

Aizawa, 13 FSM R. 281, 284 (Chk. 2005). We also note that the most frequent attorney error that may be the subject of a successful legal malpractice action (assuming the plaintiff can prove he would have prevailed) is the attorney’s failure to comply with timing requirements. See Aunu v. Chuuk, 18 FSM R. 467, 469 n.2 (Chk. 2012) (failed to comply with statute of limitation).

We, however, can express no view on whether Johnson would or could have prevailed in this suit.

V. CONCLUSION

Accordingly, we hereby affirm the trial court’s denial of the Rule 60(b) motion to set aside its dismissal of this case.

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FSM SUPREME COURT TRIAL DIVISION

FSM DEVELOPMENT BANK,)	CIVIL ACTION NO. 2014-021
)	
Plaintiff,)	
)	
vs.)	
)	
BERYSIN SALOMON and NANCY SALOMON,)	
)	
Defendants.)	
_____)	

ORDER DENYING STAY

Larry Wentworth
Associate Justice

Decided: December 16, 2020

APPEARANCES:

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HEADNOTES

Appellate Review – Notice of Appeal; Appellate Review – Stay – Civil Cases – Money Judgment; Attachment and Execution

A notice of appeal neither automatically stays the enforcement – collection – of a money judgment

nor divests the trial court of jurisdiction to enforce that judgment. FSM Dev. Bank v. Salomon, 23 FSM R. 112, 114 (Pon. 2020).

Appellate Review – Stay – Civil Cases – Money Judgment; Attachment and Execution

By rule, a judgment is automatically stayed for only ten days. Once that ten days has passed, the judgment holder is free to execute on or to enforce the judgment unless a supersedeas bond has been posted and approved by the court or a stay sought and granted. FSM Dev. Bank v. Salomon, 23 FSM R. 112, 115 (Pon. 2020).

Appellate Review – Stay – Civil Cases – Money Judgment; Attachment and Execution

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. An appeal from a final judgment does not affect the judgment holder's right to execute upon the judgment or to enforce the judgment unless a supersedeas bond is posted or a stay of enforcement is ordered by the court. FSM Dev. Bank v. Salomon, 23 FSM R. 112, 115 (Pon. 2020).

Appellate Review – Notice of Appeal; Appellate Review – Stay – Civil Cases – Money Judgment; Attachment and Execution

Generally, the filing of a notice of a appeal divests the trial court of jurisdiction over the appealed case, but despite the general effect of the filing of a notice of appeal, the trial court retains jurisdiction to determine matters collateral or incidental to the judgment, and may act in aid of the appeal. For example, because the mere filing of a notice of appeal does not affect a judgment's validity, the trial court retains jurisdiction to enforce the judgment. FSM Dev. Bank v. Salomon, 23 FSM R. 112, 115 (Pon. 2020).

Appellate Review – Stay – Civil Cases – Money Judgment

The usual method to stay the collection of a money judgment is for the defendant to give a supersedeas bond. The stay is effective when the court approves the supersedeas bond. FSM Dev. Bank v. Salomon, 23 FSM R. 112, 115 (Pon. 2020).

Appellate Review – Stay – Civil Cases – Money Judgment; Attachment and Execution

The mere fact that an appellant must move for a stay warns the appellant that a properly filed appeal does not automatically stay a judgment or divest the trial court of the authority to enforce it. A court can grant a stay of a money judgment only when a supersedeas bond has been posted and approved by the court; otherwise, every judgment debtor, who wishes to avoid paying a judgment, would file a notice of appeal solely for that purpose, rather than to seek an appellate court's review of bona fide issues. FSM Dev. Bank v. Salomon, 23 FSM R. 112, 115 (Pon. 2020).

Attachment and Execution

The trial court has the jurisdiction to enforce a money judgment, even while an appeal is pending. FSM Dev. Bank v. Salomon, 23 FSM R. 112, 116 (Pon. 2020).

Appellate Review – Stay – Civil Cases – Money Judgment; Attachment and Execution; Debtors' and Creditors' Rights – Orders in Aid of Judgment

Because the trial court retains jurisdiction to enforce a judgment, a judgment holder may, in the absence of a stay, seek to enforce its judgment, and a hearing to enforce the existing judgment by means of an order in aid of judgment may be held, since Congress has, by statute, authorized judgment holders to use this method to enforce valid money judgments. FSM Dev. Bank v. Salomon, 23 FSM R. 112, 116 (Pon. 2020).

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

An order-in-aid-of-judgment hearing's purpose is for the trial court to examine the judgment debtor's

ability to pay and to determine the fastest way in which the judgment debtor can reasonably satisfy the judgment. A writ of execution (or of garnishment or attachment) can issue as part of an order in aid of judgment. FSM Dev. Bank v. Salomon, 23 FSM R. 112, 116 (Pon. 2020).

Appellate Review – Stay – Civil Cases – Money Judgment

The purpose of requiring a supersedeas bond for a stay is to protect an appellee's interests. A bond protects an appellee by providing a fund out of which the appellee may be paid if the money judgment is affirmed, and it meets an appellee's concerns that the appellant might flee the jurisdiction or conceal or dissipate assets so as to render itself judgment-proof. FSM Dev. Bank v. Salomon, 23 FSM R. 112, 116 (Pon. 2020).

Appellate Review – Stay – Civil Cases – Money Judgment; Debtors' and Creditors' Rights – Orders in Aid of Judgment

An order in aid of judgment can protect both the appellee and the appellant. That is because the court has the ability, and the inclination, to protect both the judgment creditor and the judgment-debtor during an appeal by requiring that all sums the judgment-debtor is ordered to pay under an order in aid of judgment, be paid into the court's registry where the money would be held awaiting the outcome of the judgment debtor's appeal, with the money delivered to whichever party the appellate court deems proper. That way, the appellant is protected from the difficulty of having to try to obtain a refund from the appellee if the appellant's appeal is successful since the court will return the money directly to the appellant, and the appellee is protected because, if it prevails on appeal, it will benefit from receiving what it would have been paid if there had been no appeal. FSM Dev. Bank v. Salomon, 23 FSM R. 112, 116 (Pon. 2020).

* * * *

COURT'S OPINION

LARRY WENTWORTH, Associate Justice:

On December 7, 2020, the defendants, Berysin Salomon and Nancy Salomon ("Salomons"), filed a motion to stay the judgment in this matter. On December 8, 2020, the plaintiff, the FSM Development Bank, filed its opposition. For the reasons recited below, the stay is denied.

I.

The Salomons contend that, since they filed a notice of appeal from the February 17, 2020 judgment on March 13, 2020, jurisdiction over the judgment is transferred to the appellate division and the trial court must await the appellate court's decision and its instructions on remand before the trial court can consider enforcing the bank's judgment against them. They assert that the trial court's jurisdiction is limited to orders in aid of their appeal.

The bank contends that because a notice of appeal has been filed, Civil Procedure Rule 62(d) applies and that rule requires that a supersedeas bond be posted to stay the enforcement of a money judgment pending appeal. The bank, based on the February 17, 2020 judgment amount of \$261,410.62, the 9% judgment interest rate, and appellate costs during the estimated three years for the appeal to be resolved, calculates that an appropriate supersedeas bond amount would be \$350,600.23.

II.

The Salomons' argument lacks merit. A notice of appeal neither automatically stays the enforcement – collection – of a money judgment nor divests the trial court of jurisdiction to enforce that judgment. As the

court has previously explained:

By rule, a judgment is automatically stayed for only ten days. FSM Civ. R. 62(a); People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM Intrm. 501, 503 (Yap 2006) (statutory right to obtain the immediate issuance of a writ of execution is automatically stayed for ten days by court rule, and may be stayed by the court pending an appeal). Once that ten days has passed, the judgment holder is free to execute on or to enforce the judgment unless a supersedeas bond has been posted and approved by the court, FSM Civ. R. 62(d), or a stay sought and granted. "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. Arthur, 16 FSM Intrm. 132, 142 (Pon. 2008) (quoting 11 CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FEDERAL PRACTICE AND PROCEDURE § 2905, at 524 (2d ed. 1995)) (appellant who cannot furnish a supersedeas bond assumes the risk of not getting his money back if the judgment is reversed). "An appeal from a final judgment does not affect the judgment holder's right to execute upon the judgment." Farms v. Carlsbad Riverside Apartments, Inc., 690 P.2d 1044, 1046 (N.M. Ct. App. 1984).

"An appeal from a final judgment does not affect the judgment holder's right to enforce the judgment unless a supersedeas bond is posted or a stay of enforcement is ordered by the court." 47 AM. JUR. 2D *Judgments* § 961, at 418 (rev. ed. 1995).

Generally, the filing of a notice of a appeal divests the trial court of jurisdiction over the appealed case. . . .

Notwithstanding the general effect of the filing of a notice of appeal, the trial court retains jurisdiction to determine matters collateral or incidental to the judgment, and may act in aid of the appeal. For example, because the mere filing of a notice of appeal does not affect the validity of a judgment, the [trial] court retains jurisdiction to enforce the judgment.

TSA Int'l Ltd. v. Shimizu Corp., 990 P.2d 713, 735 (Haw. 1999) (citations omitted). The trial court therefore retains jurisdiction to enforce the judgment

FSM Dev. Bank v. Ehsa, 19 FSM R. 128, 130 (Pon. 2013). The usual method to stay the collection of a money judgment is for the defendant to give a supersedeas bond. FSM Civ. R. 62(d); Panuelo v. Amayo, 10 FSM R. 558, 563 (App. 2002). "The stay is effective when the supersedeas bond is approved by the court." FSM Civ. R. 62(d). The Salomons have not submitted a supersedeas bond for the court's approval. Nor have they offered to.

The court further notes that if the mere filing of a notice of appeal barred the trial court from enforcing a judgment until the appellate court remands the matter, then an appellant would never need to move for a stay since the stay would be "automatic." The mere fact that an appellant must move for a stay should warn the appellant that a properly filed appeal does not automatically stay a judgment or divest the trial court of the authority to enforce it. A court can grant a stay of a money judgment only when proper grounds are present – when a supersedeas bond has been posted and approved by the court, FSM Civ. R. 62(d). Otherwise, every judgment debtor, who wishes to avoid paying a judgment, would file a notice of appeal solely for that purpose, rather than to seek an appellate court's review of bona fide issues.

III.

The Salomons further contend that the bank has continued to file motions in the trial court that are

not, in the Salomons' view, in aid of the appeal and therefore should be stayed. The only pending motion that the court is aware of is the bank's motion for an order in aid of judgment and its request for a hearing on that motion.

As explained above, the trial court has the jurisdiction to enforce the money judgment, even while an appeal is pending. Setik v. FSM Dev. Bank, 21 FSM R. 505, 518 (App. 2018) (money judgment could be enforced). Since the trial court retains jurisdiction to enforce a judgment, a judgment holder may, in the absence of a stay, seek to enforce its judgment, and a hearing to enforce the existing judgment by means of an order in aid of judgment may be held, because Congress has, by statute, authorized judgment holders to use this method to enforce valid money judgments. See Ehsa, 19 FSM R. at 130. An order-in-aid-of-judgment hearing's purpose is for the trial court to examine the judgment debtor's ability to pay and to determine the fastest way in which the judgment debtor can reasonably satisfy the judgment. 6 F.S.M.C. 1409; George v. Sigrah, 19 FSM R. 210, 220 (App. 2013). A writ of execution (or of garnishment or attachment) can issue as part of an order in aid of judgment. 6 F.S.M.C. 1413(1).

The purpose of requiring a supersedeas bond for a stay is to protect an appellee's interests. Pohnpei v. Ponape Constr. Co., 6 FSM R. 221, 223 (App. 1993). A bond protects an appellee by providing a fund out of which the appellee may be paid if the money judgment is affirmed, and it meets an appellee's concerns that the appellant might flee the jurisdiction or conceal or dissipate assets so as to render itself judgment-proof. *Id.*

An order in aid of judgment, however, can protect both the appellee and the appellant. That is because the court has the ability, and the inclination, to protect both the judgment creditor and the judgment-debtor during an appeal by requiring that all sums the judgment-debtor is ordered to pay under an order in aid of judgment, be paid into the court's registry where the money would be held (usually in an interest-bearing account) awaiting the outcome of the judgment debtor's appeal, with the money delivered to whichever party the appellate court deems proper. That way, the appellant is also protected from the difficulty of having to try to obtain a refund from the appellee if the appellant's appeal is successful since the court will return the money directly to the appellant. The appellee is also protected because, if it prevails on appeal, it will benefit from receiving what it would have been paid if there had been no appeal.

IV.

Accordingly, the Salomons' request for a stay is DENIED.

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