

remains on the reef. Salvage damages cannot be awarded when there has been no salvage or rendering harmless operation and when no salvage costs have been incurred because the right to payment for salvage operations presumes that salvage operations have been conducted to a beneficial result. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 96 (Yap 2013). "Salvage operations undertaken within the Federated States of Micronesia which have had a useful result shall create the right to reward." 19 F.S.M.C. 918(1). The criteria for fixing a salvage reward amount includes "the measure of success obtained by the salvor." 19 F.S.M.C. 919(1)(c). Pohnpei has not furnished any evidence that it has suffered any damages conducting salvage operations to a useful and beneficial result. Accordingly, no salvage damages can be awarded.

There being no just cause for delay, NOW THEREFORE IT IS HEREBY ORDERED that the clerk shall enter a default judgment, FSM Civ. R. 54(b), for the plaintiff against the defaulting defendants, jointly and severally, for \$13,419,000.

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FSM SUPREME COURT TRIAL DIVISION

MOYLAN'S INSURANCE UNDERWRITERS)
(FSM), INC.,)
)
Plaintiff,)
)
vs.)
)
JAYLEEN GALLEN,)
)
Defendant.)
_____)

CIVIL ACTION NO. 2014-017

ORDER DENYING MOTION TO SET ASIDE JUDGMENT

Beauleen Carl-Worswick
Associate Justice

Decided: March 4, 2015

APPEARANCES:

For the Plaintiff: Fredrick L. Ramp, Esq.
Ramp & Mida Law Firm
P.O. Box 1480
Kolonia, Pohnpei FM 96941

For the Defendant: Salomon M. Saimon, Esq.
Staff Attorney
Micronesia Legal Services Corporation
P.O. Box 129
Kolonia, Pohnpei FM 96941

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HEADNOTES

Judgments – Relief from Judgment – Time Limits

When a motion for relief from judgment is made pursuant to Civil Rule 60(b)(1), (2), or (3), a court must first consider whether it was made within a reasonable time even when it is made within the one year time limit. To determine if the time was reasonable, the court considers whether the nonmoving party was prejudiced and whether the moving party had some good reason for his failure to take appropriate action sooner. Moylan's Ins. Underwriters (FSM), Inc. v. Gallen, 20 FSM R. 3, 5 (Pon. 2015).

Judgments – Relief from Judgment – Time Limits

Four months may be a reasonable time for a defendant to seek relief from judgment when the defendant was pro se and the plaintiff was not prejudiced by the delay. Moylan's Ins. Underwriters (FSM), Inc. v. Gallen, 20 FSM R. 3, 6 (Pon. 2015).

Judgments – Relief from Judgment – Grounds

A court may relieve an affected party from judgment on the basis of mistake, inadvertence, surprise, or excusable neglect. The grant or denial of relief under Rule 60 rests with the trial court's sound discretion. The court must balance the policy in favor of hearing a litigant's claims on the merits against the policy in favor of finality. Moylan's Ins. Underwriters (FSM), Inc. v. Gallen, 20 FSM R. 3, 6 (Pon. 2015).

Civil Procedure – New Trial; Judgments – Alter or Amend Judgment

The defendants do not present adequate grounds to support a motion to alter judgment or a motion for a new trial when there has been no manifest error of law or fact made by the court in its memorandum and judgment and when there has been no newly discovered evidence presented by the defendants in support of their motion. Moylan's Ins. Underwriters (FSM), Inc. v. Gallen, 20 FSM R. 3, 6 (Pon. 2015).

Judgments – Relief from Judgment – Grounds

Relief from judgment will be denied when the basis for relief is that there was mistake, inadvertence, and excusable neglect in the stipulated judgment because besides the fraudulent insurance policies that are the subject of the complaint, there were legitimate policies sold and the defendant mistakenly believed that the properly earned commission and proper rate of commission had already been taken into account when the parties stipulated to judgment, but, during a deposition, in discussing the stipulation, the defendant admitted that the judgment amount was correct and that she had the opportunity to review the stipulation for one to two days before signing it and when no further evidence was produced to support the claim that the judgment amount was inaccurate. Moylan's Ins. Underwriters (FSM), Inc. v. Gallen, 20 FSM R. 3, 6 (Pon. 2015).

* * * *

COURT'S OPINION

BEAULEEN CARL-WORSWICK, Associate Justice:

I. BACKGROUND

Judgment was entered in this matter on June 26, 2014, in favor of the plaintiff, Moylan's Insurance Underwriters (FSM), Inc. (Moylan), and against defendant, Jayleen Gallen (Gallen). The amount of the judgment entered was \$26,159.95, plus post judgment interest of 9% per annum. The

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Judgment was made pursuant to a Stipulated Motion for Judgment on the Pleadings filed on June 25, 2014.

On August 12, 2014, Moylan filed a Motion for an Order in Aid of Judgment, stating that no portion of the Judgment has been paid by Gallen. On October 16, 2014, Salomon Saimon, Esq., through the Micronesian Legal Services Corporation (MLSC), on Gallen's behalf, filed a Notice of Appearance, Motion to Set Aside Judgment and Withdraw Answer, and Motion to Delay Order in Aid Proceedings.¹

A hearing on Moylan's Motion for Order in Aid of Judgment was held on October 23, 2014. At the outset of the hearing, Moylan requested that the court allow the deposition of Gallen to take place before a response to the Motion to Set Aside Judgment and Withdraw Answer is filed. Gallen did not object to Moylan's request.

The deposition of Gallen was taken on November 6, 2014. On November 20, 2014, Moylan's filed an Opposition to Motion to Set Aside Judgment and Withdraw Answer. No response was entered by Gallen. After reviewing the documents filed and the evidence before the court, Gallen's motion is denied.

II. DISCUSSION

Reasonable Time Standard

Gallen's motion to set aside the Judgment entered on June 26, 2014 is made pursuant to FSM Civil Rule 60(b)(1), which states

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

When a motion for relief from judgment is made pursuant to Civil Rule 60(b)(1), a court must first consider whether it was made within a reasonable time even when it is made within the one year time limit. To determine if the time was reasonable it considers whether the nonmoving party was prejudiced and whether the moving party had some good reason for his failure to take appropriate action sooner. Walter v. Meippen, 7 FSM Intrm. 515, 518 (Chk. 1996).

When a motion for relief from judgment is made pursuant to Civil Rule 60(b)(1), (2), or (3) the court must consider whether it was made within a reasonable time even when it is made within the one

¹ In the Answer filed on April 17, 2014, Gallen admits to all the allegations set forth in Moylan's Complaint. The record shows that the Answer was drafted by Moylan and signed by Gallen. The affidavit of Gallen filed on October 16, 2014 states that she approached MLSC for the first time on September 24, 2014.

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year time limit. Senda v. Mid-Pacific Constr. Co., 6 FSM Intrm. 440, 445-46 (App. 1994).

Here, Judgment was entered on June 26, 2014, the Motion for Order in Aid of Judgment was filed by Moylan on August 12, 2014, and the Motion to Set Aside Judgment was made on October 16, 2014. Although the pending motion falls with the one year limit under 60(b)(1), the court must consider the nearly four (4) months it took Gallen to file the pending motion.

The facts show that from the initial stages of this matter, Gallen appeared *pro se*. Although she was encouraged to find legal counsel on numerous occasions, it was not until after the filing of the Motion for Order in Aid of Judgment that she contacted MLSC for assistance. Dep. of Gallen at 6-11. The delay in filing the current motion in this matter is likely attributed to the fact that Gallen was *pro se* for most of the proceedings.

The court finds that the delay by Gallen in filing her Motion to Set Aside Judgment as a result of appearing *pro se* outweighs any prejudice that Moylan may have in not having the Judgment satisfied within the period Judgment was entered up until when the pending motion was filed. Accordingly, the court finds that Gallen's motion was filed within a reasonable time pursuant to FSM Civ. R. 60(b)(1).

FSM Civ. R. 60(b)(1)

Rule 60(b)(1) provides that a court may relieve an affected party from judgment on the basis of mistake, inadvertence, surprise, or excusable neglect. Panuelo v. Amayo, 12 FSM Intrm. 365, 372 (App. 2004). The grant or denial of relief under Civil Procedure Rule 60 rests with the sound discretion of the trial court. *Id.* Relief from judgment is addressed to the discretion of the court, which must balance the policy in favor of hearing a litigant's claims on the merits against the policy in favor of finality. Walter v. Meippen, 7 FSM Intrm. 515, 518 (Chk. 1996).

The defendants have not presented adequate grounds to support their motion to alter judgment or for a new trial when there has been no manifest error of law or fact made by the court in its memorandum and judgment and when there has been no newly discovered evidence presented by the defendants in support of their motion. Livaie v. Weillbacher, 13 FSM Intrm. 249, 251 (Kos. S. Ct. Tr. 2005).

In the present matter, the basis for Gallen's claim is that there was mistake, inadvertence, and excusable neglect in the Stipulated Motion for Judgment on the Pleadings, pursuant to FSM Civ. R. 60(b)(1). Def.'s Mot. to Set Aside J. at 4. Gallen argues that besides the fraudulent insurance policies that is the subject of the Complaint, there were legitimate policies sold. Gallen further states that she had the mistaken belief that the properly earned commission and proper rate of commission had already been taken into account when the parties entered into the stipulation. *Id.* at 3, 5.

Here, during the deposition, in discussing the stipulation motion with Moylan's attorney, Fredrick L. Ramp, Esq., Gallen admitted that the amount reflected in the Judgment was correct. Dep. of Gallen at 12. Further, Gallen testified that she had the opportunity to review both the Answer and the stipulated motion for one to two days before signing the documents. *Id.* at 13-14. Finally, no reply was filed to Moylan's opposition to set aside judgment by Gallen, and no further evidence was produced to support Gallen's claim that the Judgment amount was inaccurate.

III. CONCLUSION

THEREFORE, the defendant's Motion to Set Aside Judgment and Withdraw Answer is HEREBY DENIED. A hearing on the plaintiff's Motion for an Order in Aid of Judgment is set for March 24, 2015,

at 9:30 a.m. at the FSM Supreme Court in Palikir, Pohnpei.

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FSM SUPREME COURT TRIAL DIVISION

CIVIL ACTION NO. 2012-1024

EOT MUNICIPALITY, ETTAL MUNICIPALITY,)
FANANOU MUNICIPALITY, FANAPANGAS)
MUNICIPALITY, LUKINOCHE MUNICIPALITY, MOCH)
MUNICIPALITY, NOMWIN MUNICIPALITY, PAREM)
MUNICIPALITY, RUO MUNICIPALITY, SATOWAN)
MUNICIPALITY, TAMATAM MUNICIPALITY, and)
UDOT MUNICIPALITY,)

Plaintiffs,)

vs.)

JOHNSON ELIMO, in his capacity as Governor of)
Chuuk State, CHUUK STATE, and FEDERATED)
STATES OF MICRONESIA,)

Defendants.)

FEDERATED STATES OF MICRONESIA,)

Cross-Claimant/)
Counter-Cross-Defendant,)

vs.)

STATE OF CHUUK,)

Cross-Defendant/)
Counter-Cross-Claimant.)

ORDER TO ENTER PARTIAL FINAL JUDGMENT

Beauleen Carl-Worswick
Associate Justice

Decided: March 13, 2015

APPEARANCE:

For the Plaintiffs:

Stephen V. Finnen, Esq.
P.O. Box 1450
Kolonía, Pohnpei FM 96941

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