

CHUUK STATE SUPREME COURT APPELLATE DIVISION

SAINAS KUSS and SANRIKO KUSS,)	CIVIL APPEAL NO. 11-2007
)	
Appellants,)	
)	
vs.)	
)	
KAWAICHY JOSEPH,)	
)	
Appellee.)	
_____)	

ORDER OF REMAND

Hearing: April 29, 2014
Decided: May 1, 2014

BEFORE:

Hon. Camillo Noket, Chief Justice, Presiding
Hon. Derensio S. Konman, Temporary Justice*
Hon. Brian Dickson, Temporary Justice*

*Attorney at Law, Weno, Chuuk

APPEARANCE:

For the Appellants: Ben K. Enlet
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HEADNOTES

Judgments – Relief from Judgment

A trial division justice does not have jurisdiction to issue an order granting relief from the summary judgment when the matter has been timely appealed and the jurisdiction lay in the appellate division when he issued the relief order. Kuss v. Joseph, 19 FSM R. 380, 381 (Chk. S. Ct. App. 2014).

Judgments – Relief from Judgment

After a judgment has been appealed, a trial court, without appellate court permission, has the power to both consider, and deny Rule 60(b) relief from judgment motions, but the trial court cannot grant a Rule 60(b) motion while an appeal is pending. If the trial court is inclined to grant the motion for relief from judgment, it should issue a brief memorandum so indicating, and, armed with this, the movant may then request the appellate court to remand the action so that the trial court can vacate judgment and proceed with the action accordingly. Kuss v. Joseph, 19 FSM R. 380, 381 (Chk. S. Ct. App. 2014).

Judgments – Relief from Judgment

An appellate court may consider a trial justice's order setting aside the summary judgment to be his "brief memorandum" indicating that he is inclined to grant the motion to set aside the summary judgment as void and remand the case to the trial division so that the trial justice can, if he is so inclined, re-enter his order vacating the summary judgment. Kuss v. Joseph, 19 FSM R. 380, 381-82 (Chk. S. Ct. App. 2014).

* * * *

COURT'S OPINION

CAMILLO NOKET, Chief Justice, Presiding:

This appeal arises from the trial division's September 19, 2007 Summary Judgment Order in Civil Action No. 68-2006. We remand the case for further proceedings consistent with this opinion.

I. BACKGROUND

This case was filed by Kawaichy Joseph on April 26, 2006, as a complaint for trespass against Sainas Kuss and Sanriko Kuss. It was assigned to Justice Marar. He dismissed the case on June 26, 2006.

On September 19, 2007, a different trial division justice issued an order of summary judgment against the defendants in the amount of \$13,000. There had been no motion for relief from the dismissal, no order assigning the matter to another justice, and no motion for summary judgment. The Kuss defendants timely appealed on October 19, 2007. On October 30, 2007, the Kuss defendants filed in the trial division a motion to set aside the summary judgment. On November 7, 2007, Justice Marar granted that motion characterizing the September 19, 2007 summary judgment as void.

II. ANALYSIS

No action had taken place in this appeal until we set an April 29, 2014 hearing. This may be because of the conflicting trial division orders left each side believing that the matter was closed, and possibly believing that it was closed in their favor. Counsel for the appellants did appear at the April 29, 2014 scheduled hearing. Also present was the appellee's son.

We conclude from the record that while the other trial division justice apparently did not have jurisdiction to issue his summary judgment order, Justice Marar also did not have jurisdiction to issue his November 7, 2007 order granting relief from the "summary judgment." This is because the matter had been timely appealed and the jurisdiction lay in the appellate division when he issued his November 7, 2007 order.

After a judgment has been appealed, a trial court, without appellate court permission, has the power to both consider, and deny Rule 60(b) relief from judgment motions, but the trial court cannot grant a Rule 60(b) motion while an appeal is pending. Walter v. Meippen, 7 FSM Intrm. 515, 517-18 (Chk. 1996). If the trial court is inclined to grant the motion for relief from judgment, it should issue a brief memorandum so indicating, and, armed with this, the movant may then request the appellate court to remand the action so that the trial court can vacate judgment and proceed with the action accordingly. *Id.* at 518.

We consider Justice Marar's November 7, 2007 order to be his "brief memorandum" indicating

that he is inclined to grant the motion to set aside the September 19, 2007 summary judgment as void under Chuuk Civil Procedure Rule 60(b)(5). We shall give him that opportunity.

III. CONCLUSION

We therefore remand the case to the trial division so that Justice Marar can, if he is so inclined, re-enter his order vacating the summary judgment. That should leave no loose ends and will let all parties know where they stand in the matter so that they may take whatever steps seem appropriate.

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FSM SUPREME COURT TRIAL DIVISION

KENTRICKSON MANUEL,)	CIVIL ACTION NO. 2010-020
)	
Plaintiff,)	
)	
vs.)	
)	
FEDERATED STATES OF MICRONESIA,)	
)	
Defendant.)	
)	

FINDINGS, CONCLUSIONS OF LAW, AND DECISION

Beauleen Carl-Worswick
Associate Justice

Trial: July 31-August 2, 2013
Submitted: August 16, 2013
Decided: May 2, 2014

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