

FSM SUPREME COURT TRIAL DIVISION

FSM DEVELOPMENT BANK,)	CIVIL ACTION NO. 1996-060
)	
Plaintiff,)	
)	
vs.)	
)	
LINDA CARL and the ESTATE OF YOSHIRO CARL,)	
)	
Defendants.)	
_____)	

ORDER DENYING RELIEF FROM JUDGMENT AND QUASHING SUBPOENAS

Ready E. Johnny
Acting Chief Justice

Decided: June 18, 2015

APPEARANCES:

For the Plaintiff: Nora E. Sigrah, Esq.
 P.O. Box M
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For the Defendants: Yoslyn G. Sigrah, Esq.
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HEADNOTES

Judgments – Relief from Judgment – Time Limits

A motion for relief from judgment must be made within a reasonable time and for most reasons, that time cannot exceed one year. Even if the reason given were one for which reasonable time greater than one year was allowed, a motion sixteen years after judgment, is not made within a reasonable time. FSM Dev. Bank v. Carl, 20 FSM R. 70, 72 (Pon. 2015).

Judgments – Relief from Judgment; Judgments – Relief from Judgment – Independent Action

Although Rule 60(b) does not limit the court’s power to entertain an independent action to relieve a party from a judgment, the procedure for obtaining any relief from a judgment is either by a Rule 60(b) motion or by an independent action; not by both. FSM Dev. Bank v. Carl, 20 FSM R. 70, 72 (Pon. 2015).

Judgments – Relief from Judgment – Independent Action

The mere filing of an independent action for relief is not in itself a ground for relief of any kind. Just as a Rule 60(b) motion does not affect the finality of a judgment or suspend its operation, an independent action’s filing does not affect the judgment’s finality or suspend its operation. An independent action is just that – independent of the case in which the judgment was entered unless and

until a final judgment in the independent action grants relief from the judgment. The independent action proceeds on its own. FSM Dev. Bank v. Carl, 20 FSM R. 70, 72 (Pon. 2015).

Judgments – Relief from Judgment – Independent Action

The filing of an independent action is not a ground for a stay of judgment. It cannot be the basis for a stay since its filing does not affect or suspend the judgment's operation. FSM Dev. Bank v. Carl, 20 FSM R. 70, 72 (Pon. 2015).

Debtors' and Creditors' Rights; Judgments – Stipulated

While a stipulated judgment does represent a private agreement and not a judicial determination, it is a judicial act, binding on the parties. Thus, contract defenses are not available to a judgment debtor in a proceeding to enforce a money judgment. FSM Dev. Bank v. Carl, 20 FSM R. 70, 73 (Pon. 2015).

Civil Procedure – Discovery; Debtors' and Creditors' Rights

Under Rule 69, post-judgment discovery is available only to judgment creditors. FSM Dev. Bank v. Carl, 20 FSM R. 70, 73 (Pon. 2015).

Civil Procedure – Discovery; Debtors' and Creditors' Rights

The right to post-judgment discovery is limited to judgment creditors, who are usually, but not always, plaintiffs who succeeded in obtaining a money judgment. Rule 69 is meant to benefit a judgment creditor, not a judgment debtor. FSM Dev. Bank v. Carl, 20 FSM R. 70, 73-74 (Pon. 2015).

Civil Procedure – Discovery; Debtors' and Creditors' Rights; Judgments

Rule 69 applies only to money judgments. Thus, it is generally not applicable to judgments that direct specific acts, which are covered by Rule 70. FSM Dev. Bank v. Carl, 20 FSM R. 70, 74 n.2 (Pon. 2015).

Civil Procedure – Discovery; Debtors' and Creditors' Rights

A judgment debtor has no discovery rights under Rule 69, which makes sense because once a money judgment has been rendered, the only relevant factual inquiry is the debtor's ability to pay the judgment and the fastest manner in which the debtor can reasonably pay it. FSM Dev. Bank v. Carl, 20 FSM R. 70, 74 (Pon. 2015).

* * * *

COURT'S OPINION

READY E. JOHNNY, Acting Chief Justice:

This comes before the court on the Motion for Relief from Judgment, filed March 18, 2015, by the defendants, Linda Carl and the Estate of Yoshiro Carl; FSMDB's Opposition to Linda Carl's Motion for Relief from Judgment, filed April 1, 2015; and on Plaintiff's Motion to Quash Subpoenas Directed at Sihna Lawrence; Ana Mendiola; and John Sohl, filed May 26, 2015; FSMDB's Supplemental Memorandum, in Support of Motion to Quash Subpoenas, filed June 3, 2015; Defendants' Opposition to Plaintiff's Motion to Quash Subpoenas Directed at Sihna Lawrence, Ana Mendiola, and John Sohl, filed June 4, 2015; and Plaintiff's Reply in Support of Motion to Quash Subpoenas, filed June 15, 2015. The court, having reviewed the filings, is satisfied that oral argument on these motions is unnecessary. The motion for relief from judgment is denied. The motion to quash subpoenas is granted. The reasons follow.

I. BACKGROUND

This is a post-judgment case. In 1993, Yoshiro and Linda Carl borrowed money from the bank to improve a bakery. The loan eventually went into default. Yoshiro Carl died December 29, 1995. The bank filed suit in late 1996. The litigation proceeded. Eventually, the parties, who were all represented by counsel, stipulated to a judgment in the bank's favor for \$45,137.79, bearing 7% interest per annum (instead of the statutory 9% interest). Chief Justice Andon L. Amaraich ordered that stipulated judgment entered on February 11, 1999.

II. CARL'S MOTION FOR RELIEF FROM JUDGMENT

On March 18, 2015, the defendants moved for relief from the February 11, 1999 judgment because Linda Carl had already filed a separate case, Linda Carl v. Anna Mendiola, individually and in her capacity as President and Chief Executive Officer of FSM Development Bank; John Sohl, in his official capacity as Chairman of the FSM Development Bank Board of Directors; and the FSM Development Bank, Civil Action No. 2015-010, as an independent action for relief from the judgment in this case. They ask that the judgment in this case be vacated so as to allow Civil Action No. 2015-010 to proceed.

The motion is denied. A motion for relief from judgment must be made within a reasonable time and for most reasons, that time cannot exceed one year. FSM Civ. R. 60(b). Even if the reason given were one for which reasonable time greater than one year was allowed, this motion, sixteen years after judgment, is not made within a reasonable time.

Secondly, Carl has already filed an independent action seeking relief from this case's judgment. Although Rule 60(b) does not limit the court's power "to entertain an independent action to relieve a party from a judgment," the procedure for obtaining any relief from a judgment is by a Rule 60(b) motion or by an independent action, FSM Civ. R. 60(b), not by both. Arthur v. Pohnpei, 16 FSM R. 581, 596 (Pon. 2009); FSM Dev. Bank v. Arthur, 16 FSM R. 132, 139 (Pon. 2008); FSM Dev. Bank v. Arthur, 15 FSM R. 625, 636 (Pon. 2008). Carl has chosen to proceed by an independent action.

Furthermore, the mere filing of an independent action for relief is not in itself a ground for relief of any kind. Just as a Rule 60(b) motion "does not affect the finality of a judgment or suspend its operation," FSM Civ. R. 60(b), an independent action filing does not affect the judgment's finality or suspend its operation. An independent action is just that – independent of the case in which the judgment was entered unless and until a final judgment in the independent action grants relief from the judgment. The independent action will proceed on its own.

Nor is the filing of an independent action a ground for a stay. Its filing does not affect or suspend the judgment's operation. It thus cannot be the basis for a stay. Indeed, it seems a stay would have the potential to harm the judgment debtor more than compliance with the judgment since judgment interest would continue to accrue and the principal, and thus the interest, would not be reduced, and in the end, if the judgment debtor's quest for relief is unsuccessful, the judgment debtor would pay even more and for a longer time, whereas if the judgment debtor continues to pay, the indebtedness is reduced and, if the judgment debtor is ultimately successful in obtaining relief, the court does not doubt the bank's ability to pay any unfavorable judgment.

III. BANK'S MOTION TO QUASH

The FSM Development Bank seeks to quash subpoenas directed to three bank officers, including a subpoena that asks the bank's custodian of records to bring

the complete loan files in this case, including copies of any and all of the cancelled checks that were disbursed by Plaintiff FSM Development Bank to the defendants pursuant to the loan schedule, and copies of any and all documents and cancelled check(s) pertaining to the Credit Life Insurance (CLI) in this case, and copies of any and all receipts of checks and cash payments made by the defendants from the inception of the loan to the present date.

Subpoena Duces Tecum (directed to Sihna Lawrence) (May 25, 2015). Carl contends that her subpoenas were issued under Rule 45 and are proper because the witnesses have first-hand knowledge of the 1993 promissory note and loan documents, and loan ledger. She asserts that the material sought meets the requisite test of Rule 26 for discoverable material – that the material sought is relevant and not privileged.

Carl's faith in Rule 26's application is misplaced. Rule 26, and discovery rules in general, relate only to procedures to develop evidence and prepare the case for trial. Rule 26 does not, except as permitted in Rule 69, permit or authorize discovery after trial or after entry of judgment. Even by its terms, Rule 26 would not apply because, once a judgment has been entered, the only matters that are relevant is whether the parties are complying with the judgment. In the case of a money judgment such as this case, the only information that would qualify as relevant matter would be whether the judgment debtor's payments and any offsets have been properly recorded and credited.

Thus, the documents sought by the subpoena duces tecum – "the complete loan files," the canceled disbursement checks, all documents pertaining to credit life insurance, and all receipts of payments "made by the defendants from the inception of the loan to the present date" – are all generally irrelevant to this post-judgment proceeding. The only relevant matter sought would be the payments (and the offsets, if any) made on the judgment since February 11, 1999.

Carl contends that because the judgment in this case is a stipulated judgment that somehow makes this different. She notes that a stipulated judgment is not a judicial determination of the parties' rights but is a recordation of the parties' private agreement. She argues that she can therefore assert any or all contract defenses against the judgment and that she may find relevant material for those contract defenses through the usual [pretrial] discovery procedures. What Carl overlooks is that, while a stipulated judgment does represent a private agreement and not a judicial determination, it is a judicial act, binding on the parties. FSM Dev. Bank v. Kaminanga, 16 FSM R. 45, 47 (Chk. 2008); Mailo v. Chuuk, 13 FSM R. 462, 467-68 (Chk. 2005); Farata v. Punzalan, 11 FSM R. 175, 178 (Chk. 2002). Contract defenses are not available to a judgment debtor in a proceeding to enforce a money judgment.

Under Rule 69, post-judgment discovery is available to judgment creditors only. "In aid of the judgment or execution, the judgment creditor . . . may obtain discovery from any person, including the judgment debtor, in the manner provided in these rules . . ." FSM Civ. R. 69. This right to post-judgment discovery is limited to judgment creditors, who are usually, but not always, plaintiffs¹ who succeeded in obtaining a money judgment.² Rule 69 "is meant to benefit a judgment creditor, not a

¹ In Castro v. United States, 104 F.R.D. 545, 552 (D.P.R. 1985), the defendants were judgment creditors entitled to discovery (by deposition) of the plaintiffs' assets in order to determine what of the plaintiffs' property was available to satisfy the costs taxed in the prevailing defendants' favor after the plaintiffs' action was dismissed with prejudice.

² "Rule 69 applies only to money judgments Thus, it is generally not applicable to judgments that direct specific acts, which are covered by Rule 70." 12 CHARLES ALAN WRIGHT, ARTHUR R. MILLER & RICHARD L.

judgment debtor." Adams v. Island Homes Constr., Inc., 12 FSM R. 644, 646 (Pon. 2004).

A judgment debtor has no discovery rights under Rule 69. This makes sense because once a money judgment has been rendered, the only relevant factual inquiry is "the debtor's ability to pay" and "the fastest manner in which the debtor can reasonably pay" the judgment. 6 F.S.M.C. 1409. Thus, "[t]he judgment creditor is allowed discovery to find out about assets on which execution can issue or about assets that have been fraudulently transferred or are otherwise beyond the reach of execution." 12 CHARLES ALAN WRIGHT, ARTHUR R. MILLER & RICHARD L. MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3014, at 160 (2d ed. 1997).

As noted above, the only relevant matter included in what Carl seeks would be the payments (and offsets, if any) made on the judgment since February 11, 1999. Carl does not appear to dispute that the bank has accurately accounted for all payments since February 11, 1999. Accordingly, the motion to quash the subpoenas of Sihna Lawrence, Ana Mendiola, and John Sohl is granted.

IV. CONCLUSION

NOW THEREFORE IT IS HEREBY ORDERED that the defendants' motion for relief from judgment is denied and the plaintiff's motion to quash is granted.

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