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KING COUNTY  
HONORABLE SUSAN CRAIGHEAD  
SUPERIOR COURT CLERK  
Hearing Date: February 11, 2011 @ 11:00 a.m.  
CASE NUMBER 09-2-16775-3 SEA

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

AERO CONSTRUCTION COMPANY, INC.,  
a Washington corporation,

Plaintiff,

vs.

LEDCOR CONSTRUCTION, INC. et al.,

Defendants.

NO. 09-2-16775-3 SEA

INTERVENOR PLAINTIFF 3922 SW  
ALASKA LLC'S MOTION FOR STAY  
AND POSTING OF ALTERNATIVE  
SECURITY FOR SUPERSEDEAS BOND  
UNDER RAP 8.1


AND RELATED CROSS ACTIONS

**I. RELIEF REQUESTED**

Intervenor Plaintiff 3922 SW Alaska, LLC ("Alaska") seeks a stay of foreclosure sale of the real property that is the subject of this action through posting security in accord with RAP 8.1. The security includes the value of the subject property located at 3922 SW Alaska Street, Seattle, Washington (the "Property") and a supersedeas bond for the loss of use of the property during the pendency of the stay and the appeal. This Court's Judgment and Order of Foreclosure ordered sale of the Property in order to satisfy the liens of Aero Construction Company, Inc. ("Aero"), Ledcor Construction, Inc. ("Ledcor"), and Kleinfelder West, Inc. ("Kleinfelder"). Alaska seeks a partial stay of the three senior lien

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claims held by Aero, Ledcor and Kleinfelder until the pending appeal filed by Alaska is decided by the Court of Appeals. In the alternative, Alaska seeks a full stay of the judicial foreclosure sale with the posting of the appropriate supersedeas bond.

## **II. STATEMENT OF FACTS AND PROCEDURAL BACKGROUND**

A bench trial was held by this court on the lien and judicial foreclosure claims among the parties Aero, Ledcor, Kleinfelder and Alaska between October 18 and November 3, 2010. The Court announced its decision on November 15, 2010. The Court ruled that the competing liens had the following priority: 1) Aero; 2) Ledcor; 3) Kleinfelder, and 4) Alaska.

The Court entered its Amended Money Judgment reflecting award of attorney fees and costs and its order to foreclose the various liens and to sell the property.

Alaska now seeks to post security under RAP 8.1 in excess of the value of the property to stay foreclosure sales by the senior lien holders until the currently pending appeal can be heard and determined. This order should exclude the sale rights of Alaska which should be allowed to proceed with its foreclosure sale because Alaska's sale will not affect the rights of the senior lien holders.

Alaska has obtained a current market value appraisal of the subject property located at 3922 SW Alaska Street through the O'Connor Consulting Group. Such appraisal report is attached to the Declaration of the Appraiser, Brian O'Connor, which places the market value of the subject property in its current status at \$5,160,000.00. In order to cover any loss of use claims and the entire money judgment by the senior lien holders, Alaska proposes to post a supersedeas bond of approximately \$2.6 million. The total security would thus be

1 approximately \$7.7 million, more than adequate security for the senior lien foreclosure  
2 judgments entered by the Court.

### 3 **III. ISSUES PRESENTED**

4 1. Should the Court, under RAP 8.1(b)(2) and RAP 8.1(c)(2), approve the  
5 posting of approximately \$2.6 million supersedeas bond along with the current value of the  
6 subject property of \$5.16 million to stay lien foreclosure sales by the senior lien claimants  
7 Aero, Ledcor and Kleinfelder and allow fourth position judgment lien holder Alaska to  
8 foreclose subject to these senior lien claims?

9 2. Should the Court, under RAP 8.1(b)(2) and RAP 8.1(c)(2), approve the  
10 posting of approximately \$2.6 million supersedeas bond along with the value of the Property  
11 to fully stay the Judicial Foreclosure Sale of any of the lien claimants against the Property?

### 12 **IV. EVIDENCE RELIED UPON**

13 The Declaration of appraiser Brian O'Connor with attached appraisal report, the  
14 Declaration of Gregory L. Ursich with attachments, and the files and records of this action.

### 15 **V. ARGUMENT AND AUTHORITY**

16 A. Under RAP 8.1(b)(2) Lien Claimant Alaska is Allowed to Post the Subject  
17 Property as Alternate Security to be Approved by the Trial Court Prior to  
Posting this Security.

18 RAP 8.1(b) states:

19 A trial court decision may be enforced pending appeal or  
20 review *unless stayed pursuant to the provisions of this rule.*  
21 Any party to a review proceeding has the right to stay  
22 enforcement of a money judgment, or a decision affecting real,  
personal and intellectual property, pending review. A stay of a  
decision in other civil cases is a matter of discretion.

1 (2) *Decision Affecting Property*. Except where prohibited  
2 by statute, a party may obtain a stay of enforcement of a  
3 decision affecting rights to possession, ownership or use of real  
4 property, or of tangible personal property, or of intangible  
5 personal property, by filing in the trial court a supersedeas  
6 bond or cash, **or by alternate security approved by the trial**  
7 **court pursuant to subsection (b)(4)**. If the decision affects  
the rights to possession, ownership or use of a trademark, trade  
secret, patent, or other intellectual property, a party may obtain  
a stay in the trial court only if it is reasonably possible to  
quantify the loss that would be incurred by the prevailing party  
in the trial court as a result of the party's inability to enforce  
the decision during review.

8 RAP 8.1(b)(2). (emphasis added)

9 Under RAP 8.1(b)(4) the court has the authority to allow for the posting of the  
10 alternative security upon a motion to the trial court to determine the value of the subject  
11 property involved in the case.

12 Under RAP 8.1(c)(2) when a judgment affects the rights to a specific piece of real  
13 property, the property itself at issue, assuming it has value, then "... the property itself may  
14 fully or partially secure any loss and the court may determine that no additional security  
15 need be filed or may reduce the supersedeas amount accordingly." RAP 8.1(c)(2).

16 In a foreclosure action, a party appealing a foreclosure judgment has absolute right  
17 under RAP 8.1 to supersede the enforcement of a judicial foreclosure. *See, U.S. Bank of*  
18 *Washington v. Hursey*, 116 Wn.2d 522, 806 P.2d 245 (1991).

19 Here, appraiser Brian O'Connor of the O'Connor Consulting Group has determined  
20 the current market value of the subject property located at 3922 SW Alaska Street, Seattle,  
21 Washington in its current status is \$5,160,000.00. This property value provides a substantial  
22

1 amount of the security necessary to secure the approximate \$7.7 million in liens, including  
2 additional interest and attorney's fees that will accrue during the pendency of this appeal, by  
3 the senior lien holders. The judgment entered by the Court is to foreclose against the subject  
4 property in the order of priority as determined by the Court through a judicial sheriff sale of  
5 the property, the lien holders can, and each of them, recover in their priority order their  
6 judgment amounts to the value of the property itself. As a result, the Property's value is  
7 appropriate alternate security to secure the judgment of foreclosure for each of the senior  
8 lien holders Aero, Ledcor and Kleinfelder. RAP 8.1.

9 The calculation of the three senior liens against the Property including an anticipated  
10 accrual of additional interest and attorney's fees on appeal for each of the lien claimants  
11 totals approximately \$7.7 million dollars. See, Declaration of Gregory Ursich. As such, the  
12 property value itself will posted as alternative security in the amount of \$5.16 million, plus  
13 an additional supersedeas bond in the approximate amount of \$2.6 million will be obtained  
14 by Alaska to provide full security to stay the enforcement of the lien foreclosure by the three  
15 senior lien claimants. Alaska seeks specific guidance and a ruling from the Court on the  
16 specific amount of supersedeas required and that the alternative security of the subject  
17 property itself can be posted as a portion of supersedeas security required to stay the  
18 enforcement of the judicial foreclosure in this matter pending the outcome of the Alaska  
19 appeal.

20 B. Calculation of the Three Senior Liens Against the Subject Property Held by  
21 Aero, Ledcor and Kleinfelder Respectfully Establishes that the Supersedeas  
22 Amount to be Posted by Alaska in Total Should be Approximately \$7.7  
Million Dollars.

Under RAP 8.1(c)(2), when a decision or judgment that affects real property such as a judicial foreclosure action, then the amount of security and the type of security to be posted is determined under this portion of the rule. Specifically, RAP 8.1(c)(2) states in relevant part:

The supersedeas amount shall be the amount of any money judgment, plus interest likely to accrue during the pendency of the appeal and attorney fees, costs and expenses likely to be awarded on appeal entered by the trial court plus the amount of the loss which the prevailing party in the trial court would incur as a result of the party's inability to enforce the judgment during review. Ordinarily, the amount of loss will be equal to the reasonable value of the use of the property during review.  
... If the property at issue has value, the property itself may fully or partially secure any loss and the court may determine that no additional security need be filed or may reduce the supersedeas amount accordingly.

RAP 8.1(c)(2). (emphasis added)

In this case, Alaska has calculated the amount of the three senior liens of Aero, Ledcor and Kleinfelder including their judgment amounts following trial, plus the anticipated accrual of interest and further attorney fees on appeal, to determine the appropriate supersedeas amount to stay the judgment. The calculations are as follows:

**AERO**

Judgment Principal	810,661.82
Prejudgment Interest	
12/1/08 - 10/31/10	279,445.12
11/1/10 - 11/15/10 [15 days x \$399.78]	5,996.70
Attorney Fees & Costs	235,411.40
TOTAL:	\$1,331,515.04

**Post-Judgment Interest**

18% per annum  
 $18\% \times 1,331,515.04 = \$239,672.71$  per year  
 $\$239,672.71 / 365 \text{ days} = \$656.64$  per day

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11/16/11 - 12/31/11 = 46 days x \$656.64 = \$30,205.33

**AERO: Calculation of Supersedeas Bond Amount**

Principal, prejudgment interest, & attorney's fees and costs	\$1,331,515.04
Interest (11/15/10 - 11/15/11)	239,672.71
Interest (11/16/11 - 12/30/11)	30,205.33
Estimate of attorney fees on appeal	50,000.00
<b>TOTAL:</b>	<b>\$1,651,393.08</b>

**LEDCOR**

Judgment Principal	\$2,998,016.49
Prejudgment Interest	
12/1/08 - 10/31/10	1,033,453.25
11/1/10 - 11/15/10 [15 days x \$1,478.47]	22,177.05
Attorney Fees & Costs	404,962.16
<b>TOTAL:</b>	<b>\$4,458,608.95</b>

**Post-Judgment Interest**

18% per annum

18% x 4,458,608.95 = \$802,549.61 per year

\$802,549.61/365 days = \$2,198.77 per day

11/16/11 - 12/31/11 = 46 days x \$2,198.77 = \$101,143.24

**LEDCOR: Calculation of Supersedeas Bond Amount**


Principal, prejudgment interest, & attorney's fees and costs	\$4,458,608.95
Interest (11/15/10 - 11/15/11)	802,549.61
Interest (11/16/11 - 12/30/11)	101,143.24
Estimate of attorney fees on appeal	50,000.00
<b>TOTAL:</b>	<b>\$5,412,301.80</b>

**KLEINFELDER**

Judgment Principal	\$237,013.54
Prejudgment Interest	
As of 10/1/10	80,503.93
10/2/10 - 11/15/10 [45 days x \$116.88]	5,259.60
Attorney Fees & Costs	177,008.31
<b>TOTAL:</b>	<b>\$499,785.38</b>

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Post-Judgment Interest

18% per annum

18% x \$499,785.38 = \$89,961.37 per year

\$89,961.37/365 days = \$246.47 per day

11/16/11 - 12/31/11 = 46 days x \$246.47 = \$11,337.62

KLEINFELDER: Calculation of Supersedeas Bond Amount

Principal, prejudgment interest,

& attorney's fees and costs \$499,785.38

Interest (11/15/10 - 11/15/11) 89,961.37

Interest (11/16/11 - 12/30/11) 11,337.62

Estimate of attorney fees on appeal 50,000.00

**TOTAL: \$651,084.37**

SUPERSEDEAS BOND TOTAL:

AERO \$1,651,393.08

LEDCOR \$5,412,301.80

KLEINFELDER \$651,084.37

**TOTAL: \$7,714,779.25**

See also, Declaration of Gregory L. Ursich with attachments.

Therefore, the total amount of supersedeas to be posted by Alaska in the form of a combination of alternative security and a bond totals approximately \$7,714,779.25 to fully stay the enforcement of the judgment of the three senior lien holders Aero, Ledcor and Kleinfelder.

Under RAP 8.1(c)(2), it is specifically mandated and allowed that a portion of the security be in the form of the value of the subject property itself, which is subject to the judicial foreclosure judgment issued by the Court. Here, the current value of the subject property at 3922 SW Alaska Street, Seattle, Washington should be allowed under RAP 8.1(c)(2) to act as alternative security to stay the enforcement of the foreclosure sale.

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1 A judgment is superseded under RAP 8.1 by following its mandatory  
2 procedures, including the posting of bond. RAP 8.1(b); Lampson Universal  
3 Rigging, Inc. v. Washington Pub. Power Supply Sys., 105 Wn.2d 376, 378-  
4 79, 715 P.2d 1131 (1986). In a decision affecting land, the amount of the  
5 bond will ordinarily be the reasonable value of the use of the land. RAP  
6 8.1(b)(2). If that is inadequate to secure the loss, that party must prove the  
7 additional losses. RAP 8.1(b)(2). The posting of bond is a prerequisite to  
8 superseding the judgment. RAP 8.1(c).

9 *Interstate Prod. Credit v. MacHugh*, 90 Wn. App. 650, 655 (1998)

10 Alaska intends to supplement the amount of the value of the property by the posting  
11 of an additional bond in the amount of approximately \$2.6 million to provide complete  
12 security for the stay of enforcement of the senior foreclosure judgments.

13 Furthermore, the loss of use of the subject property for the next year while the appeal  
14 is pending in the Court of Appeals can be reasonably calculated by looking at the rental  
15 value of the subject land for this period of time. According to appraiser Brian O'Connor,  
16 the rental value of the subject property land for this one year period between March 2011  
17 and March 2012 would be approximately \$415,000.00. See, Declaration of appraiser Brian  
18 O'Connor. This reasonable rental value of the land is calculated at 8% of the market value  
19 of the subject land. See, Declaration of Brian O'Connor.

20 C. Alaska Seeks a Partial Stay as to a Judicial Foreclosure Sale by the Three  
21 Senior Lien Claimants Aero, Ledcor and Kleinfelder, While Allowing Fourth  
22 Position Lien Holder Alaska to Foreclose Against Owner Fauntleroy Place,  
23 LLC to Preserve the Ongoing Value of the Property.

24 Pending this appeal and the stay of the foreclosure sales by the senior lien claimants  
Aero, Ledcor and Kleinfelder, Alaska seeks a partial stay of foreclosure by these three  
senior lien holders to allow it to foreclose subject to the three senior lien holders and

1 foreclose out owner Fauntleroy Place LLC, along with the junior judgment held by Waste  
2 Management, to begin efforts to develop and stabilize the subject property. If Alaska begins  
3 development of the property it will further add value to the subject property and further  
4 protect the interests of senior lien holders Aero, Leducor and Kleinfelder, pending the  
5 outcome of the Alaska appeal. Aero, Leducor and Kleinfelder will not be prejudiced by a  
6 stay of the enforcement of their foreclosure actions, and, in fact, will be benefited by  
7 Alaska's efforts to preserve the value of the property through the beginning of the  
8 development process, pending the outcome of Alaska's appeal. In the event that Alaska  
9 loses on appeal, the parties may then proceed to foreclose on their senior judgment liens in  
10 the order of priority of Aero, Leducor and Kleinfelder as against Alaska, with the value of the  
11 property preserved by beginning of the development work by Alaska on the site.

12 D. In the Alternative, Alaska Seeks a Full Stay of the Foreclosure Action to  
13 Foreclose on the Property by Any of the Lien Claimants Pending the Outcome  
of the Alaska Appeal Pursuant to RAP 8.1(b).

14 As discussed above, Alaska is absolutely entitled to a stay based on the posting of the  
15 appropriate supersedeas amount in the form of alternative security and bond pursuant to  
16 RAP 8.1(c)(2). The O'Connor Consulting Group appraisal has determined the current  
17 market value of the property in its current status is \$5.16 million. Thus, an additional bond  
18 in the approximate amount of \$2.6 million is needed to provide full security to stay any  
19 judicial foreclosure judgment sale as against the subject property in the total amount of \$7.7  
20 million. Alaska respectfully requests the Court to allow a minimum of seven (7) days under  
21 RAP 8.1 to obtain and file with the Court the bond necessary to stay the action.  
22

1 Currently, the King County Sheriff has scheduled the judicial foreclosure sale of the  
2 Property for Friday, February 25, 2011. It is anticipated that Alaska will be able to obtain  
3 and file with the Court the appropriate bond by Friday, February 18, 2011. The Property is  
4 already encumbered by the judgments of foreclosure against it in the order of priority  
5 established by the Court. The value of the Property will continue to be adequate security for  
6 the supersedeas amount required on appeal.

7 Alaska respectfully requests the Court to order the posting of the property as alternate  
8 security in the amount of \$5.16 million, plus an additional bond in the amount of \$2.6  
9 million to be posted by Intervenor Plaintiff/Appellant Alaska to stay the enforcement of the  
10 judicial foreclosure sale on February 25, 2011.

#### 11 VI. CONCLUSION

12 For the foregoing reasons, this court should order that the foreclosure sales by the  
13 three senior lien holders: Aero, Leducor and Kleinfelder, are stayed and superseded by  
14 posting the alternative security of the value of the property located at 3922 SW Alaska  
15 Street, Seattle, Washington plus an additional bond amount of approximately \$2.6 million.  
16 A proposed order accompanies this motion.

17 DATED this 1st day of February, 2011.

18 INSLEE, BEST, DOEZIE & RYDER, P.S.

19  
20 By 

21 Gregory L. Ursich, W.S.B.A. #18614  
22 William A. Linton, W.S.B.A. #19975  
Attorneys for Intervenor Plaintiff 3922 SW  
Alaska, LLC

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HONORABLE SUSAN CRAIGHEAD  
Hearing Date: February 11, 2011 @ 11:00 a.m.  
With Oral Argument

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

AERO CONSTRUCTION COMPANY, INC.,  
a Washington corporation,

Plaintiff,

vs.

LEDCOR CONSTRUCTION, INC. et al.,

Defendants.

NO. 09-2-16775-3 SEA

ORDER GRANTING STAY AND  
SUPERSEDEAS BOND AMOUNT [RAP 8.1]

(PROPOSED)

**[CLERK'S ACTION REQUIRED]**

AND RELATED CROSS ACTIONS

**I. HEARING**

This matter came before the Court on the Motion of Intervenor Plaintiff 3922 SW Alaska, LLC ("Alaska") for a supersedeas bond and stay pursuant to RAP 8.1 to stay the pending judicial foreclosure sale to be conducted by the King County Sheriff on February 25, 2011. Intervenor Plaintiff Alaska appeared by and through its attorneys of record, Gregory L. Ursich and William A. Linton of Inslee, Best, Doezie & Ryder, P.S., Plaintiff Aero Construction Company, Inc. ("Aero") appeared through its attorney of record, John Riper of Ashbaugh Beal LLP, Defendant Ledcor Construction, Inc. ("Ledcor") appeared through its attorney of record, Anthony Scisciani of Scheer & Zehnder LLP, and

1 Defendant Kleinfelder West, Inc. ("Kleinfelder") appeared through its attorney of record,  
2 David Eckberg and Pamela Tonglao of Skellenger Bender PS.

3 The Court having heard oral argument of counsel and having reviewed the following  
4 pleadings and documents as follows:

5 1. Intervenor Plaintiff 3922 SW Alaska, LLC's Motion for Stay and Posting of  
6 Alternative Security for Supersedeas Bond Under RAP 8.1;

7 2. Declaration of appraiser Brian O'Connor dated January 28, 2011 with  
8 attachments;

9 3. Declaration of Gregory L. Ursich dated February 1, 2011

10 4. \_\_\_\_\_

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12 5. \_\_\_\_\_

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22 10. \_\_\_\_\_

Additional pleadings to be filed later.

Based on the above documents and the arguments of counsel, the Court hereby orders as follows:

## II. ORDER

1. It is hereby ORDERED, ADJUDGED AND DECREED that the Motion of Intervenor Plaintiff Alaska to stay the judicial foreclosure sale currently set for Friday, February 25, 2011 at the King County Superior Court Courthouse by the King County Sheriff is hereby GRANTED; and that further sale by or to the three senior judgment lien claimants of Aero, Ledcor and Kleinfelder is STAYED until further order of this Court.

2. The Court accepts as alternative security the current "as-is" market value of the subject property located at 3922 SW Alaska Street, Seattle, Washington at \$5,160,000 as determined by appraiser Brian O'Connor of the O'Connor Consulting Group.

3. Intervenor Plaintiff Alaska shall post and file with the King County Superior Court Clerk an additional supersedeas bond in the amount of \$\_\_\_\_\_ to stay the judicial foreclosure sale of the subject property at 3922 SW Alaska Street, Seattle, Washington, until further Order of this Court.

DONE IN OPEN COURT this \_\_\_\_ day of February, 2011.

\_\_\_\_\_  
JUDGE/COURT COMMISSIONER



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By /s/ Gregory L. Ursich

William A. Linton, W.S.B.A. #19975

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ORDER - Page 4



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