

IN THE CHANCERY COURT FOR LEWIS COUNTY
AT HOHENWALD, TENNESSEE

In re:

SENTINEL TRUST COMPANY

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) No. 4781
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FILED
AT 12:01 O'CLOCK P.M.

MAY 03 2006

Movants' Brief in Support of their Motion for Stay of Final Judgments Entered April 12, 2006
JANET WILLIAMS, CLERK & MASTER
BY Selena Wix

Every such motion as this addresses itself to the Court's sound judicial discretion, and Movants have requested that the Court rule upon this motion without oral argument unless the Court desires such argument or unless counsel for one of the respondents shall insist upon it.

Appeal is obviously essential in this case because it is the only possible way to prevent the Court's aforesaid judgments from becoming final. Attempted competent appellate representation¹ requires losing counsel to try to avoid absolute finality so as to prevent the block of *res judicata* from interfering with appellate review of prior final judgments upheld by the Court of Appeals, *In re: Sentinel Trust Company. Sentinel Trust Company v. Lavender*, 2005 Tenn.App.LEXIS 841 (December 29, 2005), and presently before the Supreme Court on Application for Permission to Appeal.

The sale of Sentinel's valuable building is particularly an approval judgment meriting

¹ In another factual situation, the U. S. Supreme Court said of the duties of counsel at the appellate level: "... Nominal representation on an appeal as of right . . . does not suffice to render the proceedings constitutionally adequate; a party whose counsel is unable to provide effective representation is in no better position than one who has no counsel at all." *Evatts v. Lucey*, 469 U.S. 387, 396, 105 S. Ct. 830, 836, 83 L. Ed. 2d 821 (1985).

appellate review, because the putative purchaser agreed to buy for \$450,000.00 a building designed particularly for financial institution uses and built at a cost of approximately \$1,000,000.00 (Motion, Bates Affidavit), such purchaser is chargeable with notice and is bound to have actual notice that the legality of the seizure and sale of the building has long been sincerely contested, and by "bidding" on a building whose sale was subject to court approval, such bidder became subject to any judgment this court or a reviewing court might make.

The procedural rules cited in the motion make it clear that a case may be appealed upon the pauper's oath, Rule 62, T.R.Civ.P., and Rule 18, T.R.App.P. These necessarily invoke the underlying statutory authority, T.C.A. § 20-12-127, which provides for filing a civil action "without giving security as required by law for costs and without the payment of litigation taxes . . ." upon filing the required oath of present inability to pay such amounts, with the effect that such oath "does not relieve the person filing the action from responsibility for the costs or taxes but suspends their collection until taxed by the court."

Although this speaks of filing a "civil action," the statute has always been construed as equally authorizing the filing of an appeal on the pauper's oath, *Scott v. Brandon*, 125 Tenn. 314, 143 S.W. 601 (1911); 1 TENN.JUR., *Costs*, §§ 12, 65. When the statute formerly denied the right to sue on the pauper's oath for some types of cases, such as defamation and malicious prosecution, unsuccessful parties even in those types of cases always have been entitled to appeal on the pauper's oath, *Heatherly v. Bridges*, 48 Tenn. 220 (1870). The object of this statute has always been to keep the courts open by putting the weak on the same level as the powerful in seeking justice before Tennessee's courts, *Fiske v. Grider*, 171 Tenn. 565, 106 S.W. 553 (1937). The oaths taken by these movants are clearly legally adequate, *Nicholson Co. v. Transcon Inv.*, 595 S.W.2d 474 (Tenn., 1980).

In urging the Supreme Court of Tennessee to grant Appellants the right to appeal from the judgment of the Court of Appeals referenced above, these movants said that "... the U. S. District Court declined to exercise jurisdiction solely because of comity respect for Tennessee, saying, in part, 'The higher appellate courts of Tennessee, and ultimately the United States Supreme Court, will be the final arbiters of the construction and interpretation of the Tennessee banking statutes at issue in this case.' *Sentinel Trust Co., et al., v. Lavender*, 2004 U.S. Dist. LEXIS 27259 at *29. That prediction cannot come true as to Tennessee courts unless this Court shall review this case and the

