

James Holmes’s testimony before the Texas Legislature (specifically, the Judiciary & Civil Jurisprudence Committee of the House of Representatives) on April 5, 2023, in favor of House Bill 4381 and “Supersedeas Reforms” for Texas:

I greatly appreciate this Committee’s attention on an obscure and difficult procedural-law topic – which all too often becomes vitally important to litigants in our civil justice system. I refer to “supersedeas laws” – the procedures whereby we prevent executions of money judgments during the appeals through Texas appellate courts. The “judgment debtor” (who lost in the trial court) will need to appeal *and* will need to halt judgment collections by the “judgment creditor,” who won in the trial court and who will attempt to collect cash or property during that very appeal.

A meaningful appeal becomes a legal nullity or, more commonly, a spawning ground for further litigation – called “satellite litigation” (because it doesn’t address the original reason for the lawsuit) – if the judgment debtor cannot easily halt judgment collections. To speak informally, what is the point of the appeal if the judgment debtor has the whole farm sold out from under him – during the very appeal on whether he owes any money at all?

Texas supersedeas laws consist of a Rule of Appellate Procedure (namely, TRAP 24), Chapter 52 of the Civil Practice and Remedies Code, and a growing and dense body of case law construing that procedural rule and that statute.

Texas supersedeas laws are complex and will become more complex in the future. I suspect that this Committee will be considering further refinements of these laws in future sessions, as the State grows and as

needs arise. But here and now, we can address two pressing problems: (1) enabling a judgment debtor to “post alternate security” instead of the more cumbersome and expensive “cash deposit” or “supersedeas bond,” and (2) enabling the judgment debtor to reduce the amount of security posted when an intermediate appellate court reduces the debtor’s liability at the half-way point, while the parties then pursue further appeals to the Texas Supreme Court.

Representative Mano DeAyala has authored a wonderful new statute in House Bill 4381. This new law would work in conjunction with Chapter 52 (CPRC), TRAP 24, and existing case law. In fact, H.B. 4381 merely *supplements* this existing body of law – it does not contravene or “overrule” any of it.

H.B. 4381, first, would allow smaller defendants (smaller judgment debtors) to post “alternate security” – such as deeds of trust to real estate, or security agreements in personal property (including ownership in privately-held companies) – upon a showing that these smaller defendants would be forced “to substantially liquidate the judgment debtor’s interests in real or personal property necessary to the normal course of the judgment debtor’s business.” Currently, there is no standard – no underlying test – whereby trial or appellate courts can decide if and when a judgment debtor can post alternate security.

H.B. 4381, next, would allow smaller defendants to lower the required security at the “half-way point” of the appeal, if an appellate court has reduced their liability and yet the parties continuing appealing to the Texas Supreme Court. Currently, there is no standard – no underlying test – whereby trial or appellate courts can decide if and when a judgment

debtor is entitled to a reduction in required security at the half-way point of an appeal.

Both improvements to supersedeas laws in H.B. 4381 help both judgment debtors *and judgment creditors*. Both improvements greatly preserve the judgment debtor's assets and wealth – by preventing a dissipation of the same with “fire sales of assets” or “supersedeas-bond transactional costs” – so that judgment debtors can have a meaningful appeal. Further, Both improvements greatly preserve the judgment debtor's assets and wealth so that judgment creditors *have more to collect* in the event they hold on to their trial-court victory, after the appeal.

Thank you.