

FSM SUPREME COURT TRIAL DIVISION

FSM DEVELOPMENT BANK, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 PERDUS I. EHSa and TIMAKYO I. )  
 EHSa a/k/a TIMAKIO I. EHSa, )  
 )  
 Defendants. )  
 )

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CIVIL ACTION NO. 2007-035

ORDER DENYING RELIEF FROM JUDGMENT

Ready E. Johnny  
Associate Justice

Hearing: September 1, 2015  
Decided: January 6, 2016

APPEARANCES:

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HEADNOTES

Contracts – Guaranty

A guaranty is an enforceable undertaking or promise on the part of one person which is collateral to a primary or principal obligation on the part of another. A guaranty binds the guarantor to performance in the event of nonperformance by such other, the latter being bound to perform primarily. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 289 (Pon. 2016).

Contracts – Guaranty; Debtors’ and Creditors’ Rights

When the primary performer, the borrower, stopped making loan repayments to the bank and defaulted, the guarantors were then bound to perform on the loan repayments once the borrower had ceased to. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 289 (Pon. 2016).

Judgments – Relief from Judgment

When a final order has been properly appealed, a trial court has the jurisdiction, without appellate court permission, to both consider and to deny a Rule 60(b) relief from judgment motion, but it cannot

grant a Rule 60(b) motion while an appeal is pending, but if the trial court is inclined to grant the motion, it may only state on the record that it would do so if the case were remanded. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 289 (Pon. 2016).

#### Judgments – Relief from Judgment – Grounds; Judgments – Void

A judgment is void only if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 289 (Pon. 2016).

#### Judgments – Relief from Judgment – Grounds; Jurisdiction

Whether a default judgment granted relief not prayed for in the complaint's demand for judgment; whether the guaranties that were signed were not attached to the promissory notes; whether the judgment was joint and several; and whether one of the guaranties was not signed by the person it should have been signed by but was fraudulently signed by another person, are not determinants of subject-matter jurisdiction. While they may be raised as defenses, none of these grounds is jurisdictional. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 290 (Pon. 2016).

#### Jurisdiction

Subject-matter jurisdiction is jurisdiction over the nature of the case and the type of relief sought; the extent to which a court can rule on the conduct of persons or the status of things. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 290 (Pon. 2016).

#### Judgments – Relief from Judgment – Grounds; Judgments – Void

When none of the movants' asserted grounds would alter the case's nature or the type of relief sought because the court had jurisdiction over the case's nature – enforcement and collection of defaulted FSM Development Bank loans – and had, under 4 F.S.M.C. 117, the power to grant the relief sought (including mortgage foreclosure) and when none of the movants' grounds would change that or would have limited the court's ability to rule on parties' conduct or the status of debt and grant relief or judgment in any party's (including any defendant's) favor, the court had full jurisdiction over the case's subject matter even if the defenses had been raised before judgment. A motion for relief from judgment on the ground the court lacked subject-matter jurisdiction will be denied on this ground alone. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 290 (Pon. 2016).

#### Judgments – Relief from Judgment – Time Limits

As grounds for post-judgment relief, motions raised under either Rule 60(b)(3) (for a fraud claim) or Rule 60(b)(1) (for mistake, inadvertence, surprise, or excusable neglect) must be made within a reasonable time, not more than one year after the judgment, and will be denied as untimely when the one-year time limit has long since passed. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 290 n.4 (Pon. 2016).

#### Torts – Fraud

Fraud in the inducement is a fraud occurring when a misrepresentation leads another to enter into a transaction with a false impression of the risks, duties, or obligations involved. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 291 (Pon. 2016).

#### Judgments – Relief from Judgment – Time Limits

Relief from judgment for an adverse party's fraud, such as fraud in the inducement, or misrepresentation is a motion that can only be made under Rule 60(b)(3) and that has a one-year deadline. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 291 (Pon. 2016).

Judgments – Relief from Judgment – Time Limits; Torts – Fraud

The only type of fraud not subject to the one-year limitation for relief from judgment is fraud on the court. This is because Rule 60(b) does not limit the time in which the court may set aside a judgment for fraud on the court. Fraud on the court is a lawyer's or party's misconduct so serious that it undermines or is intended to undermine the integrity of the judicial proceeding. A finding of fraud on the court is justified only by the most egregious misconduct directed to the court itself, such as bribery of a judge or counsel's fabrication of evidence, and must be supported by clear, unequivocal, and convincing evidence. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 291 (Pon. 2016).

Civil Procedure

While the court must first look to FSM sources of law, when an FSM court has not previously construed an FSM Civil Procedure Rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 291 n.7 (Pon. 2016).

Contracts – Guaranty; Notaries

The false notarization of a guaranty does not affect the guaranty's substantive provisions as it relates to the signer when the signer admits that he did sign the guaranty. This is because the purpose of notarization is to verify the identity and signature of the person who signed the document. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 292 & n.8 (Pon. 2016).

Judgments – Void; Jurisdiction

Whether a judgment is joint and several or not has no effect on whether the court has subject-matter jurisdiction. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 292 (Pon. 2016).

Civil Procedure – Default and Default Judgments; Judgments – Void

A judgment in a default case that awards relief that either is more than or different in kind from that requested originally is null and void. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 292 (Pon. 2016).

Civil Procedure – Default and Default Judgments

A default judgment is not different in kind from and does not exceed in amount that prayed for in the complaint's demand for judgment when the demand for judgment clearly asked for a money judgment against each defendant in amount of the unpaid notes and a default judgment was entered for a money judgment in that amount and when the prayer for relief made reference to the causes of action in the complaint's body in which it pled the defendants' personal liability since the plaintiff did not have to repeat the theory of liability in its demand for judgment. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 292 (Pon. 2016).

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COURT'S OPINION

READY E. JOHNNY, Associate Justice:

On September 1, 2015, the court heard: the Defendants' Motion for Relief from and to Vacate the 28 December 2007 Default Judgment, filed February 17, 2014; Plaintiff's Opposition to Defendants' Motion for Relief from and to Vacate the Default Judgment, filed March 7, 2014; and Defendants' Reply to Plaintiff's Opposition to Defendants' Motion for Relief from and to Vacate the Default Judgment, filed March 17, 2014. The motion is denied. The reasons follow.

### I. DEFAULT JUDGMENT ON GUARANTIES

The default judgment against Perdus I. Ehsa and Timakyo I. Ehsa a/k/a Timakio I. Ehsa is based on guaranties that they each signed for FSM Development Bank loans to Pacific Foods and Services, Inc. A guaranty is an enforceable undertaking or promise on the part of one person which is collateral to a primary or principal obligation on the part of another. Adams v. Island Homes Constr., Inc., 9 FSM R. 530a, 530c-30d (Pon. 2000). A guaranty binds the obligor [the guarantor] to performance in the event of nonperformance by such other, the latter being bound to perform primarily. *Id.* at 530d.

The primary performer, the borrower, Pacific Foods and Services, Inc., stopped making loan repayments to the bank. It defaulted. The Ehsas were then bound, as guarantors, to perform on the loan repayments once Pacific Foods and Services, Inc. had ceased to. They did not.

The bank therefore sued both the borrower and three guarantors and, on December 28, 2007, obtained a default judgment against all of them.<sup>1</sup>

### II. POWER TO GRANT RELIEF

The Ehsas now move for relief from that judgment under Civil Procedure Rule 60(b)(4), asserting that the judgment is void. This is not the first time that the Ehsas have moved for relief from judgment in this case.<sup>2</sup> The court denied an earlier Rule 60(b)(4) motion<sup>3</sup> that argued that the judgment was void on different grounds. FSM Dev. Bank v. Ehsa, 18 FSM R. 608 (Pon. 2013). The Ehsas have appealed that denial.

When a final order has been properly appealed, a trial court has the jurisdiction, without appellate court permission, to both consider and to deny a Rule 60(b) relief from judgment motion, but it cannot grant a Rule 60(b) motion while an appeal is pending. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 589 (App. 2008); Walter v. Meppen, 7 FSM R. 515, 517-18 (Chk. 1996). If the trial court is inclined to grant the motion, it may only state on the record that it would do so if the case were remanded. Estate of Mori v. Chuuk, 12 FSM R. 3, 9 (Chk. 2003). The court is not inclined to grant this motion. It will be denied.

### III. NATURE OF MOTION

The Ehsas, purportedly making their motion under Civil Procedure Rule 60(b)(4), contend that the default judgment against them should be vacated because it is void. A judgment is void "only if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process." FSM Dev. Bank v. Arthur, 15 FSM R. 625, 633 (Pon. 2008); Lee v. Lee, 13 FSM R. 252, 256 (Chk. 2005) (both quoting 11 CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FEDERAL PRACTICE AND PROCEDURE § 2862, at 326-29 (2d ed. 1995) (footnotes

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<sup>1</sup> The borrower has since declared bankruptcy and is in a bankruptcy chapter 2 corporate reorganization in which it is required to make some payments to the bank towards the borrowed sums. Since all claims against it became part of the bankruptcy proceeding, it is no longer a party in this case.

<sup>2</sup> Since it was not raised, the court will not address whether, and under what circumstances, a party, having failed to prevail on one Rule 60(b) motion, may file successive Rule 60(b) motions.

<sup>3</sup> There was another, even earlier motion for relief from judgment made under either Rule 60(b)(1) or Rule 60(b) generally and which did not claim that the default judgment was void.

omitted)). The Ehsas do not contend that the court has acted in a manner inconsistent with due process or that the court lacked jurisdiction over the parties.

The Ehsas contend that the judgment is void for lack of subject-matter jurisdiction because the default judgment granted relief not prayed for in the complaint's demand for judgment; because the guaranties the Ehsas signed were not attached to the promissory notes; because the judgment was joint and several; and because one of the guaranties was not signed by the person it should have been signed by but was fraudulently signed by another person.

These grounds are not usually thought of as determinants of subject-matter jurisdiction. While they may be raised as defenses, none of these grounds is jurisdictional. Subject-matter jurisdiction is "[j]urisdiction over the nature of the case and the type of relief sought; the extent to which a court can rule on the conduct of persons or the status of things." BLACK'S LAW DICTIONARY 931 (9th ed. 2009).

None of the Ehsas' asserted grounds would alter the case's nature or the type of relief sought. The court has jurisdiction over the case's nature – enforcement and collection of defaulted FSM Development Bank loans – and has, under 4 F.S.M.C. 117, the power to grant the relief sought (including mortgage foreclosure). See FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 433 (App. 2014); Helgenberger v. FSM Dev. Bank, 18 FSM R. 498, 500 (App. 2013). None of the Ehsas' grounds would change that. Nor would the Ehsas' grounds alter the extent to which the court could have ruled on conduct or status. The Ehsas' grounds would not have limited the court's ability to rule on parties' conduct or the status of debt and grant relief or judgment in any party's (including any defendant's) favor. The court thus had full jurisdiction over this case's subject matter even if the Ehsas had raised these defenses before judgment. The motion should be denied on this ground alone.<sup>4</sup>

#### IV. IF GROUNDS WERE CONSIDERED

Even if the court were to consider the grounds raised by the Ehsas, they still could not prevail.

##### A. *Guaranty with the Wrong Signature*

The two Ehsas contend that the guaranties that they each signed are not binding on them and that the judgment against them based on them signing the guaranties is void because the court lacked subject-matter jurisdiction over an action on the guaranties since a third guaranty did not have the correct signature on it. The Ehsas also note that all three guaranties were later notarized out of the signer's presence.

Perdus I. Ehsa signed one guaranty document. Timakyo I. Ehsa signed another guaranty document. The third guaranty was supposed to have been signed by Ellen Mae T. Ehsa,<sup>5</sup> Perdus Ehsa's

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<sup>4</sup> As grounds for post-judgment relief, the Ehsas' grounds would usually be raised by motions under either Rule 60(b)(3) (for the fraud claim) or Rule 60(b)(1) (mistake, inadvertence, surprise, or excusable neglect). Since motions under either subsection must be made within a reasonable time, not more than one year after the judgment, FSM Civ. R. 60(b), that would mean that the current motion would be denied as untimely since the one-year time limit has long since passed.

<sup>5</sup> Now Ellen Mae T. Ehsa Manlapaz.

daughter, but instead, the bank mistakenly obtained the signature of Ellen T. Ehsa, Perdus Ehsa's wife.<sup>6</sup> FSM Dev. Bank v. Ehsa, 19 FSM R. 579, 581 & n.1 (Pon. 2014). The Ehsas contend that this mistaken or fraudulent signature on one guaranty and the alleged false notarizations makes all three of the guaranties void.

The Ehsas claim that this is fraud in the inducement. Fraud in the inducement is a "[f]raud occurring when a misrepresentation leads another to enter into a transaction with a false impression of the risks, duties, or obligations involved." BLACK'S LAW DICTIONARY 732 (9th ed. 2009). The Ehsas now assert that it was important that the third guaranty be signed by the proper person or they may not have signed. The court doubts that would have made a difference and does not see any fraud here. Nevertheless, even if it were fraud, the time period to seek relief from judgment has expired. Relief from judgment for the fraud or misrepresentation of an adverse party is a motion that can only be made under Rule 60(b)(3) and that has a one-year deadline which has long since passed.

The only type of fraud not subject to the one-year limitation is fraud on the court. This is because Rule 60(b) "does not limit the time in which the court may set aside a judgment for fraud on the court." 11 CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FEDERAL PRACTICE AND PROCEDURE § 2866, at 392 (2d ed. 1995).<sup>7</sup> But even if the bank's failure to get the third guaranty signed by the proper person were fraud in the inducement, it is not fraud on the court.

Fraud on the court is "a lawyer's or party's misconduct so serious that it undermines or is intended to undermine the integrity of the [judicial] proceeding." BLACK'S LAW DICTIONARY 732 (9th ed. 2009). A finding of fraud on the court is justified only by the most egregious misconduct directed to the court itself, such as bribery of a judge or counsel's fabrication of evidence, and must be supported by clear, unequivocal, and convincing evidence. Ramp v. Ramp, 11 FSM R. 630, 636 (Pon. 2003). Nothing like that occurred here. Thus, even if there had been fraud in the inducement in this case, that fraud would not constitute a fraud on the court since any misconduct by the bank was not egregious and intended to undermine the judicial proceeding.

In Northwestern Bank v. Roseman, 344 S.E.2d 120 (N.C. Ct. App. 1986), a company sought a loan and the bank sought personal guaranties from the company's owner and his wife. The owner refused to provide a personal guaranty and the bank knowingly obtained a forged signature of the owner's wife on a guaranty and then induced the owner sign the same guaranty without reading it when they had him sign, at one time, a large package of documents needed to effect the loan, all of which were later notarized by the bank's notary back at the bank. *Id.* at 122. The court rejected the owner's claim that the proof of fraud in forging his wife's signature vitiated the entire guaranty. *Id.* at 123. It held that the "[p]roof of fraud in obtaining [the wife]'s signature vitiates the document as to her, but not as to [the husband]. Neither the forgery nor the false notarization false notarization affected the substantive provisions of the guaranty as it related to [the husband]." *Id.*

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<sup>6</sup> The default judgment against Ellen Mae T. Ehsa Manlapaz was vacated after she was able to show the bank that the signature on "her" guaranty, although notarized, could not have been hers. FSM Dev. Bank v. Ehsa, 19 FSM R. 579, 581-82 (Pon. 2014).

<sup>7</sup> While the court must first look to FSM sources of law, FSM Const. art. XI, § 11, when an FSM court has not previously construed an FSM Civil Procedure Rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. *See, e.g., Arthur v. FSM Dev. Bank*, 14 FSM R. 390, 394 n.1 (App. 2006). Both the U.S. and FSM rules state: "This rule does not limit the power of a court to . . . set aside a judgment for fraud upon the court." FSM Civ. R. 60(b).

In this case, neither the false notarization nor the wrong signature on the Ellen Mae T. Ehsa guaranty vitiates the other two guaranties. Perdus I. Ehsa and Timakyo I. Ehsa admit signing their guaranties. The false notarization<sup>9</sup> of their signatures does not affect the substantive provisions of the guaranties as it related to them. The guaranties are valid and binding on them.

**B. Other Grounds**

The Ehsas' other three grounds need not detain us long.

There is nothing in the loan documents or the guaranties that would indicate that joint and several liability would be improper. The whole structure of the transaction contemplates joint and several liability with each liable party liable for 100% of the indebtedness. See Guaranty para. 2 ("The liability of Guarantor shall at all times be equal to one hundred percent (100%) of the entire indebtedness.") Furthermore, whether a judgment is joint and several or not has no affect on whether the court has subject-matter jurisdiction.

The Ehsas did not prove that the guaranties were not attached to the loan documents. Nor did the Ehsas show any legal basis for holding the guaranties void if they were not attached to the loan documents. Each guaranty covers "any and all indebtedness of Pacific Foods & Services Inc." Guaranty para. 1. And each contains the statement: "This is a continuing guaranty relating to any indebtedness, including that arising under successive transactions which shall either continue the indebtedness or from time to time renew it after it has been satisfied." *Id.* para. 2.

The Ehsas are correct that "[a] judgment in a default case that awards relief that either is more than or different in kind from that requested originally is null and void." 10 CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FEDERAL PRACTICE AND PROCEDURE § 2663, at 167-69 (3d ed. 1995). This is because "[a] judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment." FSM Civ. R. 54(c). The Ehsas do not contend that the judgment against them exceeded the amount prayed for in the complaint. They contend that the judgment is different in kind because what they call the wherefore clause does not demand a money judgment on the guaranty but instead demands a money judgment for the unpaid balances of the outstanding promissory notes.

The court cannot agree. The default judgment is not different in kind from and does not exceed in amount that prayed for in the complaint's demand for judgment. The demand for judgment clearly asked for a money judgment against each Ehsa in amount of the unpaid notes. A default judgment was entered for a money judgment in that amount. The bank plead the guaranties as the theory on which the Ehsas were personally liable. The bank's prayer for relief made reference to the causes of action in the complaint's body in which it pled the Ehsas' personal liability based on their guaranties. The bank did not have to repeat the theory of liability in its demand for judgment. The Ehsas had adequate notice that a money judgment would be entered against them in the outstanding amount of the unpaid promissory notes and the reasons why. This case is thus completely unlike Western Sales Trading Co. v. Billy, 13 FSM R. 273, 277 (Chk. 2005), in which the plaintiff was denied a default judgment for prejudgment interest that was neither mentioned anywhere in the body of the complaint nor prayed for in the demand for judgment at the end of the complaint. Here, the guaranties were extensively pled in the complaint, the guaranties were attached to the complaint, and the demand for judgment referred

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<sup>9</sup> The purpose of notarization is to verify the identity and signature of the person who signed the document. See Peter v. Jessy, 17 FSM R. 163, 174 (Chk. S. Ct. App. 2010). Perdus and Timakyo Ehsa admit that they did sign their guaranties.

to the parts of the complaint where they were pled and requested a money judgment.

V. CONCLUSION

Accordingly, the Ehsas' motion for relief from judgment is denied as untimely, and even if it were not untimely, it would be denied on the merits. The default judgment against Perdus I. Ehsa and Timakyo I. Ehsa a/k/a Timakio I. Ehsa is not void.

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FSM SUPREME COURT TRIAL DIVISION

FEDERATED STATES OF MICRONESIA,	)	CRIMINAL CASE NO. 2003-1508
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
SIMEON R. INNOCENTI,	)	
	)	
Defendant.	)	
_____	)	

ORDER DENYING EXPUNGEMENT

Dennis K. Yamase  
Chief Justice

Hearing: December 14, 2015  
Decided: January 19, 2016

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HEADNOTES

Criminal Law and Procedure – Expungement of Records

A court's power to expunge criminal records falls into three categories: 1) expungement pursuant