

Court. As these are sections of statutory law governing the administrative review of such labor contracts disputes as in this matter, they are a necessary part of the administrative process. As this Court noted on page 5 of its November 17, 2008 Order and Memorandum, Plaintiff has "[made] no attempt to excuse his failure to appeal the April 17, 2006 decision to the Pohnpei Supreme Court as provided by state law." [Smith, 16 FSM Intrm. at 190.]

VI. CONCLUSION

Following the above analysis, it is well-established that Plaintiff has been remiss in his obligation, mandated by statute as well as by the principle of exhausting administrative remedies, to pursue the administrative process to its ultimate conclusion. In denying the November 24, 2008 Motion to Reconsider, this Court rejected Plaintiff's argument that he could not pursue the administrative process because this matter was pending in FSM Supreme Court, which denied Pohnpei State Court the power to assume jurisdiction. In the instant Motion, Plaintiff now argues that the lack of jurisdiction goes back to Perman. This Court is not persuaded by this argument. The Plaintiff may preserve this, and other interlocutory orders, for appeal pending the final resolution of this matter. Also, should he consider a third Motion to Reconsider arguing that the lack of jurisdiction was on the part either of the Division of PL&MD or of this Court, Plaintiff may be advised instead to contemplate moving this Court to dismiss this matter altogether. Finally, should Plaintiff truly believe that he has not exhausted his administrative remedies due to his perception that Perman lacked jurisdiction to issue the April 17, 2006 Decision, Plaintiff is welcome to continue seeking redress in the proper forum pursuant to the Act, and this Court will assist him by dismissing this matter without prejudice under Rule 41(a)(2), or by receiving a stipulated dismissal under Rule 41(a)(1)(ii).

This Court hereby DENIES this Second Motion to Reconsider.

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FSM SUPREME COURT TRIAL DIVISION

FSM DEVELOPMENT BANK,)	CIVIL ACTION NO. 2004-013
)	
Plaintiff,)	
)	
vs.)	
)	
SHELTON NETH and GIDEON NETH,)	
)	
Defendants.)	
_____)	

ORDER

Dennis K. Yamase
Associate Justice

Decided: May 17, 2010

APPEARANCE:

For the Defendants: Marstella Jack, Esq.
P.O. Box 2210
Kolonia, Pohnpei FM 96941

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HEADNOTES

Civil Procedure – Motions

Rule 6(b) requires that, absent a showing of excusable neglect, a motion for enlargement of time must be filed within the period set forth by subpart (d). FSM Dev. Bank v. Neth, 17 FSM Intrm. 131, 133 (Pon. 2010).

Civil Procedure – Motions

Primarily salient to a court's analysis of an assertion of excusable neglect are: 1) an explanation of the movant's diligent and good faith efforts and 2) the lack of prejudice to the opposing party, but good-cause efforts and lack of prejudice are not enough to justify a finding of excusable neglect. Excusable neglect does not exist when there are possible methods by which the situation may have been avoided. FSM Dev. Bank v. Neth, 17 FSM Intrm. 131, 134 (Pon. 2010).

Civil Procedure – Motions

The standard for reviewing excusable neglect is stricter than the standard of good cause. FSM Dev. Bank v. Neth, 17 FSM Intrm. 131, 134 (Pon. 2010).

Civil Procedure – Motions

When the defendants were served a motion after their attorney left the island on April 6, 2010, and the deadline for filing an opposition lapsed before her return, there was no practical way to oppose the motion, even though the defendants had notified the court and all attorneys of their attorney's departure before she departed the island. Had the analysis stopped here, the defendants' motion to enlarge time to oppose would have merited a finding of excusable neglect. But when, upon their attorney's return the defendants did not immediately file a request for enlargement but waited an additional ten days to file a request for an enlargement to May 7, 2010, and when that date passed and the defendants had yet to file an opposition memorandum, the court is unable to find the defendants' neglect was excusable. FSM Dev. Bank v. Neth, 17 FSM Intrm. 131, 134 (Pon. 2010).

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COURT'S OPINION

DENNIS K. YAMASE, Associate Justice:

This matter is before Judge Dennis K. Yamase. The Plaintiff is represented by Attorney Nora E. Sigrah. Defendants are represented by Attorney Marstella E. Jack.

BACKGROUND

On April 6, 2010 Plaintiff filed the following four papers: 1) Plaintiff's Motion for an Order to Show Cause; 2) Plaintiff's Motion to Amend Order in Aid of Judgment; 3) Affidavit of Nora E. Sigrah; and Exhibits "A" and "B." On April 30, 2010 Defendants filed a Motion for enlargement of time.

Plaintiff has not filed a motion in opposition to Defendants' request to enlarge time.

ANALYSIS

Defendants' motion requests that the deadline for filing motions in opposition be enlarged. In support of this request she asserts that the grounds for granting this motion arise out of the following facts:

- 1) On April 5, 2010 Defendants' attorney left the island;
- 2) Prior to her departure she sent a letter to the court and all attorneys requesting that no hearings or motions requiring responsive pleadings be filed during her absence;
- 3) On April 20, 2010 Defendants' attorney returned to the island and during the subsequent ten days reviewed the motion and discussed its contents with opposing counsel;
- 4) Defendants' attorney requested that the date be enlarged to May 7, 2010 to file motions in opposition to Plaintiff's motions.

As of the date of this order Defendants' May 7, 2010 deadline has passed without the filing of an opposition.

Rule 6(b) of the FSM Rules of Civil Procedure regulates when and how motions to enlarge may be filed. FSM Civ. R. 6(b). It provides,

When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specific time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under rules 52(b), 59(b), (d) and (e), and 60(b), except to the extent and under the conditions stated in them.

Id. On its face, Rule 6(b) requires that, absent a showing of excusable neglect, a motion for enlargement of time must be filed within the period set forth by subpart (d) of the same rule. Subpart (d) of rule 6 provides that,

The party opposing the motion shall not later than 10 days after the service of the motion upon that party, file and serve responsive papers. When a motion is opposed by affidavit, the affidavit shall be served with the responsive papers. The responsive papers shall consist of either (1) a memorandum of points and authorities, or (2) a written statement that the party will not oppose the motion.

Failure by the moving party to file the memorandum of points and authorities shall be deemed a waiver by the moving party of the motion; such failure by the opposing party shall constitute a consent to the granting of the motion.

FSM Civ. R. 6(d).

The FSM Supreme Court has addressed the issue of what constitutes excusable neglect in various circumstances. Primarily salient to a court's analysis of an assertion of excusable neglect are 1) an explanation of the movant's diligent and good faith efforts and 2) the lack of prejudice to the opposing party. Bualuay v. Rano, 11 FSM Intrm. 139, 147 (App. 2002).

However, good-cause efforts and lack of prejudice are not enough to justify a finding of excusable neglect. Heirs of George v. Heirs of Dizon, 16 FSM Intrm. 100, 108 n.5 (App. 2008). In 2005, the FSM Supreme Court found that excusable neglect does not exist when there are "possible methods by which the situation may have been avoided." Goya v. Ramp, 13 FSM Intrm. 100, 109 (App. 2005). In 2002, the court explained being unaware of the service of a responsive paper, while significant, is not enough to show excusable neglect. Bualuay, 11 FSM Intrm. at 146. Being a busy lawyer does not constitute excusable neglect. *Id.* at 147. The standard for reviewing excusable neglect is stricter than the standard of good cause. *Id.*

In this case, Defendants were served the motion subsequent to their attorney leaving the island on April 6, 2010. Under Rule 6, the deadline for filing an opposition lapsed prior to her return to the island. FSM Civ. R. 6(b). Under these circumstances there was no practical way to oppose the motion. *Id.* Moreover, Defendants had notified the court and all attorneys of their attorney's departure prior to her departure from the island. Had the court's analysis stopped here Defendants' motion would have merited a finding of excusable neglect. However, upon her return they did not immediately file a request for enlargement. Defendants waited an additional 10 days to file a request for an enlargement to the 7th day of May 2010. This date has passed and Defendants have yet to file an opposition memorandum. Based upon these facts the court is unable to find the Defendants' neglect was excusable.

CONCLUSION

For the reasons set forth above the Defendant's motion to enlarge is denied.

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