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SEE TX R RAP RULE 47.2 FOR DESIGNATION AND SIGNING OF OPINIONS.

Court of Appeals of Texas, Houston (14th Dist.).

[TEXAS BLACK IRON, INC.](#), Stephen M. Yamin, Sr. and Mary Ann Yamin, Appellants

v.

[NORTH AMERICAN INTERPIPE, INC.](#), Appellee

NO. 14-20-00068-CV

|

Opinion on Motion filed July 28, 2020

On Appeal from the 113th District Court, Harris County, Texas, Trial Court Cause No. 2017-39172

Attorneys and Law Firms

[Timothy Ray Hightower](#), [D. Todd Smith](#), for Appellee.

[Robert M. Corn](#), for Appellants.

Panel consists of Chief Justice [Frost](#) and Justices [Christopher](#) and [Jewell](#).

MEMORANDUM OPINION ON MOTION

[Tracy Christopher](#), Justice

*1 Appellants Texas Black Iron, Inc. (TBI), Stephen M. Yamin, Sr., and Mary Ann Yamin moved for review of the trial court's net worth determination in connection with supersedeas of the judgment. *See* [Tex. R. App. P. 24.4](#). This court issued an order staying execution of the judgment pending disposition of the motion. Appellee North American Interpipe, Inc. (NAI) responded to the motion at our request. We grant in part and deny in part the motion and lift our stay.

BACKGROUND

The underlying dispute arises from TBI and Stephen's agreement to buy oil and gas casing from NAI. A jury made several findings in favor of NAI, including:

- TBI and Stephen breached a contract with and committed fraud against NAI;
- TBI, Stephen, and Mary Ann fraudulently transferred various assets and were part of a conspiracy that damaged NAI;
- Stephen and Mary Ann were each responsible for the conduct of TBI; and
- TBI, Stephen, and Mary Ann each committed their tortious conduct with malice, such that exemplary damages should be assessed against each of them.

The trial court signed a judgment on the jury's verdict, awarding NAI compensatory damages of \$325,157.60 and all taxable costs from TBI, Stephen, and Mary Ann, jointly and severally. The judgment also awards NAI exemplary damages, attorneys' fees, and prejudgment interest, but those awards need not be superseded and will not be discussed in this opinion.

To suspend enforcement of the judgment, TBI, Stephen, and Mary Ann each deposited \$200 into the court's registry and filed affidavits claiming negative net worth. NAI contested each appellant's claimed net worth. Following discovery, the trial court heard NAI's contest over the course of two days.

The trial court signed an order sustaining the contest (the Order). The Order includes findings that (1) TBI, Stephen, and Mary Ann each failed to satisfy the burden to prove their net worth, and (2) from the evidence presented, the court was unable to determine the net worth of TBI, Stephen, or Mary Ann or to state with particularity any factual basis for such determination. The trial court set a supersedeas bond for each appellant of \$355,562.37, which comprises the compensatory damages awarded in the judgment, interest on that amount for the estimated duration of the appeal, and costs awarded in the judgment. The Order also enjoins TBI, Stephen, and Mary Ann from dissipating or transferring assets to avoid satisfaction of the final judgment.

Appellants filed a motion for review of the Order. They also asked that we stay enforcement of the Order and stay execution on or enforcement of the final judgment. This court stayed the Order in its entirety except the injunctive portion, which we modified.


ANALYSIS

I. Legal standards


The amount of security necessary to supersede a money judgment must equal the sum of: (1) the amount of compensatory damages awarded in the judgment; (2) interest for the estimated duration of the appeal; and (3) costs awarded in the judgment. [Tex. R. App. P. 24.2\(a\)\(1\)](#). The amount of the security may not, however, exceed the lesser of (1) 50 percent of the judgment debtor's net worth or (2) \$25 million. [Tex. R. App. P. 24.2\(a\)\(1\)\(A\), \(B\)](#).


*2 A judgment debtor who provides a bond or deposit based on net worth simultaneously must file an affidavit that states the debtor's net worth and states complete, detailed information concerning the debtor's assets and liabilities from which net worth can be ascertained. [Tex. R. App. P. 24.2\(c\)\(1\)](#). A judgment creditor may file a contest to the debtor's claimed net worth and may conduct reasonable discovery concerning net worth. [Tex. R. App. P. 24.2\(c\)\(2\)](#).



Following discovery, the trial court must hold a hearing on the contest. [Tex. R. App. P. 24.2\(c\)\(3\)](#). The judgment debtor bears the burden to prove net worth. *Id.* The trial court must issue an order that states each judgment debtor's net worth and states with particularity the factual basis for that determination. *Id.*; *In re Smith*, 192 S.W.3d 568, 569 (Tex. 2006) (orig. proceeding) (per curiam). Net worth is calculated as the difference between total assets and total liabilities as determined by generally accepted accounting principles. *Ramco Oil & Gas, Ltd. v. Anglo Dutch (Tenge) L.L.C.*, 171 S.W.3d 905, 914 (Tex. App.—Houston [14th Dist.] 2005, no pet.).

On the motion of a party, an appellate court may review the sufficiency or excessiveness of the amount of security. *See Tex. R. App. P. 24.4(a)*. We review the trial court's determination of the amount of security for an abuse of discretion. *See Hunter Bldgs. & Mfg., L.P. v. MBI Global, L.L.C.*, 514 S.W.3d 233, 236 (2013); *Ramco*, 171 S.W.3d at 910. Generally, the test for abuse of discretion is whether the trial court acted without reference to any guiding rules and principles or whether the trial court acted arbitrarily and unreasonably. *See*  *McDaniel v. Yarbrough*, 898 S.W.2d 251, 253 (Tex. 1995). The trial court abuses its discretion if the evidence is legally or factually insufficient to support its findings. *See In re Smith*, 192 S.W.3d at 570; *Ramco*, 171 S.W.3d at 910. The appellate standards of review for evidentiary sufficiency are as follows:

- **Legal sufficiency.** We consider all of the evidence in the light most favorable to the challenged finding and indulge every reasonable inference that would support it. We must credit favorable evidence if a reasonable fact finder could and disregard

contrary evidence unless a reasonable fact finder could not. Finally, we must determine whether the evidence before the court would allow reasonable and fair-minded people to find the facts at issue.  *City of Keller v. Wilson*, 168 S.W.3d 802, 822 (Tex. 2005); *Ramco*, 171 S.W.3d at 910.

- **Factual sufficiency.** We examine the entire record, considering the evidence both in favor of and contrary to the challenged finding. *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986) (per curiam); *Ramco*, 171 S.W.3d at 910. We set aside the fact finding only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.  *Pool v. Ford Motor Co.*, 715 S.W.2d 629, 635 (Tex. 1986); *Ramco*, 171 S.W.3d at 910.

In conducting our review of both the legal and factual sufficiency of the evidence, we are mindful that the trial court, as fact finder, is the sole judge of the credibility of the witnesses and the weight to be given their testimony.  *City of Keller*, 168 S.W.3d at 819; *Ramco*, 171 S.W.3d at 910. We may not substitute our judgment for the fact finder's, even if we would reach a different answer on the evidence.  *Maritime Overseas Corp. v. Ellis*, 971 S.W.2d 402, 407 (Tex. 1998).

*3 To show the trial court abused its discretion due to insufficient evidence, the judgment debtor must show the evidence conclusively establishes, as a matter of law, all vital facts in support of the debtor's position. *Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 241 (Tex. 2001) (per curiam); *Ramco*, 171 S.W.3d at 910.

II. Evidence

Stephen and Mary Ann testified at the net-worth hearing, as did two certified public accountants: Steven Hardy for appellants and Michael Turner for NAI. Admitted documentary evidence included the balance sheet of TBI and personal financial statements of Stephen and Mary Ann, as well as various bank statements, credit card statements, contracts, and judgments alleged to support the balance sheet and personal financial statements.

A. Explanation of GAAP and net worth

Throughout the hearing, the trial court heard testimony from both accountants regarding GAAP and calculation of net worth.

GAAP-required elements. Turner said a “simplified explanation” of the GAAP components for an entity are (1) the balance sheet, which is “the financial position at a particular point in time, composed of assets, liabilities, and the resulting equity or net worth”; (2) the income statement, sometimes referred to as “profit and loss,” which “flow[s] into the ‘equity’ section of the balance sheet; (3) the cash flow statement; (4) the equity statement, which can be in the balance sheet or separate, and “addresses the initial capitalization, retained earnings, and ... the net income or loss” for the reporting period; and (5) the notes and disclosures regarding the composition and basis for valuation of the assets and liabilities. For an individual, Turner testified, the same principles apply except that an individual's assets are reported based on the assets' present, fair market value, whereas an entity's assets are reported based on the assets' historical value.

Hardy, on the other hand, opined that GAAP does not require an income statement, cash flow statement, equity statement, or notes and disclosures. He did not state the basis for his opinion. He also disagreed that net worth is calculated as the difference between the party's total assets and total liabilities as determined by GAAP.

Disclosure of relationship between transacting parties. The accountants disagreed as to the extent to which GAAP requires disclosure of related parties in significant transactions. Turner opined that when an entity owns and/or controls more than 50 percent of another entity with which it is transacting, there is the “possibility for manipulating financial transactions that will make one corporation look less profitable or valuable than the other.” Due to that “propensity for fraudulent transfers,” Turner asserted, transactions between related parties need to be disclosed in detail. Hardy said simply that relationships between entities

must be disclosed on audited financial statements but not on unaudited financial statements. Turner and Hardy agreed that audited financial statements are not required for purposes of superseding a judgment.

Disclosure of assets with “no value.” In Hardy's opinion, it would “serve no purpose to disclose” an asset with no value. Turner did not disagree with that assertion, but he pointed out that it may not be clear whether an asset has no value. For example, he said, the appraisal value of an entity (the amount for which it could be sold) is “rarely” the same as the entity's book value (its net worth). Turner testified an appraiser would look at “more modern, present-day numbers,” would have to “allow for negotiation,” and would have to consider many other factors.

***4 Reliability of QuickBooks results.** Both accountants testified that QuickBooks, the accounting software package appellants used to generate financial statements, is reliable and GAAP-compliant. They both also acknowledged that any statement produced by QuickBooks is only as good as the data on which it is based. Turner described the principle as “garbage in, garbage out.”

B. TBI

Stephen, TBI's president, testified about the company's balance sheet. He said he relies exclusively on QuickBooks with respect to TBI's financial statements. A bookkeeper inputs the financial information into QuickBooks, and Stephen reviews the entries to make any necessary corrections. He testified he would not remove an entry but would move it into the correct category. He said he did not have formal accounting experience, just what he gleaned from 55 years as a businessman.

TBI's balance sheet as of December 31, 2019 identified two assets totaling just over \$31,000: roughly \$135 in a bank account and the rest in inventory. Liabilities were said to total roughly \$4.87 million. The liabilities included a 2017 judgment against the company for approximately \$1.88 million, a loan from “Crown” of roughly \$1.56 million, the judgment in this case for just over \$1.4 million, and payroll liabilities of around \$27,000. The difference of assets minus liabilities, according to the balance sheet, is approximately negative \$4.84 million. Stephen testified the balance sheet contained full and complete lists of TBI's assets and liabilities.

Hardy testified TBI's balance sheet appeared to be GAAP-compliant. He acknowledged he did not prepare the balance sheet or review the data on which it was based; his opinion was merely that the balance sheet looked like a GAAP-compliant balance sheet should look.

Turner's report and his testimony included lengthy discussions about the problems with TBI's balance sheet. His overarching criticism of the balance sheet was its many omissions. He testified a balance sheet may not be supplemented orally; the balance sheet needs to include all necessary information for it to be considered complete.

Related entities. Turner discovered 24 entities on the Texas Secretary of State's website that were started, owned, or controlled by appellants. Of the 24, TBI and four more were described as active. Turner said he had seen evidence of transactions in the general ledger between TBI and some of those entities that did not appear to be arms-length and had not been disclosed or submitted “with any amount of accuracy or credibility.” Failure to disclose related entities under these circumstances, he said, is a “badge of fraud.” Responding to that assertion, Stephen did not deny those entities were active but testified they had no operations or assets.

Assets. TBI's claim of \$31,000 in assets was significantly lower than the claim in TBI's previous statements of \$4.8 million in assets. Turner found it incredible that TBI could have experienced such a dramatic reduction in assets. Even if it had, Turner explained, the \$4.8 million in assets were subject to secured loans, so those loans should have been reduced by the disposition of those assets. That TBI's balance sheet did not reflect a reduction in the loans was another badge of fraud.

Liabilities. Turner was troubled by the inadequate documentation to support the balance sheet's claim of nearly \$3.5 million in liabilities besides the judgment in this case. For example, there no was proof that the \$1.88 million judgment from the other

case remained unpaid or that the parties had not settled for a lesser amount. As for the loan from “Crown,” Turner contended the identity of “Crown” was unclear but important, because TBI owns 50 percent of a “Crown” entity (Crown Iron, LLC). If the loan transaction was between TBI and a related entity, that information must be disclosed. Further, Turner opined, merely describing a liability as a “loan” does not provide sufficient information to assess the dollar value of that liability:

*5 If the loans are actually a result of some Guarantee Agreement, then that is a [c]ontingent liability which may or may not be realized. Discussion of the assets related to the loan, primary borrower, security and other factors may indicate [whether] the odds of being forced to payment are real or de minimus.

Notes and disclosures. Turner acknowledged a balance sheet is not required to be audited for purposes of superseding a judgment. However, he said, if TBI's balance sheet had been audited, he would not be as troubled by its apparent omissions, because he could rely on the diligence of the auditor, a neutral third-party, in ensuring the balance sheet was accurate. Even if a balance sheet is not audited, he asserted, it still should disclose pertinent facts to offer assurances of reliability.

In summary, Turner did not “believe in the integrity” of the numbers on TBI's balance sheet; to the contrary, he thought the numbers were “manipulated or fabricated.” Turner believed the balance sheet did not provide sufficient information from which to determine TBI's net worth.

C. Mary Ann

Mary Ann's personal financial statement was prepared by Stephen. She testified it accurately reflected her financial condition and listed all her assets and liabilities, except her primary residence. Mary Ann acknowledged she has no understanding of GAAP.

The personal financial statement listed nearly \$140,000 in assets: roughly \$122,000 cash in bank accounts, \$15,000 in stocks and bonds, and \$3,115 in “personal assets.” That last figure was supported by a written appraisal from Simpson Galleries, self-described as “Houston's Oldest Fine Arts Auctioneers and Appraisers.” The Simpson appraisal included more than 100 items in Mary Ann's home and various pieces of jewelry. The total value of the appraised items was reported as \$103,115. From that, \$100,000 was deducted as an exemption under [section 42.001\(a\)\(1\) of the Texas Property Code](#),¹ leaving a remainder of \$3,115. Her liabilities were said to be approximately \$3.71 million: \$137,000 to the Internal Revenue Service, \$224,000 in “leases,” \$1.18 million to banks, \$580,000 to credit unions, \$183,000 in credit card debt, and the \$1.4 million judgment in this case. Excluding the judgment in this case, Mary Ann's net worth reported on her personal financial statement is negative \$2.17 million (negative \$3.57 million including the judgment).

¹ That section states: “Personal property, as described in Section 42.002, is exempt from garnishment, attachment, execution, or other seizure if: (1) the property is provided for a family and has an aggregate fair market value of not more than \$100,000, exclusive of the amount of any liens, security interests, or other charges encumbering the property....”

[Tex. Prop. Code § 42.001\(a\)\(1\)](#).

On cross-examination, Mary Ann testified about multiple assets not disclosed on her financial statement, including her primary residence, an entity of which she owns 100%, a boat, and a beach house in Galveston. She offered the following explanations for each exclusion:

- Her residence is “exempt” because it is her homestead.
- The entity (5310 Woodway, LLC) is “actually kind of worthless. It doesn't have any value.”

- Though Mary Ann bought both the boat (worth \$500,000) and the Galveston house, she transferred ownership of each into a trust established for the Yamins' children, so they are not her assets to disclose. But they are her liabilities, she suggested, because each month she pays between \$4,000 and \$5,000 for the boat and between \$10,000 and \$12,000 for the house's mortgage.

*6 NAI's counsel questioned Mary Ann about the “disconnect” between her claimed net worth and her monthly expenditures, which included more than \$3,000 in a home mortgage and \$6,000 in car leases. Mary Ann answered, “I don't know what to tell you. That's what we pay for cars. And if it doesn't gel with what you're looking at on paper, there really isn't anything I can say.”

As he did with TBI's, Turner found much to criticize about Mary Ann's financial statement. He testified it was not accurate under GAAP or from a layperson's perspective. Turner said GAAP requires Mary Ann to include her home as an asset, regardless of the implications under Texas law due its status as her homestead. She should have but failed to disclose her ownership in TBI. Because she identified the car lease payments as a liability, a recent change in GAAP required her to include the use of the cars as an asset, which she did not. She should have disclosed the asset values of the boat and Galveston house in addition to the liability values, particularly because the transactions between the trust and Mary Ann did not appear to be arms' length. Finally, according to Turner, GAAP requires disclosure of a future income stream that is reliable and/or guaranteed. The Yamins' ability to pay their high monthly debt obligations gave the impression they have an undisclosed source of income that may have to be disclosed. Turner said Mary Ann's financial statement was “not even close” to accurately reflecting her net worth.

D. Stephen

Stephen's personal financial statement listed \$8,212 in assets: three pistols, two watches, and \$3,212 in cash. He testified he did not include any marital assets with Mary Ann because he had given them to her via a partition agreement.² Stephen's liabilities are reported to be nearly \$1.16 million excluding the judgment in this case (\$2.56 million including the judgment in this case). The liabilities are said to comprise \$585,000 for “Lease Judgment,” \$546,000 for “Note Liability,” and \$27,300 in credit card debt. Stephen testified the “Lease Judgment” refers to the judgment entered against him in a 2009 lawsuit. That judgment is for \$316,294.66 in damages, \$10,625 in liquidated attorneys' fees, \$35,000 in contingent appellate attorneys' fees, and post-judgment interest of five percent on each of those awards. Stephen testified he arrived at the \$585,000 figure by multiplying the “amount of the judgment” at five-percent compound interest, “plus the attorney's fees over the period of time.” There is no evidence as to whether an appeal was taken from that judgment, and Stephen did not testify as to the amount of attorneys' fees he included in his calculation. “Note Liability” was said to refer to the “Loan from Crown” on TBI's balance sheet; Stephen testified he had personal liability for the first \$600,000, but that ceiling had been lowered to \$546,000. The credit card debt encompassed amounts owed to two credit card companies. Stephen's net worth, excluding the liability of this judgment, is said to be roughly negative \$1.15 million (negative \$2.55 million including this judgment).

² The admissibility of the partition agreement was the subject of dispute by the parties, because this court had affirmed a judgment declaring that agreement void. *See Yamin v. Carroll Wayne Conn, L.P.*, 574 S.W.3d 50, 65–66 (Tex. App. —Houston [14th Dist.] 2018, pet. denied).

*7 Turner voiced nearly identical criticism to Stephen's personal financial statement as he had to Mary Ann's. He opined Stephen's statement contained “too many inconsistencies and glaring errors” to be considered complete. As with TBI, Turner believed neither Mary Ann's nor Stephen's financial statement provided sufficient information from which to determine their net worth.

III. Application

The trial court made two key findings: (1) TBI, Stephen, and Mary Ann each failed to satisfy the burden to prove their net worth, and (2) from the evidence presented, the trial court was unable to determine the net worth of TBI, Stephen, or Mary Ann or to state with particularity any factual basis for such determination.³ We must decide if appellants have shown the evidence

conclusively establishes, as a matter of law, all vital facts in support of their contention that they met their burden of proof to show their net worth. *Ramco*, 171 S.W.3d at 910. We conclude they have not made that showing.

3 The trial court also found that the net-worth affidavits filed by appellants failed to state complete and detailed information regarding their assets and liabilities from which net worth can be determined, and the affidavits were therefore not prima facie evidence of net worth under Texas Rule of Appellate Procedure 24. See *Tex. R. App. P. 24.3(c)(1)*. Once NAI filed a contest to their affidavits, appellants bore the burden of proof at an evidentiary hearing. See *Tex. R. App. P. 24.2(c)(3)*. Any error the trial court may have committed with respect to the sufficiency of the affidavits is harmless in light of appellants' evidentiary burden at the hearing. See *In re L.M.*, 572 S.W.3d 823, 833 (Tex. App.—Houston [14th Dist.] 2019, no pet.).

Considered in the light most favorable to the trial court's findings, the evidence shows TBI, Mary Ann, and Stephen submitted incomplete, inaccurate, and misleading financial statements. Mary Ann and Stephen acknowledged various omissions, and Turner testified about the significance of those omissions. None of the statements disclosed ownership in or transactions with entities appellants controlled; failure to disclose related entities under those circumstances is a badge of fraud. TBI's balance sheet reflected a reduction of more than \$4 million in assets over the course of a year with no corresponding deduction in the liabilities connected to those assets. Mary Ann's financial statement did not account for her residence,⁴ a \$500,000 boat, or a beach house for which she was paying at least \$10,000 monthly. She was unable to explain how she was able to afford the \$3,000 to \$4,000 monthly mortgage on her residence and \$6,000 per month in car lease payments. Stephen, despite being in business for 55 years, claimed to own just three pistols, two watches, and \$3,212 in cash. He said he did not own any community property because he had disposed of it all through a partition agreement with Mary Ann, but a jury found that agreement to be void, and this court agreed. See *Yamin v. Carroll Wayne Conn, L.P.*, 574 S.W.3d 50, 65–66 (Tex. App.—Houston [14th Dist.] 2018, pet. denied). And, because so much information was missing, Turner opined it was impossible to determine appellants' net worth based on the evidence they provided.

4 In the trial court, Mary Ann stated the residence was omitted from her financial statement because it is an “exempt” homestead. On appeal, Mary Ann does not suggest equity in a homestead residence must be excluded from the net-worth determination for purposes of calculating the supersedeas bond amount, so we do not address the question.

*8 Next, we examine the entire record, considering the evidence both in favor of and contrary to the trial court's findings that appellants did not satisfy their burden of proof. Hardy testified GAAP did not require nearly as much as Turner suggested. He said an unaudited financial statement, which both experts agreed is acceptable for supersedeas purposes, does not require an income statement, cash flow statement, equity statement, or notes and disclosures. The trial court was presented with two experts' opinions and was free to credit one over the other. See *Gunn v. McCoy*, 554 S.W.3d 645, 665 (Tex. 2018). Additionally, when deciding what weight to afford Hardy's opinion, the trial court could consider his disagreement with the legal definition of net worth (the difference between the party's total assets and total liabilities as determined by GAAP). Mary Ann and Stephen, who are interested witnesses, each swore their financial statements were complete and correct. Testimony from interested witnesses may establish a fact as a matter of law only if the testimony could be readily contradicted if untrue, and is clear, direct, and positive, and there are no circumstances tending to discredit or impeach it. See *Lofton v. Texas Brine Corp.*, 777 S.W.2d 384, 386 (Tex. 1989). Even though the trial court declined to disregard their testimony entirely, the court reasonably could have chosen not to believe certain portions of their testimony.

We conclude the evidence is legally and factually sufficient to support the trial court's findings that appellants did not satisfy their burden to prove their net worth and that, from the evidence presented, the trial court was unable to determine their net worth. The evidence does not conclusively establish, as a matter of law, all vital facts in support of appellants' contention they met their burden to prove net worth.

Texas Rule of Appellate Procedure 24.2(c)(3) requires the trial court to issue an order that states the judgment debtor's net worth and states with particularity the factual basis for that determination. *Tex. R. App. P. 24.2(c)(3)*. Appellants contend the trial

court abused its discretion by failing to make such statements. But the trial court had no way to determine appellants' net worth, because appellants did not provide the trial court with sufficient evidence to do so. We agree with our sister courts that when the trial court is unable to determine a specific net-worth amount from the evidence, it is not an abuse of discretion to set the bond in the default amount dictated by [Rule 24.2\(a\)\(1\)](#): the sum of compensatory damages awarded in the judgment, interest for the estimated duration of the appeal, and costs awarded in the judgment. See [Ruff v. Ruff](#), No. 05-18-00326-CV, 2018 WL 2926639, at *1 (Tex. App.—Dallas June 8, 2018 [mand. denied]) (mem. op. on motion); [Bishop Abbey Homes, Ltd. v. Hale](#), No. 05-14-01137-CV, 2015 WL 4456209, at *5 (Tex. App.—Dallas July 21, 2015) (mem. op. on motion), *disp. on merits*, 2015 WL 9167799 (Tex. App.—Dallas Dec. 16, 2015, pet. denied) (mem. op.) and 2016 WL 80546 (Tex. App.—Dallas Jan. 7, 2016, no pet.) (supp. mem. op.); [Acra v. Bonaudo](#), No. 05-17-00451-CV, 2017 WL 6164576, at *3 (Tex. App.—Dallas Dec. 8, 2017 [mand. denied]) (mem. op. on motion), *disp. on merits*, 2018 WL 3238133 (Tex. App.—Dallas July 3, 2018, no pet.) (mem. op.); [Newsome v. N. Tex. Neuroscience Ctr., P.A.](#), No. 08-09-00025-CV, 2009 WL 3738504, at *5 (Tex. App.—El Paso Nov. 9, 2009) (mem. op. on motion). That is what the trial court did in this case.

IV. Modification of Order

In issuing an order setting a supersedeas bond under [Texas Rule of Appellate Procedure 24.2\(c\)\(3\)](#), the trial court may enjoin the judgment debtor from dissipating or transferring assets to avoid satisfaction of the judgment, but the trial court may not make an order that interferes with the judgment debtor's use, transfer, conveyance, or dissipation of assets in the normal course of business. [Tex. R. App. P. 24.2\(d\)](#). Appellants complain the trial court abused its discretion by failing to include the normal-course-of-business proviso in the Order's injunctive language. NAI appears to concede this defect in the Order's original injunctive language.

On May 11, 2020, we modified the injunctive portion of the Order to mirror the language of [Rule 24.2\(d\)](#). As modified, the injunctive portion states:

*9 Texas Black Iron, Inc., Stephen Yamin, Sr., and Mary Ann Yamin are ENJOINED from dissipating or transferring assets to avoid satisfaction of the judgment, but this injunction shall not be construed so as to interfere with the judgment debtors' use, transfer, conveyance, or dissipation of assets in the normal course of business.

We reaffirm our modification of the Order.

CONCLUSION

We grant appellants' motion to the extent appellants complain about the injunctive portion of the Order, and we deny the motion in all other respects. We affirm the Order as modified. Except to the extent we have modified the Order, we vacate our May 11, 2020 order staying execution of the judgment, and lift our stay.

All Citations

Not Reported in S.W. Rptr., 2020 WL 10231117