

FSM SUPREME COURT TRIAL DIVISION

FSM DEVELOPMENT BANK,

Plaintiff,

vs.

MARIANNE B. SETIK, THE ESTATE OF MANNEY
SETIK, ATANASIO SETIK, VICKY SETIK IRONS,
IRENE SETIK WALTER, MARLEEN SETIK, JUNIOR
SETIK, ELEANOR SETIK SOS, PATRICIA SETIK,
JOANITA SETIK PANGELINAN, individually as dba
C-STAR APARTELLE,

Defendants.

FSM DEVELOPMENT BANK,

Plaintiff,

vs.

MERIAM SETIK, CHRISTOPHER JAMES SETIK,
JERMINA SETIK, AREEN SETIK, individually and
dba C-STAR APARTELLE,

Defendants.

CIVIL ACTION NOS. 2007-008 & 2010-006
(Consolidated)

ORDER

Lourdes F. Materne
Temporary Associate Justice

Decided: July 1, 2015

APPEARANCES:

For the Plaintiff: Nora E. Sigrah, Esq.
P.O. Box M
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For the Defendants: Salomon M. Saimon, Esq. (motions to set aside and to stay)
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Yoslyn G. Sigrah, Esq. (reply & opposition to motion to appoint)
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HEADNOTES

Judgments – Relief from Judgment – Time Limits

Rule 60(b)(6) motions are reserved for extraordinary circumstances. Since Rule 60(b)(6), which delineates "any other reason justifying relief" and the other Rule 60(b) subsections are mutually exclusive, Rule 60(b)(6) cannot be utilized to circumvent the one-year time limit for motions seeking relief from judgment under Rule 60(b)(1), (2), and (3). FSM Dev. Bank v. Setik, 20 FSM R. 85, 88 (Pon. 2015).

Judgments – Relief from Judgment – Grounds; Judgments – Relief from Judgment – Time Limits

Relief from judgment will not be granted when the defendants' arguments brought pursuant to subsections 60(b)(1), (2), and (3) are well outside the one-year time constraint and are thus untimely and when the defendants' remaining affirmations fail to demonstrate any other reason justifying relief. FSM Dev. Bank v. Setik, 20 FSM R. 85, 88 (Pon. 2015).

Property – Mortgages

When the subject mortgage required that the mortgagor not only refrain from removing or demolishing the buildings on the premises but also maintain the structures in good repair, as well as assign to the mortgagee all rents and profits derived from same, this language reflects that the buildings, and not just the land they were on, were expressly contemplated, in ascribing the respective value to the mortgage, as security for the underlying loan. FSM Dev. Bank v. Setik, 20 FSM R. 85, 88 (Pon. 2015).

Judgments – Relief from Judgment – Default Judgments

The court may refuse to set aside a default judgment when the default is due to willfulness or bad faith or when the defendant offers no excuse at all for the default. FSM Dev. Bank v. Setik, 20 FSM R. 85, 89 (Pon. 2015).

Judgments – Relief from Judgment – Default Judgments

In order to obtain relief from a default judgment, the defendant must have a meritorious defense that would constitute a complete defense to the action if proven at trial. FSM Dev. Bank v. Setik, 20 FSM R. 85, 89 (Pon. 2015).

Judgments – Relief from Judgment – Default Judgments

A default judgment will not be set aside when the defendants' averments were made more than one year after the judgment was entered and as such, fail to come within the time frame prescribed in Rule 60(b) and when the default was a direct result of the defendants' willful conduct and there has been no meritorious defense or extraordinary circumstance(s) depicted to justify the coveted relief. FSM Dev. Bank v. Setik, 20 FSM R. 85, 89 (Pon. 2015).

Judgments – Relief from Judgment

The court, in its discretion and on such condition for the adverse party's security as is proper, may, pending the disposition of a Rule 60 motion for relief from judgment, stay the execution of or any proceedings to enforce a judgment. The criteria to be utilized when determining the propriety of a such a stay are: 1) whether the applicant has made a strong showing that the applicant is likely to prevail on the merits of the appeal; 2) whether the applicant has shown that without the stay, the applicant will be irreparably harmed; 3) whether issuance of the stay would substantially harm other parties interested in the proceedings and 4) whether the public interest would be served by granting the stay. FSM Dev. Bank v. Setik, 20 FSM R. 85, 89 (Pon. 2015).

Judgments – Relief from Judgment

The movants do not qualify for a suspension of the proceedings when they do not deny the debt and therefore fail to denote that they are likely to prevail on the merits of the accompanying Rule 60(b) motion; when there has been an inadequate showing that irreparable harm will befall the movants without the stay; when they have made no attempt to meet their obligation under the mortgage even though the executed mortgage pledged the subject parcels as security; when the coveted issuance of a stay would further delay the plaintiff's ability to recoup money due and owing, as reflected in the judgment(s) that have languished for an inordinate length of time, coupled with the fact that the deterioration of the mortgaged buildings is inevitable with the passage of time, thereby adversely impacting the value of the mortgaged property; and when the stay could set a troubling public policy precedent by allowing other debtors to stave off satisfaction of final judgments when an underlying justification for suspension of proceedings has not been adequately depicted. FSM Dev. Bank v. Setik, 20 FSM R. 85, 89 (Pon. 2015).

Property – Mortgages

When the previously court-appointed land sales agent has died and the mortgagee has proposed a successor agent and when the defendants have failed to cite any legal authority in support of their opposition to this proposed successor, the court will confirm the successor since he is familiar with the case's operative facts and is an employee of the mortgagee whose services would thus require no additional compensation. FSM Dev. Bank v. Setik, 20 FSM R. 85, 90 (Pon. 2015).

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COURT'S OPINION

LOURDES F. MATERNE, Temporary Associate Justice:

BACKGROUND

In Civil Action No. 2007-008, Judgment was entered on February 1, 2008, in favor of Plaintiff, FSM Development Bank ("FSMDB") and against Marianne B. Setik and Irene Setik Walter in the principal amount of \$856, 016.07 and against the remaining Defendants on January 25, 2010. In Civil Action No. 2010-006, Judgment was entered on March 22, 2011, in favor of FSMDB and against all Defendants in the same amount, plus interest. Both matters were consolidated, by a Court Order entered on December 24, 2013, under the same set of operative facts, coupled with the common questions of law and fact present in the two cases.

On December 24, 2013, the Court also issued an Order in Aid of Judgment which directed the foreclosure of the real property mortgage (that had been pledged as security to backstop the loan from FSMDB) and provided for the sale of the respective two parcels. As noted within this Ruling, as of November 20, 2013, the amount due and owing on the Judgment totaled \$1,133, 283.46, with post-judgment interest accruing at a rate of \$207.03 per day. As of July 14, 2014, the outstanding balance of the subject Judgment equaled \$756,192.58 in principal, in addition to \$341,273.51 in accrued statutory interest; for an aggregate figure of \$1,097,466.09. This sum reflected a credit of \$83,333.26 to the Judgment principal, as a result of a payout from a Credit Life Insurance policy for Defendant Manny Setik, who had passed away.

On January 30, 2014, Defendants filed a Motion to Stay Pending Rule 60(b), along with a separate Motion to Set Aside the Judgment. On February 3, 2014, Defendants filed a Notice of Appeal. On February 10, 2014, Plaintiff filed an Opposition to Set Aside the Judgment, as well as an Opposition to Defendants' Motion to Stay Pending Rule 60(b). Plaintiff also filed a Motion to Substitute

Rendy Abraham as Land Sale Agent on February 10, 2014. On April 21, 2014, Defendants' Reply to Plaintiff's Memorandum in Opposition to Motion to Set Aside Judgment was filed and Plaintiff's Sur-Reply was filed on May 30, 2014. Plaintiff filed another Motion for Substitution of Land Sales Agent on July 25, 2014 and Defendants' Opposition thereto was filed on August 7, 2014. Finally, on August 14, 2014, Plaintiff filed a Reply to Defendants' Opposition to Motion for Substitution of Land Sales Agent.

ANALYSIS

a. Motion to Set Aside the Judgment

The Defendants move to set aside the Judgment(s) under Rule 55(c) and Rule 60(b) of the FSM Rules of Civil Procedure. Rule 55(c) enables the Court to set aside a Default Judgment in accordance with Rule 60(b) contingent upon a depiction of "good cause." The movants' coveted relief from the subject Judgment was predicated on Rule 60(b)(1), (2), (3) and (6).

The relevant portion of Rule 60(b) sets forth: "On motion and upon such terms as are just, the [C]ourt may relieve a party or a party's legal representative from a final [J]udgment, [O]rder or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence[,] which by due diligence[,] could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of the adverse party . . . or (6) any other reason justifying relief from the operation of the [J]udgment. The motion shall be made within a reasonable time and for reasons (1), (2), and (3)[,] not more than one year after the [J]udgment, [O]rder or proceeding was entered or taken. . . ."

In undertaking an analysis of motions under Rule 60(b), subsection (6) is reserved for extraordinary circumstances. Rule 60(b)(6), which delineates "any other reason justifying relief" and the other subsections are mutually exclusive. As a result, Rule 60(b)(6) cannot be utilized to circumvent the one-year time limit for motions seeking relief from Judgment under Rule 60(b)(1), (2), and (3). FSM Dev. Bank v. Arthur, 15 FSM Intrm. 625, 634 (Pon. 2008).

Since Defendants' arguments brought pursuant to subsections (1), (2), and (3) are well outside the time constraint enumerated within the Rule 60(b), this Court finds them to be untimely. In addition, the remaining affirmations of the Defendants fail to demonstrate "any other reason justifying relief." The argument concerning a belated issuance of proceeds from a Credit Life Insurance taken out by the late Manny Setik affecting the amount due and owing, has been rectified, as the Plaintiff subsequently credited these subject monies (\$83,333.26) to the outstanding Judgment principal.

An additional averment broached by Defendants, *to wit*: that the subject mortgage pertained only to land and therefore the buildings situated on these parcels were exempt, as an appurtenance, is belied by repeated references within the mortgage. The subject mortgage required, *inter alia*, that the mortgagor, not only refrain from removing or demolishing the buildings on the premises, but maintain the structures in good repair, as well as assign all rents and profits derived from same to the mortgagee. This language reflects the buildings were expressly contemplated, in ascribing the respective value to the mortgage, as security for the underlying loan. In Helgenberger v. FSM Dev. Bank, 18 FSM Intrm. 498 (App. 2013), the Court affirmed the sale of land lease rights, along with the buildings situated on the property which had been mortgaged as security. FSM Dev. Bank v. Jonah, 17 FSM Intrm. 318 (Kos. 2011) similarly held, that in a judicial sale of land secured to the creditor through a deed of trust, the land included the appurtenant rental house.

Defendants have additionally failed to demonstrate "good cause" to set aside the Default Judgment, in accordance with Rule 55(c). There is no dispute as to the existence of the debt. Defendants were all provided ample notice, along with an opportunity to be heard, yet there has been nonfeasance, in terms of satisfying the amount due and owing (i.e. the default was the result of their own volitional/willful and culpable conduct). Defendants have also not proffered any rationalization for the default. The Court may refuse to set aside a Default Judgment when the default is due to willfulness or bad faith or where the Defendant offers no excuse at all for the default. Adams v. Island Homes Constr. Inc. 10 FSM Intrm. 159, 162 (Pon. 2001). In order to obtain relief from a Default Judgment, the Defendant must have a meritorious defense that would constitute a complete defense to the action if proven at trial. UNK Wholesale, Inc. v. Robinson, 11 FSM Intrm. 118, 123 (Chk. 2002). Consequently, a meritorious defense has not been portrayed and setting aside the default would invariably rebound to the detriment of Plaintiff (as the Defendants lack the financial wherewithal to pay the outstanding debt and the only viable mechanism for recovery is to sell the mortgaged property, which continues to depreciate in value). Western Sales Trading Co. v. Billy, 13 FSM Intrm. 273, 279 (Chk. 2005).

Accordingly, the Court finds Defendants have failed to satisfy the requirements of both Rule 55^e and Rule 60(b), to have the Default Judgment set aside. The averments of Defendants are made more than one year after the Judgment was entered and as such, fail to come within the time frame prescribed in Rule 60(b). Furthermore, the default was a direct result of the Defendants' willful conduct and there has been no meritorious defense or extraordinary circumstance(s) depicted to justify the coveted relief and therefore the Motion to Set Aside the Judgment(s) is DENIED.

b. Motion to Stay Pending Rule 60(b)

Defendants' Motion to Stay is brought pursuant to Rule 62(b) of the FSM Rules of Civil Procedure and predicated on the concurrently filed Motion to Set Aside the Judgment. Rule 62(b) sets forth, in pertinent part, "In its discretion and on such condition for the security of the adverse party, as [is] proper, the [C]ourt may stay the execution of or any proceedings to enforce a [J]udgment[,] pending the disposition of . . . a motion for relief from [J]udgment made pursuant to [R]ule 60." Ponape Enterprises Co. v. Luzama, 6 FSM Intrm. 274, 277-78 (Pon. 1993) set forth the criteria to be utilized when determining the propriety of a coveted stay: 1) whether the applicant has made a strong showing that he/she is likely to prevail on the merits of the appeal; 2) whether the applicant has shown that without the stay, he/she will be irreparably harmed; 3) whether issuance of the stay would substantially harm other parties interested in the proceedings and 4) whether the public interest would be served by granting the stay.

Undertaking an evaluation of Defendants' Motion to Stay, utilizing the Luzama factors, the movant would not qualify for a suspension of the proceedings. Defendants do not deny the debt and therefore fail to denote that they are likely to prevail on the merits of the accompanying Rule 60(b) motion. There has similarly been an inadequate showing by Defendants that irreparable harm will befall them without the stay. They have made no attempt to meet their obligation under the mortgage even though the executed mortgage pledged the subject parcels as security. In addition, the coveted issuance of a stay would further delay Plaintiff's ability to recoup monies due and owing, as reflected in the Judgment(s) which have already been languishing for an inordinate length of time, coupled with the fact that the deterioration of the subject buildings is inevitable with the passage of time, thereby adversely impacting the value of the mortgaged property. Finally, the stay would hardly affect any modicum of public interest and quite the contrary, could set a troubling public policy precedent, in terms of allowing other debtors to stave off satisfaction of final Judgments when an underlying justification for suspension of proceedings has not been adequately depicted.

Accordingly, the Defendants' Motion to Stay Pending Rule 60(b) is DENIED.

c. Motion for Substitution of Land Sales Agent

In the December 24, 2013 Order in Aid of Judgment, an individual was appointed by the Court to serve as Plaintiff's Representative for Land Sales and in said capacity, was expected to oversee the specific tasks delineated within the Order which spoke to advertising the subject property, as well as the imminent sale. With the passing of this Land Sales Agent, the Plaintiff's proposed replacement would undertake the predecessor's Court-Ordered duties and responsibilities. Defendants have failed to cite any legal authority in support of their opposition to this proposed successor. In addition, as the proposed replacement is familiar with the operative facts of this case and an employee of the FSMDB, the contemplated services would require no additional compensation.

In light of the existing Order in Aid of Judgment, coupled with an implicit need to have an individual appointed by the Court to orchestrate the requisite action items, to ensure an orderly sale of the subject mortgaged property, Rendy Abraham is hereby appointed to serve as Plaintiff's Representative for Land Sales. This Land Sales Agent will assume all responsibilities of the predecessor, as set forth in the December 24, 2013 Order in Aid of Judgment.

Accordingly, Plaintiff's Motion for Substitution of Land Sales Agent is GRANTED.

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FSM SUPREME COURT TRIAL DIVISION

JOHN PALASKO,)	CIVIL ACTION NO. 2010-030
)	
Plaintiff,)	
)	
vs.)	
)	
POHNPEI GOVERNMENT and KITTI)	
GOVERNMENT,)	
)	
Defendants.)	
_____)	

ORDER GRANTING PARTIAL SUMMARY JUDGMENT

Beauleen Carl-Worswick
Associate Justice

Decided: July 17, 2015

APPEARANCES:

For the Plaintiff:	Salomon M. Saimon, Esq. Micronesia Legal Services Corporation P.O. Box 129 Kolonias, Pohnpei FM 96941
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