However, that would require this Court to make factual findings, which is the province of the trial court. In re Extradition of Jano, 6 FSM R. 23, 24 (App. 1993).

It is for the trial court to determine the amount of the final judgment, regardless of the practical import of this court's Opinion and consequent Judgment. Accordingly, the matter should remain with the trial court for further proceedings.

IV. CONCLUSION

We have carefully reviewed this matter and determined that we have neither overlooked nor misapprehended any point of law or fact and therefore summarily deny the Petition for Re-Hearing. Stephen v. Chuuk, 17 FSM R. 496, 499 (App. 2011); Berman v. Pohnpei, 17 FSM R. 464, 465 (App. 2011).

THEREFORE, the Appellant's Petition for Re-Hearing to Correct Clerical Error in the July 8, 2020 Judgment is HEREBY DENIED.

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FSM SUPREME COURT APPELLATE DIVISION

THE FOURTH CONSTITUTIONAL CONVENTION OF THE FEDERATED STATES OF MICRONESIA, KIND KANTO, Delegate, and TENDY LIWY, Delegate, Appellants, vs. EUGENE AMOR, in his official capacity as Secretary of Finance and Administration for the FSM National Government, Appellee.	APPEAL CASE NO. P6-2020 (Civil Action No. 2020-004)

ORDER DENYING MOTION TO STAY PENDING APPEAL

Decided: August 20, 2020

BEFORE:

Hon. Dennis K. Yamase, Chief Justice, FSM Supreme Court
Hon. Larry Wentworth, Associate Justice, FSM Supreme Court

APPEARANCE:

For the Appellants: Kathleen M. Burch, Esq.
Chief Legal Counsel
Fourth FSM Constitutional Convention
Palikir, Pohnpei FM 96941

* * * *

HEADNOTES

Appellate Review – Stay – Civil Cases

Appellants must meet the requirement that they first apply for a stay to the court appealed from, and then furnish the appellate court with a copy of the trial court's order denying stay. Fourth Constitutional Convention v. Amor, 23 FSM R. 11, 12 (App. 2020).

Appellate Review – Stay – Civil Cases

It is appropriate under the FSM Rules of Appellate Procedure for only two justices to consider a motion to stay when the third justice is disqualified. Fourth Constitutional Convention v. Amor, 23 FSM R. 11, 12-13 (App. 2020).

Appellate Review – Stay – Civil Cases

The appellate division will deny a stay when the Constitutional Convention delegates' participation in a hearing under the Administrative Procedure Act does not implicate any important previously unresolved constitutional question; when the appellants cannot demonstrate any irreparable harm; and when it is not clear that the appellants can demonstrate a likelihood of success on the merits. Fourth Constitutional Convention v. Amor, 23 FSM R. 11, 13 (App. 2020).

* * * *

COURT'S OPINION

DENNIS K. YAMASE, Chief Justice:

This case comes before the court on Appellee's Motion to Stay Pending Appeal, filed under Rule 8 of the FSM Rules of Appellate Procedure. Rule 8(a) provides in part that:

> Application for a stay of the judgment or order of the court appealed from pending appeal . . . must ordinarily be made in the first instance in the court appealed from. A motion for such relief may be made to the Supreme Court appellate division or to a justice thereof, but the motion shall show that application to the court appealed from for the relief sought is not practicable, or that the court appealed from has denied the application, or has failed to afford the relief which the applicant requested, with any reasons given by the court appealed from for its action. The motion shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the motion shall be supported by affidavits or other sworn statements or copies thereof. With the motion shall be filed such parts of the record as are relevant. Reasonable notice of the motion shall be given to all parties. The motion shall be filed with the clerk and normally will be considered by all justices of the court eligible to act with the appellate division in the case, but in exceptional cases where such procedure would be impracticable due to the requirements of time, the application may be made to and considered by a single justice of the Supreme Court.

FSM App. R. 8(a).

Appellants meet the requirement that they first apply to the court appealed from, and they furnished this Court with a copy of the Trial Court's Order Denying Stay, dated July 17, 2020. Associate Justice Carl-Worswick has issued all of the relevant rulings in the Trial Court and is thus disqualified from considering the Motion to Stay in the Appellate Division. Accordingly, it is appropriate under the FSM Rules of Appellate

Procedure for Chief Justice Yamase and Associate Justice Wentworth to consider this motion. Panuelo v. Amayo, 10 FSM Intrm. 558, 560-61 (App. 2002).

For the following reasons we deny Appellants' Motion to Stay Pending Appeal.

First, Appellants' participation in a hearing under the Administrative Procedure Act does not implicate any "important previously unresolved constitutional question" of whether the FSM Constitution grants the Executive Branch and the FSM Congress the power to subject the Constitutional Convention or its Delegates to the authority of an Executive Branch officer and to the administrative hearing process. This case essentially revolves around two individual Delegates seeking redress for money they claim they are owed, based on their service as Delegates to the FSM Constitutional Convention. The FSM Department of Finance holds this money and has not released it to them. It would not be onerous in any way to require that these two Delegates seek to obtain payment from the Department of Finance by submitting their case for administrative review by the Department.

Second, Appellants cannot demonstrate any irreparable harm. If they attend the administrative hearing as ordered, and prevail on their claims, there is no harm. If they lose, they will be back before the FSM Supreme Court Trial Division with an administrative record and decision of hearing. This can only assist the Trial Court in determining the merits of the claims asserted below.

It is also not clear that the Appellants can demonstrate a likelihood of success on the merits. Despite their assertion that the FSM Executive and FSM Congress have no authority over the Constitutional Convention or its Delegates, this case does not reach the level of intrusion by either branch in the precedent cited, Constitutional Convention 1990 v. President, 4 FSM R. 320, 326 (App.1990).

Based on the foregoing, Appellants' Motion to Stay Pending Appeal is HEREBY DENIED.

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