MOSES A. GREENFIELD, Appellant/Respondent, v. **WILLIAM ALFRED TUBMAN**, Appellee/Movant.

MOTION TO DISMISS APPEAL FROM THE CIRCUIT COURT FOR THE FOURTH JUDICIAL CIRCUIT, MARYLAND COUNTY.

Heard: May 5, 1983. Decided: July 6, 1983.

1. An appeal bond is not fatally defective for having only one surety if the financial ability of the surety is not questioned and the appellee does not allege that he is insufficiently indemnified.

2. Where the appeal is not from a money judgment granted to appellee, and therefore the appellee can only recover costs should he prevail in the appellate court, the value of the bond need not be one and a half times the amount sued for.

3. In an appeal from a non money judgment appeal, the penalty assessed in the bond need only be sufficient for the purpose of indemnification for costs.

4. An appeal bond is not fatally defective where the property of one of the sureties is sufficient to indemnify the appellee even though no recourse is possible to the property of the other surety.

Appellee filed a motion to dismiss an appeal from the Fourth Judicial Circuit Court, Maryland County, alleging that the appeal bond was defective in that it is not one and one-half times the amount sued for. The Supreme Court found that the bond was proper and in keeping with the statute on appeal bond, and that the contentions of appellee were not supported by the records. With respect to appellee's contention that the bond tendered was not one and one-half times the amount sued for, the Supreme Court held that where the appeal is not taken from a money judgment granted to appellee the value of the bond need not be one and one-half times the amount sued for, but rather in an amount sufficient to cover costs and/or injury likely to be sustained by appellee. The bond in the instant case having met this requirement, the Supreme Court denied the motion and ordered the case docketed.

S. Edward Carlor appeared for the appellant/respondent. Wellington K Neufville appeared for the appellee/movant.

MR. JUSTICE SMITH delivered the opinion of the Court.

The appellant/respondent instituted an action of damages for breach of contract against the appellee/movant in the Fourth Judicial Circuit Court, Maryland County. The complaint was dismissed on the disposition of the legal issues raised in the pleadings; the appellant

thereupon appealed from the ruling of the court below and has brought this case up for appellate review.

The appellee filed a three-count motion to dismiss appellant's appeal, stating substantially as grounds that there is no unencumbered real property offered in the bond, and that the bond is not secured by two natural persons; instead, the appellant himself and one Joseph S. Jackson signed the bond as sureties; that the bond is not accompanied by an affidavit of sureties and a statement of property valuation for appellant himself as one of the sureties to his appeal bond, except that of Surety Joseph S. Jackson (see counts 1 and 2 of the motion). And count three of the motion averred that the value of the appeal bond tendered by the appellant is only $1,000.00 instead of one and one-half times the amount sued for. A resistance was filed to this motion and arguments heard pro et con thereon.

We discovered, from an inspection of the appeal bond, that it is signed by Moses A. Greenfield as defendant/principal and by Joseph S. Jackson and Moses M. Greenfield as sureties. We also discovered that the bond is accompanied by an affidavit of sureties signed by both sureties and a certificate of property valuation from the Real Estate Tax Division of the Ministry of Finance, stating that Surety Joseph S. Jackson owns real estate to the value of $3,200.00 on which taxes for 1983 have been completely paid. The said appeal bond is approved by the trial judge for the amount of $1,000.00.

The question of appellant being surety for himself is not supported by the records, because Moses A. Greenfield and Moses M. Greenfield are two separate and distinct persons by reason of their middle initials and/or names. Count 1 of the motion is, therefore, not sustained.

Appellee's counsel contended and argued in his motion to dismiss plaintiff/appellant's appeal that there is no certificate of property valuation in the records for the property of Surety Moses M. Greenfield, which renders the appeal bond insufficient. We have, however, discovered that the certificate of property valuation accompanying the bond is issued in favour of Surety Joseph S. Jackson, wherein the value of his property is stated to be in the amount of $3,200.00. It is our holding therefore that since the property offered is above the value of the bond, the said bond is sufficient. In the case Van Ee v. Gabbidon, reported in 11 LLR65 (1951), this Court held that an appeal bond is not fatally defective for having only one surety if the financial ability of the surety is not questioned and the appellee does not allege that he is insufficiently indemnified. Also in the case Baz Bros. Corporation v. Gray, reported in 26 LLR27 (1977), this Court held that an appeal bond is not fatally defective where the property of one of the sureties is sufficient to indemnify the appellee even though no recourse is possible to the property of the other surety. In view of the holding of the court, count 2 of the motion is also not sustained.

In count 3 of the motion, appellee contended and strongly argued before us that the value of the appeal bond should have been one and one-half times the amount sued for, and cited this Court to the case Niumo v. Freeman 15 LLR517 (1964), in which this Court held that:

"An appeal bond in a civil appeal must cover one and one-half times the principal amount at issue where indemnification is a primary purpose of the obligation; and defectiveness of such a bond in this respect constitutes ground for dismissal of the appeal."

In the text of the said opinion, at page 519, here is what the Court said:

"The purpose of the requirement that an appeal bond in a civil case must cover one and one-half times the amount at issue is to indemnify the appellee from all loss or injury he might sustain by reason of the appeal. This Court has repeatedly held that, where indemnification is a primary purpose of the appeal bond, the amount named therein must be at least one and one-half times the amount for which judgment was rendered ...."

In the case cited and relied upon by the appellee, the judgment was a money judgment against the defendant, and therefore, the court was referring to one and one-half times the amount of judgment. But in the instant case, the one to be indemnified is the defendant/appellee in whose favour the ruling was made, stating in simple language that he should not pay the $71,333.60 sued for. Consequently, neither the appellant nor the appellee is to pay the amount sued for, except that the appellant must indemnify the appellee from all costs or injury which appellee may sustain by reason of the appeal should he prevail in the appellate court. Since the appellee can only recover costs and not the amount sued for, should he prevail in the appellate court, it is our considered opinion that the amount of $1,000.00 assessed in the bond as penalty is sufficient for the purpose of indemnification, and hence count 3 of the motion is also not sustained.

Having traversed the points of contention raised by the parties, and in view of the law cited supra, it is our holding that the motion to dismiss be, and the same is hereby denied with costs against the appellee.

The Clerk of this Court is hereby ordered to docket the appeal for the ensuing October Term of this Court. And it is so ordered.

Motion denied.