

The November 16, 2012 dismissal with prejudice is therefore affirmed.

IV. CONCLUSION

Accordingly, we 1) affirm the denials of injunction requests; 2) affirm the denial of consolidation; 3) affirm the denial of summary judgment on the law of the case ground; and 4) affirm the case's dismissal with prejudice.

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FSM SUPREME COURT TRIAL DIVISION

FSM DEVELOPMENT BANK,)	CIVIL ACTION NO. 2007-035
)	
Plaintiff,)	
)	
vs.)	
)	
PERDUS I. EHSa and TIMAKYO I.)	
EHSa a/k/a TIMAKIO I. EHSa,)	
)	
Defendants.)	
_____)	

ORDER DENYING VACATION OF HEARING

Ready E. Johnny
Associate Justice

Decided: September 2, 2013

APPEARANCES:

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HEADNOTES

Appellate Review – Stay – Civil Cases – Money Judgments; Attachment and Execution

By rule, a judgment is automatically stayed for only ten days. Once that ten days has passed, the judgment holder is free to execute on or to enforce the judgment unless a supersedeas bond has been posted and approved by the court or a stay sought and granted. FSM Dev. Bank v. Ehsa, 19 FSM R. 128, 130 (Pon. 2013).

Appellate Review – Stay – Civil Cases – Money Judgments; Attachment and Execution

In the absence of a stay obtained in accordance with Rule 62(d), the pendency of an appeal does not prevent the judgment creditor from acting to enforce the judgment. FSM Dev. Bank v. Ehsa, 19 FSM R. 128, 130 (Pon. 2013).

Appellate Review – Stay – Civil Cases – Money Judgments; Attachment and Execution

An appeal from a final judgment does not affect the judgment holder's right to execute upon the judgment. FSM Dev. Bank v. Ehsa, 19 FSM R. 128, 130 (Pon. 2013).

Appellate Review – Stay – Civil Cases – Money Judgments; Attachment and Execution

An appeal from a final judgment does not affect the judgment holder's right to enforce the judgment unless a supersedeas bond is posted or a stay of enforcement is ordered by the court. FSM Dev. Bank v. Ehsa, 19 FSM R. 128, 130 (Pon. 2013).

Appellate Review – Notice of Appeal; Attachment and Execution; Judgments

Generally, the filing of a notice of a appeal divests the trial court of jurisdiction over the appealed case. Notwithstanding the general effect of the filing of a notice of appeal, the trial court retains jurisdiction to determine matters collateral or incidental to the judgment, and may act in aid of the appeal. For example, because the mere filing of a notice of appeal does not affect the validity of a judgment, the trial court retains jurisdiction to enforce the judgment. FSM Dev. Bank v. Ehsa, 19 FSM R. 128, 130 (Pon. 2013).

Appellate Review – Stay – Civil Cases – Money Judgments; Attachment and Execution; Debtors' and Creditors' Rights – Orders in Aid of Judgment

Since the trial court retains jurisdiction to enforce a judgment even though it has been appealed, a judgment holder may, in the absence of a stay, seek to enforce its judgment, and a hearing to enforce or modify existing orders in aid of the existing judgment will proceed as scheduled because Congress has, by statute, has authorized judgment holders to use these methods to enforce valid money judgments. FSM Dev. Bank v. Ehsa, 19 FSM R. 128, 130 (Pon. 2013).

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COURT'S OPINION

READY E. JOHNNY, Associate Justice:

This comes before the court on the Defendants' Motion to Reconsider Order Setting Hearing, filed August 15, 2013, and the Plaintiff's Opposition to Defendants' Motion to Reconsider Order Setting Hearing, filed August 19, 2013. The defendants ask that the hearing set to consider the judgment-creditor FSM Development Bank's motions be vacated. The defendants' motion is denied. The reasons follow.

I. BACKGROUND

On December 28, 2007, a money judgment was entered in this case against defendants Perdus I. Ehsa, Timakio I. Ehsa, and others. Defendants Perdus I. Ehsa and Timakio I. Ehsa moved for relief from that judgment. On March 19, 2013, the court denied their Rule 60(b) motion for relief. FSM Dev. Bank v. Ehsa, 18 FSM Intrm. 608 (Pon. 2013). On April 16, 2013, the Ehsas appealed that denial (docketed as P3-2013). They did not move under Civil Procedure Rule 62 for a stay of the judgment against them or provide a supersedeas bond.

II. ANALYSIS

The Ehsas contend that, since they timely appealed the March 19, 2013 order, all jurisdiction over this case has been transferred from the trial court to the appellate division and the trial court cannot take any further action on the bank's pending motions that seek to enforce the money judgment against them. In effect, they assert that the judgment has been automatically stayed by their notice of appeal without them having to move for a stay or post a supersedeas bond.

By rule, a judgment is automatically stayed for only ten days. FSM Civ. R. 62(a); People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM Intrm. 501, 503 (Yap 2006) (statutory right to obtain the immediate issuance of a writ of execution is automatically stayed for ten days by court rule, and may be stayed by the court pending an appeal). Once that ten days has passed, the judgment holder is free to execute on or to enforce the judgment unless a supersedeas bond has been posted and approved by the court, FSM Civ. R. 62(d), or a stay sought and granted. "'In the absence of a stay obtained in accordance with Rule 62(d), the pendency of an appeal does not prevent the judgment creditor from acting to enforce the judgment.'" FSM Dev. Bank v. Arthur, 16 FSM Intrm. 132, 142 (Pon. 2008) (quoting 11 CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FEDERAL PRACTICE AND PROCEDURE § 2905, at 524 (2d ed. 1995)) (appellant who cannot furnish a supersedeas bond assumes the risk of not getting his money back if the judgment is reversed). "An appeal from a final judgment does not affect the judgment holder's right to execute upon the judgment." Farms v. Carlsbad Riverside Apartments, Inc., 690 P.2d 1044, 1046 (N.M. Ct. App. 1984).

"An appeal from a final judgment does not affect the judgment holder's right to enforce the judgment unless a supersedeas bond is posted or a stay of enforcement is ordered by the court." 47 AM. JUR. 2D *Judgments* § 961, at 418 (rev. ed. 1995).

Generally, the filing of a notice of a appeal divests the trial court of jurisdiction over the appealed case. . . .

Notwithstanding the general effect of the filing of a notice of appeal, the trial court retains jurisdiction to determine matters collateral or incidental to the judgment, and may act in aid of the appeal. For example, because the mere filing of a notice of appeal does not affect the validity of a judgment, the [trial] court retains jurisdiction to enforce the judgment.

TSA Int'l Ltd. v. Shimizu Corp., 990 P.2d 713, 735 (Haw. 1999) (citations omitted). The trial court therefore retains jurisdiction to enforce the judgment against the Ehsas. The bank may therefore, in the absence of a stay, seek to enforce its judgment against Perdus I. Ehsa and Timakio I. Ehsa.

Since the hearing the bank requested, 6 F.S.M.C. 1409, is to enforce or modify, 6 F.S.M.C. 1411, existing orders in aid of the existing judgment, the hearing will proceed as scheduled. Congress has, by statute, authorized judgment holders to use these methods to enforce valid money judgments.

III. CONCLUSION

Accordingly, the Ehsas' motion to reconsider setting a hearing is denied.

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