

**IN THE SUPREME COURT OF OHIO**

**THE FAHEY BANKING COMPANY,** : CASE NO. 2015-1287  
Plaintiff-Appellee, :  
v. :  
**PERCY SQUIRE, ET AL.** : ON APPEAL FROM THE  
Defendant-Appellant. : MAHONING COUNTY COURT  
OF APPEALS  
CASE NO. 15 MA 105

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**APPELLEE THE FAHEY BANKING COMPANY'S MEMORANDUM IN OPPOSITION TO  
MOTION FOR STAY PENDING APPEAL**

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**APPELLEE THE FAHEY BANKING COMPANY'S MEMORANDUM IN OPPOSITION TO  
MOTION FOR STAY PENDING APPEAL**

As set forth in The Fahey Banking Company's ("Fahey Bank") Motion To Dismiss being filed concurrently with this response Fahey Bank believes that this appeal should be dismissed as the matter is moot and there is not and never was a final appealable order. For those reasons, Fahey Bank believes that Appellant is not entitled to a stay and that the matters at issue herein do not require any such relief.

Regardless, to the extent that this Court determines that a stay is appropriate, Fahey Bank requests that any such stay be conditioned on the posting of a bond in the amount of \$66,353.00, determined as follows:

<u>Item</u>	<u>Amount</u>	<u>Description</u>
Sheriff's Sale Winning Bid	\$ 62,000.00	Winning Bid by Fahey Bank at Sept. 2, 2014 sale
Property Tax from Date of Sale	\$ 2,176.50	Full year tax from Sept. 2, 2014 sale
Property Tax Pending Appeal	\$ 2,176.50	Escrow for tax during 1 year appeal period
<b>Total:</b>	\$ 66,353.00	

The amount of the foregoing requested bond is supported by the actions taken in this case to delay and attempt to preclude Fahey Bank's ability to recover from its secured collateral. Through multiple tactics and baseless appeals Appellant, who holds at most a dower interest in the property although he has previously claimed no interest, has delayed Fahey Bank's ability to recognize the value of the property that it purchased at a lawful Sheriff's sale almost one year ago. The case itself is nearly 5 years old. In the absence of the tactics of Appellant Fahey Bank would have obtained the value of its bid, \$62,000.00. As a Stay Pending Appeal would further delay Fahey Bank's ability to be repaid and recognize the value of its asset, a bond in the amount of the bid that Fahey Bank made to purchase the property is appropriate.

In addition, once the Sheriff's sale is ultimately confirmed Fahey Bank the taxes for the period from the September 2, 2014 Sheriff's sale and thereafter will be a lien on the property, payable by the then owner Fahey Bank. As Appellant has deprive Fahey Bank of the ability to obtain title to the property after the lawful Sheriff's sale and for nearly a year, it is proper to impose payment of taxes upon Appellant who has obtained the benefit from the use of the subject property. Taxes for the property are currently \$2,176.50 on an annual basis. Moreover, should appellant's appeal continue and Fahey Bank be deprived of obtaining the value of the property to be applied to its lawful debt then it is also appropriate to require Appellant to deposit as part of a supersedeas bond the amount of taxes that will become due during the pendency of this appeal or approximately 12 months. Should this appeal last longer than 12 months – which Fahey Bank has no belief that it will – Fahey Bank would respectfully request leave to request an additional amount to be added to any bond for the payment of property tax or other amounts due.

Fahey Bank believes that Appellant's latest appeal is baseless and should be dismissed. Dismissal of the appeal and confirmation of the valid September 2, 2014 Sheriff's sale will put an end to the unnecessary burden on the judicial system through these continuous filings. At some point Fahey Bank must be permitted to recover from its collateral property. If Appellant is to obtain a stay pending appeal in this case he should be required to post a bond in the amount of \$66,353.00 to protect Fahey Bank from the continued delay and loss of value to which it is entitled.

For all of these reasons, Fahey Bank requests that a stay be denied or in the event that a stay is granted that Appellant be required to post a supersedeas bond in the amount of \$66,353.00 in order for the stay to be effective.

**RESPECTFULLY SUBMITTED:**

**KEMP, SCHAEFFER & ROWE CO., L.P.A.**

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing was served via U.S. Mail, postage prepaid this 10th day of August 2015 to the following:

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