO ATTORNEY FEE AND EXPENSE AWARD AND RESPONSE TO ATTORNEY [REDACTED]'S FILINGS

Comes now Intervenors, [REDACTED] in person and by Counsel, Bryan Ciyou, and hereby file their Verified Renewed Motion to Stay Enforcement of the Order of [REDACTED] as to Attorney Fee and Expense Award and Response to Attorney [REDACTED]'s Filings, and in support thereof, would show the Court as follows:

1. That on or about [REDACTED] the Court entered its Findings of Fact and Conclusions of Law and Judgment (the "Order").
2. That, pursuant to the Order, attorney [REDACTED] was awarded attorney fees in the amount \$27,614.78.
3. That, on or about [REDACTED], [REDACTED] (collectively "Intervenors") filed their Notice of Appeal with respect to the attorney fee award, which was taken as an interlocutory appeal by right under Ind. App. R. 14(A)(1).

4. That on or about [REDACTED] this Court issued an Order to Reduce Sanctions to a Judgment.
5. That on or about [REDACTED] Intervenor's filed their Motion to Stay Reduction to Judgment and the Enforcement of the Order of [REDACTED] as to Attorney Fee and Expense Award ("Motion to Stay").
6. That Intervenor's evidenced good faith and a basis for a stay by indicating in their Motion to Stay that they are prepared to post an appeal bond or a letter of credit.
7. That on or about [REDACTED] Attorney [REDACTED] filed her Response to Intervenor's Motion to Stay ("Response").
8. That, in Attorney [REDACTED]'s Response, she indicates that "[o]n [REDACTED], counsel for [REDACTED] sent an email to counsel for the [REDACTED] identifying the amount of a bond that would be needed for [REDACTED] to agree to a stay." (paragraph 8, Attorney [REDACTED]'s Response).
9. That Attorney [REDACTED], presumably, included this statement to show her willingness to work with Intervenor's, but this is simply not the case.
10. That, in fact, the email received from Attorney [REDACTED]'s counsel indicated that the way Attorney [REDACTED] would agree is if Intervenor's posted "an appropriate bond or letter of credit, consisting of the judgment, interest for the next 3 years, and our reasonable attorney's fees on appeal."¹
11. That, clearly, Attorney [REDACTED] had no intention of working out an agreement with Intervenor's, but instead, sent an unreasonable demand and then attempted to spin it

¹ Appellate attorney's fees are rarely awarded. (*see, In re Moeder*, 27 N.E.3d 1089 (Ind. Ct. App. 2015) "[i]n considering a request for appellate attorney's fees, we use extreme restraint because of the potential chilling effect upon the exercise of the right to appeal.")

to the Court as Attorney [REDACTED] was acting in good faith but the Intervenor's refused to work with her.

12. That, in addition to the Response, Attorney [REDACTED] also filed two (2) Verified Motions for Proceeding Supplemental and Notice and Interrogatories to Garnishee-Defendant [REDACTED] ("Motion for Proceeding Supplemental") after Intervenor's filed their Motion to Stay.
13. That Attorney [REDACTED]'s Motion's for Proceeding Supplemental are premature for two reasons.
14. That, first, there is no indication that Intervenor's are unwilling or unable to pay the attorney fee award if this matter is not reversed on appeal.
15. That, to the contrary, Intervenor's Motion to Stay indicated their willingness to post an appeal bond or letter of credit.
16. That, second, the award is being appealed, and as such, has the potential to be reversed.
17. That, as has long been held, "a reversal of the underlying judgment nullifies the proceedings supplemental." *Lewis v. Rex Metal Craft, Inc.*, 831 N.E.2d 812 (Ind. Ct. App. 2005).
18. That, as such, it would be in contradiction to the promotion of judicial economy to hold a proceedings supplemental as same could become moot depending on the outcome of the appeal, as well as result in the [REDACTED] needing to then bring proceedings to disgorge money from Attorney [REDACTED] if they prevail on appeal.

19. That Intervenor's respectfully request a stay of enforcement of the award pending the outcome of the appeal, as same promotes judicial economy and is within this Court's authority pursuant to Indiana Trial Rule 62(D).

20. That Intervenor's are willing to post the entire award amount of \$27,614.78 with the Clerk of the Court pending the appeal.

WHEREFORE, Intervenor's, in person and by Counsel, Bryan Ciyou, respectfully requests this Court stay enforcement of the award pending appeal, recognize that Intervenor's will post the full award amount of \$27,614.78 with the Clerk of the Court during the pendency of the appeal, and for all other relief just and proper in the premises.

Respectfully Submitted,

CIYOU & DIXON, P.C.

/s/ Bryan L. Ciyou

Bryan L. Ciyou, Attorney # 17906-49

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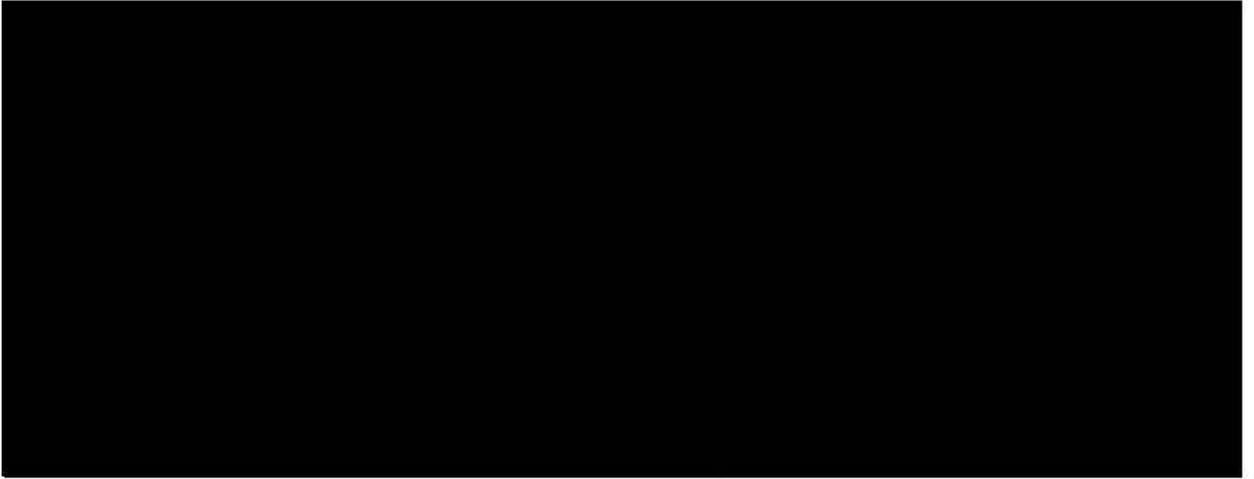
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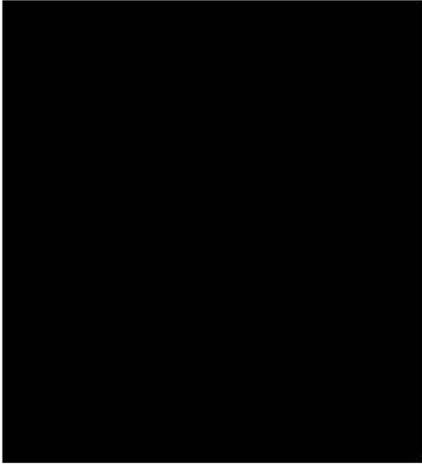
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VERIFICATION



CERTIFICATE OF SERVICE

I hereby certify that on [REDACTED] I electronically filed the foregoing document(s) with the Clerk of the Court using the Indiana E- Filing System (IEFS) and sent notification of such filing to the following parties or attorneys who are registered for electronic filing and service in [REDACTED]



/s/ Bryan L. Ciyou
Bryan L. Ciyou

Distribution:

Bryan L. Ciyou

