

FSM SUPREME COURT TRIAL DIVISION

EMANUEL "MANNY" MORI,)
)
 Plaintiff,)
)
 vs.)
)
 MYRON HASIGUCHI, ELSA LAGRADILLA,)
 and TRUK TRANSPORTATION CO., INC.,)
)
 Defendants,)
)
 _____)
 TRUK TRANSPORTATION CO., INC.,)
)
 Counterclaimant,)
)
 vs.)
)
 EMANUEL "MANNY" MORI,)
)
 Counter-Defendant,)
)
 _____)
 TRUK TRANSPORTATION CO., INC.,)
)
 Third-Party Plaintiff,)
)
 vs.)
)
 BARNEY OLTER, MARION OLTER, ROSELT)
 POBUK, LISA OLTER, and DWIGHT OLTER,)
)
 Third-Party Defendants.)
)
 _____)

CIVIL ACTION NO. 2008-1111

ORDER DENYING STAY

Ready E. Johnny
Associate Justice

Decided: August 4, 2011

APPEARANCES:

For the Plaintiff: Sabino S. Asor, Esq.
P.O. Box 95
Weno, Chuuk FM 96942

For the Defendants: Stephen V. Finnen, Esq.
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Kolonia, Pohnpei FM 96941

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HEADNOTES

Appellate Review – Stay – Civil Cases

Generally, a court weighs four factors when considering whether to grant a stay pending appeal: 1) whether the appellant has made a strong showing that he is likely to prevail on the appeal's merits; 2) whether the appellant has shown that he will be irreparably harmed without the stay; 3) whether the stay's issuance would substantially harm other parties interested in the proceedings; and 4) whether the public interest would be served by granting a stay, and ordinarily, the first factor is the most important, but a stay may be granted upon a lesser showing of a substantial case on the merits if the balance of the equities in factors 2, 3, and 4 weighs heavily in the stay's favor. Mori v. Hasiguchi, 17 FSM Intrm. 602, 604 (Chk. 2011).

Appellate Review – Stay – Civil Cases

Although it is not a trial court's place to rule on an appellate court's jurisdiction, an analysis of the first factor to weigh when considering a stay request – likelihood of success – may require that the trial court to express a view on the appellate court's jurisdiction over what has been appealed. Mori v. Hasiguchi, 17 FSM Intrm. 602, 604 (Chk. 2011).

Appellate Review – Decisions Reviewable

Interlocutory orders involving injunctions, receivers and receiverships, and interlocutory decrees determining rights and liabilities in admiralty cases, are reviewable in the appellate division and interlocutory appellate review may also be granted when the trial court has issued an order pursuant to Appellate Rule 5(a). Mori v. Hasiguchi, 17 FSM Intrm. 602, 604 (Chk. 2011).

Appellate Review – Stay – Civil Cases

When the trial court is unaware of any basis on which an appellate court can entertain an interlocutory appeal of a motion, it may conclude the plaintiff has virtually zero chance of success on the appeal's merits because the appellate court will not, for lack of jurisdiction, be able to even consider the appeal's merits, and when, even if the interlocutory appeal were from a severance order and not a motion, it is not apparent that, under these circumstances, an appellate court could exercise jurisdiction, the first and most important factor weighs most heavily against granting the plaintiff a stay. Mori v. Hasiguchi, 17 FSM Intrm. 602, 604 (Chk. 2011).

Appellate Review – Stay – Civil Cases

When the first and most important factor weighs most heavily against granting the plaintiff a stay and the second factor – irreparable harm to the appellant – also does not weigh in the plaintiff's favor because he cannot show any harm when the court has yet to rule one way or the other on its own pending motion, the other two factors are irrelevant since even if they favored a stay, they could not overcome the weight of the first two factors. Mori v. Hasiguchi, 17 FSM Intrm. 602, 604 (Chk. 2011).

* * * *

COURT'S OPINION

READY E. JOHNNY, Associate Justice:

On June 6, 2011, the plaintiff filed a Notice of Appeal of the court's Order Setting Further Schedule, entered May 13, 2011. The notice stated that the plaintiff's issues on appeal were whether the court had abused its discretion by not ruling on his October 26, 2009 Motion to Compel Discovery

and by severing the present action and including that motion in a second, separate action. The notice, under a heading reading "2. MOTION TO STAY FURTHER PROCEEDINGS PENDING INTERLOCUTORY APPEAL," further stated that "[t]his being an interlocutory appeal, in due course, appellant will file a Motion to Stay further Proceedings of the present civil matter." Notice of Appeal at 2 (Jun. 6, 2011). Although no further motion was filed, defendants Myron Hasiguchi, Elsa Lagradilla, and Truk Transportation Co., Inc. filed their Opposition to Motion to Stay Proceedings on June 22, 2011.

Assuming that there is a motion to stay before the court, which is an uncertain proposition, the court will apply the usual factors to the analysis. Generally, a court weighs four factors when considering whether to grant a stay pending appeal: 1) whether the appellant has made a strong showing that he is likely to prevail on the appeal's merits; 2) whether the appellant has shown that he will be irreparably harmed without the stay; 3) whether the stay's issuance would substantially harm other parties interested in the proceedings; and 4) whether the public interest would be served by granting a stay, and ordinarily, the first factor is the most important, but a stay may be granted upon a lesser showing of a substantial case on the merits if the balance of the equities in factors 2, 3, and 4 weighs heavily in the stay's favor. FSM Dev. Bank v. Helgenberger, 17 FSM Intrm. 266, 269 (Pon. 2010); Carlos Etscheit Soap Co. v. McVey, 17 FSM Intrm. 176, 178-79 (Pon. 2010).

Although it is not a trial court's place to rule on an appellate court's jurisdiction, see Bank of Guam v. O'Sonis, 9 FSM Intrm. 197, 199 (Chk. 1999); cf. Ruben v. Petewon, 14 FSM Intrm. 177, 187 (Chk. S. Ct. App. 2006), an analysis of the first factor – likelihood of success – requires that this trial court express a view on the appellate court's jurisdiction over what has been appealed in this case. Interlocutory orders involving injunctions, receivers and receiverships, and interlocutory decrees determining rights and liabilities in admiralty cases, are reviewable in the appellate division and interlocutory appellate review may also be granted when the trial court has issued an order pursuant to Appellate Rule 5(a), Etscheit v. Adams, 6 FSM Intrm. 608, 610 (App. 1994), but this interlocutory appeal does not fall within any of those categories. This court has not issued an order including the prescribed statement required by Appellate Rule 5(a) before a party can ask the appellate division for permission to pursue an interlocutory appeal. Nor does the matter appealed involve an injunction or a receiver or a re receivership and this is not an admiralty case.

Furthermore, what the plaintiff seeks to appeal is not even a court order. The plaintiff opposes the severance of his derivative action claims from the rest of this case and the disposition of his motion to compel discovery in a new severed action instead of the current case. The court's May 13, 2011 order did not sever this case nor did it assign the discovery motion to a new case. It merely suggested that these might be viable options to expedite the resolution of pending matters in this action and invited the parties' comments on the suggestion. The issues in this case have neither been severed nor has the discovery motion been assigned to one case or another. At this point, it is merely a motion made (sua sponte) by the court, on which the court has yet to rule one way or the other. This court is unaware of any basis on which an appellate court can entertain an interlocutory appeal of a motion. This court therefore concludes that the plaintiff has virtually zero chance of success on the appeal's merits because the appellate court, as best as this court can predict, will not, for lack of jurisdiction, be able to even consider the appeal's merits. And, even if the interlocutory appeal were from a severance order and not a motion, it is not apparent that, under these circumstances, an appellate court could exercise jurisdiction. Thus, the first and most important factor weighs most heavily against granting the plaintiff a stay.

The second factor – irreparable harm to the appellant – also does not weigh in the plaintiff's favor. The plaintiff cannot show any harm when the court has yet to rule one way or the other on its own pending motion. The other two factors are thus irrelevant since even if (although it seems unlikely) they favored a stay, they could not overcome the weight of the first two factors.

Accordingly, the plaintiff's motion for a stay pending appeal is denied.

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FSM SUPREME COURT TRIAL DIVISION

FSM DEVELOPMENT BANK,)	CIVIL ACTION NO. 2010-1010
)	
Plaintiff,)	
)	
vs.)	
)	
JOHN KANSOU, SUSAN KANSOU,)	
and PENRI KOFOT,)	
)	
Defendants.)	
_____)	

ORDER DENYING INTERVENTION

Ready E. Johnny
Associate Justice

Decided: August 8, 2011

APPEARANCES:

For the Plaintiff: Nora Sigrah, Esq.
P.O. Box M
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For the Would-be Intervenors: Salomon M. Saimon, Esq.
Micronesia Legal Services Corporation
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HEADNOTES

Civil Procedure – Intervention

Since both intervention as of right and permissive intervention must be upon timely application and a permissive intervention motion under Rule 24(b) filed after judgment has been entered and all rights to appeal have expired can never be timely, post-judgment movants must qualify as intervenors as of right in order to be permitted to intervene. FSM Dev. Bank v. Kansou, 17 FSM Intrm. 605, 607 & n.1 (Chk. 2011).

Property – Registered Land

A certificate of title is conclusive upon all persons who have had notice of the proceedings and all those claiming under them and is prima facie evidence of ownership as stated therein against the world. FSM Dev. Bank v. Kansou, 17 FSM Intrm. 605, 607-08 (Chk. 2011).