

FSM SUPREME COURT TRIAL DIVISION

FSM DEVELOPMENT BANK,)
)
Plaintiff,)
)
vs.)
)
LINDA CARL and the ESTATE OF YOSHIRO CARL,)
)
Defendants.)
)

CIVIL ACTION NO. 1996-060

ORDER

Dennis K. Yamase
Chief Justice

Decided: August 29, 2016

APPEARANCES:

For the Plaintiff: Nora E. Sigrah, Esq.
P.O. Box M
Kolonia, Pohnpei FM 96941

For the Defendants: Yoslyn G. Sigrah, Esq.
P.O. Box 3018
Kolonia, Pohnpei FM 96941

* * * *

HEADNOTES

Debtor's and Creditor's Rights; Insurance

A creditor who undertakes to secure credit insurance for a debtor is liable to the debtor for negligent performance of that duty or of duty to notify debtor if insurance not obtained. FSM Dev. Bank v. Carl, 20 FSM R. 592, 593 (Pon. 2016).

Debtor's and Creditor's Rights; Insurance

When the debtor has not produced evidence to show that credit insurance was obtained when the loan was entered into, the court will not rule that the debt has been discharged although, if credit insurance had been obtained, the debtor would have had a valid claim of discharge of the debt. FSM Dev. Bank v. Carl, 20 FSM R. 592, 594 (Pon. 2016).

Civil Procedure; Judgments ← Payment and Satisfaction

When the current matter is in the post-judgment phase and a separate civil action raises claims that the debt has been discharged, the court will defer those issues to be determined in that other civil action and deny the defendant's motion for court order declaring satisfaction of account. FSM Dev. Bank v. Carl, 20 FSM R. 592, 594 (Pon. 2016).

Attachment and Execution – Garnishment

The remedy of garnishment exists in the FSM, and does so on the basis that 6 F.S.M.C. 1404 provides that judgments may be enforced in any manner known to American common law or common in courts in the United States. FSM Dev. Bank v. Carl, 20 FSM R. 592, 594 (Pon. 2016).

Attachment and Execution; Civil Procedure – Discovery; Debtor’s and Creditor’s Rights – Orders in Aid of Judgment

Under Rule 69, the judgment creditor, in aid of the judgment or execution, may obtain discovery from any person, including the judgment debtor. Rule 69 was intended to establish an effective and efficient means of securing the execution of judgments. As part of the process, it provides for securing information relating to the judgment-debtor’s assets. FSM Dev. Bank v. Carl, 20 FSM R. 592, 594-95 (Pon. 2016).

Debtor’s and Creditor’s Rights – Orders in Aid of Judgment

As required by 6 F.S.M.C. 1409, the court will schedule a hearing on the motions for an order to show cause for the failure to comply with an order in aid of judgment and for an order in aid of judgment. FSM Dev. Bank v. Carl, 20 FSM R. 592, 595 (Pon. 2016).

* * * *

COURT’S OPINION

DENNIS K. YAMASE, Chief Justice:

A hearing was held in this matter on February 16, 2016, and a subsequent Order was entered on March 15, 2016. [FSM Dev. Bank v. Carl, 20 FSM R. 329 (Pon. 2016).] Several motions filed by the parties remain pending. In the interest of moving this matter forward, the court addresses the following outstanding motions.

I. PENDING MOTIONS

1. *Declaration of Satisfaction of Account*

On August 18, 2014, the defendant, Linda Carl (herein "Carl") filed a Motion for Court Order Declaring Satisfaction of Account, arguing that according to FSMDB regulations, the death of Yoshiro Carl required the debt at issue to be written off. Carl also challenges the statutory scheme of the FSMDB and its collection process.

The FSMDB claims that defendants’ claims are untimely because this matter is in the post-judgment phase, Linda Carl is a promisor on the note making her liable on the debt, and the estate of the deceased Yoshiro Carl, is a judgment debtor.

Here, the Loan Agreement as submitted into evidence lists Linda Carl and Yoshiro Carl as borrowers, and both individuals signed and executed the note on September 1, 1993. Further, because the estate of Yoshiro Carl is a named defendant in this matter, the judgment debt in this matter cannot be deemed as satisfied.

The defendants also argue that the borrower is entitled to a decree of cancellation of the note and discharge of the mortgage pursuant to FSM Development Bank v. Bruton, 7 FSM Intrm. 246 (Chk. 1995). A creditor who undertakes to secure credit insurance for a debtor is liable to the debtor for negligent performance of that duty or of duty to notify debtor if insurance not obtained. *Id.* at 251.

In the present case, the defendant has not produced evidence to show that credit insurance was obtained when the loan was entered into. If credit insurance was obtained, the defendant would have a valid claim of discharge of the debt under the decision in Bruton.

Carl's claims as to the scheme and collection practices of the FSMDB is the subject of a companion case docketed as Civil Action No. 2015-010, Linda Carl v. Anna Mendiola et al., which is in its initial stages of litigation. Because the current matter is in the post-judgment phase, the court will defer these issues to be determined in Civil Action No. 2015-010. Accordingly, the defendant's Motion for Court Order Declaring Satisfaction of Account is HEREBY DENIED.

2. *Writ of Garnishment*

On October 1, 2014, the FSMDB entered a Motion for Writ of Garnishment pursuant to FSM Civil Rule 69 and 6 F.S.M.C. 1404. The motion states that Kazuhiro Fujita and Fujita Enterprises was making rental payments to the FSMDB for rental space owned by Carl in the amount of \$500.00 per month, and Carl then instructed Fujita to discontinue making payments to the FSMDB and forward payments back to Carl. The garnishment request seeks an Order by the court instructing Fujita to resume payments to the FSMDB. Carl filed an opposition to the motion on October 13, 2014, where she made the same arguments in her previous motion regarding the scheme of the FSMDB creating a social injustice to the public, and that Fujita Enterprises has since dissolved and is no longer in business.

The remedy of garnishment exists in the FSM, and does so on the basis that 6 F.S.M.C. 1404 provides that judgments may be enforced "in any. . . manner known to American common law or common in courts in the United States." FSM Social Sec. Admin. v. Lelu Town, 13 FSM R. 60, 61 (Kos. 2004).

The court entered an Order on February 18, 2015 requiring Carl to deposit the \$500.00 monthly rental payments with the court clerk in an interest bearing account, until the pending motions have been heard and decided. A subsequent Order to Show Cause made by the plaintiff states that defendants have not made any deposits with the court resulting in a failure to comply with the February 18, 2015 Order. This issue will be further discussed *infra*.

3. *Request for Production of Documents and Protective Order*

The FSMDB filed a Request for Production of Documents on Linda Carl and the estate of Yoshiro Carl on December 10, 2014. On December 24, 2014, the defendants filed a Motion to Strike Plaintiff's Requests for Production of Documents, and for Protective Order. The defendants' motion argues that the requested information is not relevant because the debt is satisfied as argued in the Motion for Court Order Declaring Satisfaction of Account filed on August 18, 2014. This motion has been denied.

A response was entered by the FSMDB on January 15, 2015, citing FSM Civil Rule 69, which states

In aid of the judgment or execution, the judgment creditor or a successor in interest when that interest appears of record, *may obtain discovery from any person, including the judgment debtor*, in the manner provided in these rules or in the manner provided by the practice of the state in which the court is held.

FSM Civ. R. 69 (emphasis added).

Rule 69 was intended to establish an effective and efficient means of securing the execution of

judgments. As part of the process, it provides for the securing of information relating to the judgment-debtor's assets. Adams v. Island Homes Constr., Inc., 12 FSM Intrm. 644, 646 (Pon. 2004).

Here, the court finds the requested information relevant because the Motion for Court Order Declaring Satisfaction of Account is denied *supra*, and the discovery materials sought are pertinent to the defendants' income and assets to pay the outstanding judgment. Therefore, the defendants' Motion to Strike Plaintiff's Requests for Production of Documents and for Protective Order is HEREBY DENIED. The Plaintiff's Motion to Compel Discovery is HEREBY GRANTED.

The plaintiff shall re-serve its discovery requests on the defendants within ten (10) days of the issuance of this Order. The defendants shall produce the requested discovery materials within thirty (30) days of being served with the discovery requests.

4. Order to Show Cause

On September 4, 2014, the FSMDB filed a Motion for an Order to Show Cause for the Carl's failure to comply with an Order in Aid of Judgment entered on August 16, 2012. A reply was filed by Carl on September 24, 2014.

On March 20, 2015, a Second Motion for an Order to Show Cause was filed by the FSMDB in regards to Carl's failure to make the \$500.00 per month payment to the clerk of court as required by an Order entered on February 18, 2015. Therefore, pursuant to 4 F.S.M.C. 119, the court will hear arguments on the above-mentioned motions during the next scheduled hearing.

5. Order in Aid of Judgment

A Motion for an Order in Aid of Judgment was filed by the FSMDB on January 11, 2016, and an opposition was entered by Carl on February 1, 2016. A reply was filed on February 3, 2016. An Order entered on March 15, 2016 required all subpoenaed parties to testify at a future hearing regarding the pending motion. [FSM Dev. Bank v. Carl, 20 FSM R. 329, 334 (Pon. 2016).] As required by 6 F.S.M.C. 1409, the court will schedule a hearing on the above-mentioned motions.

II. CONCLUSION

The defendant's Motion for Court Order Declaring Satisfaction of Account is HEREBY DENIED. The defendants' Motion to Strike Plaintiff's Requests for Production of Documents and for Protective Order is HEREBY DENIED.

The Plaintiff's Motion to Compel Discovery is HEREBY GRANTED. The plaintiff shall re-serve its discovery requests on the defendants within ten (10) days of the issuance of this Order. The defendants shall produce the requested discovery materials within thirty (30) days of being served with the discovery requests.

A hearing on plaintiff's Motion for an Order to Show Cause and Order in Aid of Judgment is scheduled for Tuesday, October 11, 2016 at 9:30 a.m. at the FSM Supreme Court in Palikir, Pohnpei. The defendants shall appear personally for the hearing.

* * * *