

Central Micronesia Commc'ns, Inc. v. FSM Telecomm. Corp.
20 FSM R. 311 (App. 2016)

the referenced deficiencies in its current composition. Notwithstanding, Appellants will be entitled to cure these procedural defects, since their noncompliance does not rise to the level of willful conduct and remedying the cited deficiencies within a finite period of time will not unduly prejudice Appellee.

Accordingly, the Court hereby DENIES Appellee's Motion to Dismiss [the] Appeal and instructs Appellants to confer with Appellee, regarding the contents of the Appendix and Record as a whole, along with appropriate citations to the latter within its Brief. Appellants' "amended" Brief, consonant with these contemplated remedial efforts, shall be due no later than 30 days from issuance of this Order. Furthermore, the Court GRANTS Appellee's Motion to Enlarge Time to File [their respective brief]; which shall be due no later than 30 days after service of the "amended" Brief of Appellants.

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FSM SUPREME COURT TRIAL DIVISION

FSM DEVELOPMENT BANK,)	CIVIL ACTION NOS. 2007-008 & 2010-006
)	(Consolidated)
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.)	
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FSM DEVELOPMENT BANK,)	
)	
Plaintiff,)	
)	
vs.)	
)	
MERIAM SETIK, CHRISTOPHER JAMES SETIK,)	
JERMINA SETIK, AREEN SETIK, individually and)	
dba C-STAR APARTELLE,)	
Defendants.)	

ORDER

Lourdes F. Materne
Temporary Associate Justice*

Decided: February 25, 2016

*Associate Justice, Palau Supreme Court, Koror, Palau

APPEARANCES:

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For the Defendants: Yoslyn G. Sigrah, Esq.
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HEADNOTES

Civil Procedure – Motions – For Reconsideration

A motion to reconsider is not expressly identified within the FSM Rules of Civil Procedure. FSM Dev. Bank v. Setik, 20 FSM R. 315, 317 (Pon. 2016).

Judgments – Alter or Amend Judgment

The court may alter or amend a judgment under Rule 59(e) on any of four grounds: 1) to correct a manifest error of law or fact upon which the judgment is based; 2) the court is presented with newly discovered or previously unavailable evidence; 3) to prevent a manifest injustice; or 4) there is an intervening change in controlling law. FSM Dev. Bank v. Setik, 20 FSM R. 315, 317 (Pon. 2016).

Judgments – Alter or Amend Judgment

A Rule 59(e) motion may not be used to relitigate old matters. FSM Dev. Bank v. Setik, 20 FSM R. 315, 317-18 (Pon. 2016).

Judgments – Alter or Amend Judgment

A trial court has jurisdiction to consider and deny a Rule 59(e) motion after an appeal has been filed. FSM Dev. Bank v. Setik, 20 FSM R. 315, 318 (Pon. 2016).

Attachment and Execution; Debtors' and Creditors' Rights – Orders in Aid of Judgment

In the absence of a stay obtained in accordance with Rule 62(d), the pendency of an appeal does not prevent the judgment-creditor from acting to enforce the judgment. FSM Dev. Bank v. Setik, 20 FSM R. 315, 318 (Pon. 2016).

Appellate Review – Notice of Appeal; Attachment and Execution; Debtors' and Creditors' Rights – Orders in Aid of Judgment

Notwithstanding a notice of appeal's general effect, the trial court retains jurisdiction to determine matters collateral or incidental to the judgment and may act in aid of the appeal. Because the mere filing of a notice of appeal does not affect the judgment's validity, the trial court retains jurisdiction to enforce the judgment. FSM Dev. Bank v. Setik, 20 FSM R. 315, 318 (Pon. 2016).

Appellate Review – Stay – Civil Cases; Judgments – Relief from Judgment – Independent Actions

The mere filing of an independent action for relief, is not in itself a ground for relief of any kind. Such a filing does not affect the judgment's finality or suspend its operation. Nor is the filing of an independent action a ground for stay. FSM Dev. Bank v. Setik, 20 FSM R. 315, 319 (Pon. 2016).

Civil Procedure – Motions – For Reconsideration

A motion for reconsideration may not be used to marshal arguments for the first time that could

have been raised before. FSM Dev. Bank v. Setik, 20 FSM R. 315, 319 (Pon. 2016).

Civil Procedure – Motions – For Reconsideration

A motion to reconsider should state, with particularity, the points of law or fact the moving party contends the court overlooked or misapprehended *vis a vis* an attempt to reargue a question that has previously been considered and ruled upon. A motion for reconsideration must also be narrowly construed and strictly applied, in order to discourage litigants from making repetitive arguments on the same issue that the court has already thoroughly considered. FSM Dev. Bank v. Setik, 20 FSM R. 315, 319 (Pon. 2016).

Judgments – Alter or Amend Judgment

When the movants have failed to satisfy any of the four grounds for altering or amending a judgment, a reconsideration of the court's order transferring title is unwarranted and the motion for reconsideration of that order will be denied. FSM Dev. Bank v. Setik, 20 FSM R. 315, 319 (Pon. 2016).

* * * *

COURT'S OPINION

LOURDES F. MATERNE, Temporary Associate Justice:

On November 30, 2015, Defendants filed a Motion for Reconsideration of the Order Transferring Title [issued on] November 24, 2015. The subject Order reflected the culmination of a land sale, to the winning bidder of a publicly advertised auction. Defendants' previous Motion to Stay and Set Aside the Judgment in this matter was denied by this Court on July 1, 2015. Furthermore, on November 13, 2015, Defendants' Motion to Set Aside the July 1st Order was similarly denied, as was the Motion for an Emergency Hearing thereon. The instant motion, seeking reconsideration of the November 24th Order transferring title to the highest bidder of the land sale auction, is brought pursuant to Rule 59(e) of the FSM Rules of Civil Procedure.

Motion to Reconsider

A motion to reconsider is not expressly identified within the FSM Rules of Civil Procedure, instead such filings are treated as a motion to alter or amend a Judgment under Rule 59(e). "The Court may alter or amend a [Judgment] under Rule 59(e) on any of the following four grounds: (1) to correct a manifest error of law or fact upon which the judgment is based; (2) the Court is presented with newly discovered or previously unavailable evidence; (3) to prevent a manifest injustice; or (4) there is an intervening change in controlling law." Ehsa v. FSM Dev. Bank, 19 FSM R. 421, 422 (Pon. 2014) (quoting Chuuk v. Secretary of Finance, 9 FSM R. 99, 100 (Pon. 1999)).

Defendants argue that issuance of the November 24th Order in an expeditious fashion, hampered their ability to file an Opposition to Plaintiff's Motion to Transfer Title. As a result, the movant asks this Court to set aside the November 24th Order and be allowed to file a responsive filing. The relevant Order simply affixed this Court's imprimatur to the routine transfer of ownership in the wake of a land sale auction; which ultimately proceeded after numerous post-judgment motions (the Judgment having been entered eight years prior) had been resolved. As such, this Order, transferring title to the new owner, was perfunctory.

Defendants also attempt to reargue an unsuccessful challenge, with respect to authenticity of the Presiding Judge's signature, which was addressed in this Court's November 13, 2015 Order. A

Rule 59(e) motion may not be used to relitigate old matters. Ehsa, 19 FSM R. at 423, (citing Palmer v. Champion Mortgage, 465 F.3d 24 (1st Cir. 2006)). Another argument marshaled by Defendants concerns the similarity of Plaintiff's proposed Order (which accompanied the Motion to Transfer Title) to the November 24th Order. As noted, this Order merely acknowledged the consummation, in terms of a transfer of ownership, regarding the subject property; hence adopting the sum and substance of Plaintiff's draft was hardly improper.

An additional averment is posited, which implies an appearance of impropriety, given the familial relationship of the presiding Judge to the individual deemed the highest qualified bidder at the land sale auction. This Court notes, it was, neither involved in orchestrating that land sale auction, nor participated in the selection process, as far as determining the winning bid. The allegation that this blood relationship somehow had, an event remote impact on the bidding process and ultimate award, is plain and simple: groundless. It bears noting, that none of Defendants' above-mentioned affirmations are supported by a scintilla of legal authority.

Defendants next maintain that when an appeal is filed, a trial Court is divested of its authority to take any further action. Defendants have filed two appeals, concerning the case at bar (a Notice of Appeal in P2-2014 was filed February 3, 2014 and in P4-2015, on August 7, 2015). It is well established, that a trial Court's jurisdiction to consider and deny a Rule 59(e) motion after an appeal has been filed is similar to its power with respect to a Rule 60(b) motion. A trial Court has the power to consider and rule upon both types of motions. Stinnett v. Weno, 8 FSM R. 142, 145 (Chk. 1997).

More recently, in FSM Dev. Bank v. Ehsa, 19 FSM R. 128 (Pon. 2013), this issue was broached under a set of facts similar to those at bar. The Defendants therein argued, that since a Notice of Appeal had been taken, jurisdiction over the matter had been supplanted by the Appellate Division, thus the trial Court could not take any further action on the bank's pending motions to enforce the money Judgment against them. The Court quoted FSM Dev. Bank v. Arthur, 16 FSM R. 132 (Pon. 2008) for the proposition: "'In the absence of a stay obtained in accordance with Rule 62(d), the pendency of an appeal does not prevent the [J]udgment creditor from acting to enforce the [J]udgment.'" *Id.* at 142. Further quoting TSA Int'l Ltd. v. Shimizu Corp. 990 P.2d 713, 735 (Haw. 1999), the Ehsa Court further noted, "'Notwithstanding the general effect of a [N]otice of [A]ppeal, the trial [C]ourt retains jurisdiction to determine matters collateral or incidental to the [J]udgment and may act in aid of the appeal. For example, because the mere filing of a [N]otice of [A]ppeal does not affect the validity of a [J]udgment, the trial [C]ourt retains jurisdiction to enforce the [J]udgment.'" 19 FSM R. at 130.

In the present case, Defendants' Motion to Stay had already been considered and denied, as reflected within the July 1, 2015 Order. As a result, the trial Court properly retains jurisdiction and Plaintiffs herein were entitled to enforce their Judgment, which included the transfer of title at issue.

The penultimate affirmation of movant, in support of its request to have this Court further consider the November 24th Order transferring title, cites to the independent cases that have been brought, along with a motion which coveted injunctive relief. Accordingly, Defendants essentially contend that these pending matters should have tolled the land sale auction and hence, the subsequent transfer of title was invalid.

One of the independent cases, to which the movant makes reference: 2015-031 was dismissed in its entirety on November 17, 2015 and Defendants' motion seeking a temporary restraining Order/injunctive relief in that same matter was denied on November 20, 2015; having been deemed moot, in light of the earlier dismissal of the underlying matter. The Court would also note that the latest activity in the other independent cause of action referenced by Defendants: 2015-032, consisted of an Order issued on November 20, 2015, which rejected Plaintiffs' Opposition to Defendants' Motion

to Dismiss. This rejection stemmed from the failure of Plaintiffs to file a second Motion for Enlargement, depicting "excusable neglect," regarding an untimely filing, despite an admonishment set forth in the October 15, 2015 Order denying the Plaintiffs' first Motion for Enlargement, *to wit*: that a subsequent motion seeking an extension would need to denote "excusable neglect." Plaintiffs chose to ignore the Court's directive and instead, simply filed an Opposition sans any accompanying Motion for Enlargement.

Moreover, regardless of the aforementioned matters having been initiated, "the mere filing of an independent action for relief, is not in itself a ground for relief of any kind. . . . [A]n independent action filing does not affect the judgment's finality or suspend its operation." FSM Dev. Bank v. Carl, 20 FSM R. 70, 72 (Pon. 2015). The Carl Court also opined: "Nor is the filing of an independent action a ground for stay." *Id.* As such, Defendants' claim, that having filed these independent cases, a stay was warranted in the case at hand, is similarly without merit.

As alluded to above, there have been a myriad of post-judgment motions brought since the first Notice of Appeal was filed (on February 3, 2014), which would effectively estop the movant from challenging the authority of the trial Court at this late juncture. Carlos Etscheit Soap Co. v. Epina, 8 FSM R. 155, 163 (Pon. 1997); Enengeitaw Clan v. Shirai, 10 FSM R. 309, 311 (Chk. S. Ct. Tr. 2010). The fact that Defendants exercised zero compunction to date, in terms of filing numerous post-appeal motions, infers their recognition of this Court's continuing jurisdiction.

Furthermore, a motion for reconsideration may not be used to marshal arguments for the first time that could have been raised before. Ehsa, 19 FSM R. at 423 (citing Vallejo v. Santini-Padilla, 607 F.3d 1,7 n.4 (1st Cir. 2010); Kona Enterprises, Inc. v. Estate of Bishop, 229 F.3d 877 (9th Cir. 2000)).

The remaining argument proffered by Defendants is redundant, as the issues contained therein had been raised in earlier filings and ruled upon accordingly. A motion to reconsider should state, with particularity, the points of law or fact the moving party contends the Court overlooked or misapprehended *vis a vis* an attempt to reargue a question that has previously been considered and ruled upon. "A motion for reconsideration must also be narrowly construed and strictly applied[,] in order to discourage litigants from making repetitive arguments on the same issue that have already been thoroughly considered by the Court. Ehsa, 19 FSM R. at 423-24.

In sum, Defendants have failed to satisfy any of the four grounds for altering or amending a Judgment, therefore this Court finds reconsideration of the subject Order to be unwarranted. Defendants' conclusion requests the Court to set aside this Order, however the basis for such relief is found to be equally wanting.

Accordingly, it is hereby ORDERED that Defendants' Motion for Reconsideration of the Order Transferring Title [issued on] November 24, 2015, under FSM Civil Rule 59(e), is DENIED.

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