FSM SUPREME COURT APPELLATE DIVISION

PERDUS I. EHSA and TIMAKIO EHSA, Appellants-Defendants, vs. FEDERATED STATES OF MICRONESIA DEVELOPMENT BANK, Appellee-Plaintiff.	)	APPEAL CASE NO. P10-2017 (Civil Action No. 2007-035)

OPINION

Argued: September 22, 2021
Decided: April 6, 2022

BEFORE:

Hon. Dennis L. Belcourt, Associate Justice, FSM Supreme Court
Hon. Chang B. William, Temporary Justice, FSM Supreme Court*
Hon. Mayceleen JD Anson, Temporary Justice, FSM Supreme Court**

*Chief Justice, Kosrae State Court, Tofol, Kosrae
**Associate Justice, Pohnpei Supreme Court, Kolonia, Pohnpei

APPEARANCES:

For the Appellants: Joseph S. Phillip, Esq.
P.O. Box 464
Kolonia, Pohnpei FM 96941

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

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HEADNOTES

Appellate Review – Standard – Civil Cases – Abuse of Discretion; Judgments – Relief from Judgment

An appellate court reviews a trial court's denial of a Rule 60(b) motion under an abuse of discretion standard. An abuse of discretion occurs when: 1) the court's decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court's findings are clearly erroneous; or 4) the record contains no evidence on which the court rationally could have based its decision. Such abuses must be unusual and exceptional; an appeals court will not merely substitute its judgment for that of the trial judge. Ehsa v. FSM Dev. Bank, 23 FSM R. 520, 523 (App. 2022).

Civil Procedure; Signatures

Civil Procedure Rule 58 does not mandate that a signature by a judicial official be an original signature. Ehsa v. FSM Dev. Bank, 23 FSM R. 520, 523 (App. 2022).

Signatures

A signature is a person's name or mark written by that person or at the person's direction, or any name, mark, or writing used with the intent of authenticating a document – also termed legal signature. Ehsa v. FSM Dev. Bank, 23 FSM R. 520, 524 (App. 2022).

Appellate Review – Standard – Civil Cases – Abuse of Discretion

A trial-court order is not an abuse of discretion when the order was based upon a reasonable interpretation of existing FSM law, including other decisions issued in other cases; when the trial court's findings do not appear to be clearly erroneous; and when any alleged error by the trial court is not unusual and exceptional. It is not the appellate court's role to merely substitute its judgment for that of the trial judge. Ehsa v. FSM Dev. Bank, 23 FSM R. 520, 524 (App. 2022).

Appellate Review – Decisions Reviewable

When a litigant raises an issue for the first time on appeal, he or she is deemed to have waived the right to challenge the issue. The general rule is that an issue not raised below will not be considered for the first time on appeal. Ehsa v. FSM Dev. Bank, 23 FSM R. 520, 524 (App. 2022).

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COURT'S OPINION

DENNIS L. BELCOURT, Associate Justice:

This appeal arises from the trial-court case of: Federated States of Micronesia Development Bank v. Ehsa, Civil Action No. 2007-035. In this appeal, the Appellants present us with a challenge to a trial-court justice's use of a rubber signature stamp to affix his signature to his orders, rather than actually signing the order with his own signature. The Appellants also question the practice of a party submitting a form judgment for entry by the court. FSM Civ. R. 58 ("attorneys shall not submit forms of judgment except upon direction of the court, and these directions shall not be given as a matter of course"). For the reasons stated below, we dismiss this appeal and affirm the entry of all the trial-court orders that are at issue here.

I. BACKGROUND

For this appeal, the background is simple: the FSM Development Bank loaned money to Pacific Foods & Services, Inc ("Pacific). The individual Appellants, Perdus Ehsa and Timako Ehsa, each issued continuing guarantees on Pacific's debt to the Development Bank. After the Pacific defaulted, the Development Bank filed suit against the Appellants. The trial court record shows that both the Appellants were served with a summons and a copy of the complaint. Thereafter, when no answer was filed, a default judgment was entered against the Appellants, jointly and severally, on December 28, 2007, in the amount of $2,018,234.28.[1]

Nearly ten (10) years later, on February 14, 2017, the trial court issued an order denying, *inter alia*., the Appellants' motion to vacate the judgment entered against them, as well as various other orders issued in the case on the basis that the presiding justice had affixed his signature to the orders using a rubber stamp, instead of his actual signature. On September 19, 2017, the trial court again issued an order denying the Defendants' motion for reconsideration on the grounds that no new evidence or arguments had been presented by the Defendants. The Appellants now appeal the February 14, 2017 and September 19, 2017 trial court orders.

[1] Although Pacific Food & Services, Inc., eventually sought bankruptcy protection, *see In re* Pacific Foods & Services, Inc., Bankr. No. PB 001-2009 (Pon. Sept. 2, 2021) (order confirming reorganization and closing case), the individual Appellants did not. *See* FSM v. Webster George & Co., 7 FSM R. 437, 441 (Kos. 1996) (a corporation acts as a distinct legal entity separate and apart from its shareholders, directors and officers).

The Appellants specifically take issue with the trial court's order of February 14, 2017, in which it explained:

> These contentions must be rejected as without any valid legal or factual basis. First, there is case authority that signatures other than hand-written are permissible. In the absence of any provision in the FSM Code, Civil Procedure Rules, or General Court Order, mandating a handwritten signature on an order issued by a justice, arguments that a judge's signature is deficient because it is "rubber-stamped," are devoid of merit. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 225, 228 (Chk. 2015).
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> Counsel notes that my signature on court orders is by rubber stamp and "challenges the validity of a rubber stamped signature." Besides this, counsel further speculates that others have signed documents on my behalf "through rubber-stamped signature." Not only is this pure speculation, but it is also a falsehood. I have been signing, without any objection, documents by use of a rubber stamp for the last three years. The rubber stamp is kept in my personal possession and I am the only person who uses it. I personally affix my rubber-stamped signature to each and every document that I sign. No one but me personally, affixes my rubber-stamped signature on documents. Just because I rubber stamp my signature, it does not mean that it is not my own signature or that it is not a valid signature. A signature is defined as "[a] person's name or mark written by that person or at the person's direction," or "[a]ny name, mark, or writing used with the intent of authenticating a document – [a]lso termed *legal signature*." BLACK'S LAW DICTIONARY 1507 (9th ed. 2009) (emphasis in original) (citations omitted); *see also* Iriarte v. Individual Assurance Co., 18 FSM R. 340, 352 (App. 2012).

FSM Dev. Bank v. Ehsa, 21 FSM R. 148, 149 (Pon. 2017) (quoting George v. Palsis, 20 FSM R. 157, 159 (Kos. 2015)).

II. ISSUES ON APPEAL

Appellants interpret Rule 58 of the Court's Rules of Civil Procedure to require that a presiding justice affix – sign – his actual signature to a final judgment or order, in order for the order to be valid. To the Appellants, the Judge's use of a rubber stamp bearing a facsimile of his signature renders the judgment or order void *ab initio*. The Appellants further argue that Micronesian custom and tradition dictate this result, as the majority of the FSM population is "not familiar with [a] rubber stamp signature."

The Appellants also argue that when a party submits a form judgment, or order, to the Court, without the Court directing the submission of such a document, the judgment or order subsequently issued by the Court is similarly void. The Appellants claim that the trial court justice in this case issued a judgment and orders that were prepared and submitted by the Appellee's counsel, in purported violation of the last sentence of Rule 58 of this Court's Rules of Civil Procedure.

At this time, there has been no decision from this Court addressing the issues at hand. Indeed, Appellants cite to various legal authorities outside of the FSM which purport to state that the use of a rubber stamp should not be permitted for court judgments and orders. For example, the Appellants cite to the definition of a "judgment" provided at wikipedia.com to clarify that a "signature is a 'handwritten (and often stylized) depiction of someone's name, nickname, or even a simple 'X' or other mark that a person writes on a document as proof of identity and intent.'" The Appellants also argue that it is "high time" for this Court to take a second look at the judicial guidance in the FSM Constitution – FSM Constitution, art. XI, section

11 – which mandates that decisions of this Court be consistent with Micronesian custom and tradition. The Appellants suggest that a "[m]ajority of the [FSM] populous [sic] is not familiar with rubber stamp signature."[2]

With regard to a party's submission of a form judgment, the Appellants argue that under Rule 58, "[a]ttorneys shall not submit forms of judgment except upon direction of the court, and these directions shall not be given as a matter of course." The Appellants argue that any judgments or orders that were prepared by the Appellee's counsel without the trial court requesting them, and, which were, in turn, entered by the Court, must now be vacated.

By contrast, the Appellee argues that the legal authority cited by the Appellants actually confirms that the use of rubber signature stamps by judicial officials is a valid way of affixing the judicial officer's signature to a judgment or order. For example, the Appellee cites to the Appellant's reliance upon a legal opinion by the Ohio State Attorney General who confirmed that an ailing justice's use of a signature stamp would be permissible as long as it was used by the justice in question, or even another person who was properly authorized to do so. The Appellee also does not dispute the fact that certain orders issued by the trial court came about as form orders that the Appellee's counsel submitted to the court for its consideration in issuing. The Appellee, however, argues that the Appellants waited so long to challenge the use of these form orders that their actions should be deemed a waiver to the use of any form judgments by the trial court.[3]

III. DISCUSSION

It is well established that the standard of review for a trial court's decision to deny a motion for relief under Rule 60(b)(4) is whether the trial court abused its discretion. As this Court has explained: an "appellate court reviews a trial court denial of a Rule 60(b) motion under an abuse of discretion standard." Panuelo v. Amayo, 12 FSM R. 365, 372 (App. 2004). An abuse of discretion occurs when: 1) the court's decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court's findings are clearly erroneous; or 4) the record contains no evidence on which the court rationally could have based its decision. Such abuses must be unusual and exceptional; an appeals court will not merely substitute its judgment for that of the trial judge. *Id.* *See* Setik v. FSM Dev. Bank, 21 FSM R. 505, 514 (App. 2018) (since Rule 60(b) relief from judgment is addressed to the court's sound discretion, an appellate court reviews the trial court's denial of relief from judgment using the abuse of discretion standard).

Rule 58 of this Court's Rules of Civil Procedure provides that "upon a decision by the court that a party shall recover only a sum certain or costs or that all relief shall be denied, the clerk, unless the court orders otherwise, shall prepare, *sign*, and enter the judgment without awaiting any direction by the court" (emphasis added). There is no restriction on the term "sign" that mandates that a signature by a judicial official be an original signature. Indeed, and as the trial court in this case explained, citing to Black's Law

[2] While there are no appellate court decisions on the issue at hand, at this time, there are various trial-court decisions which have addressed a trial-court justice's use of a stamp, including the case at hand, *see* FSM Dev. Bank v. Ehsa, 21 FSM R. 148, 149 (Pon. 2017), as well as: George v. Palsis, 20 FSM R. 157 (Kos. 2015) (a signature affixed by a judge by rubber stamp is valid because a signature is a person's name or mark written by that person or at the person's direction, or any name, mark, or writing used with the intent of authenticating a document – also termed a legal signature); FSM Dev. Bank v. Christopher Corp., 20 FSM R. 225, 228 (Chk. 2015) (in the absence of any provision in the FSM Code, Rules of Civil Procedure, or General Court Order, mandating a handwritten signature on an order issued by a justice, an argument that a judge's signature is deficient because it appears to be "rubber-stamped," is devoid of merit); FSM Dev. Bank v. Salomon, Civil Action 2014-021 (Pon. 2014); and FSM Dev. Bank v. Phillip, Civil Action 2014-026 (Pon. 2014).

[3] The record here shows that the Appellants filed a reply brief, but that it was untimely. At the commencement of oral arguments, and in response to the Appellee's request to have the Appellants' tardily-filed reply brief stricken from the record, the Appellants requested to withdraw their reply brief. As such, the Court will not consider that filing by the Appellants in connection with this appeal.

Dictionary, "a signature is defined as '[a] person's name or mark written by that person or at the person's direction,' or '[a]ny name, mark, or writing used with the intent of authenticating a document – [a]lso termed legal signature.'" FSM Dev. Bank v. Ehsa, 21 FSM R. 148, 149 (Pon. 2017) (citing BLACK'S LAW DICTIONARY 1507 (9th ed. 2009)). *See* Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 440 (Pon. 2009) (signing another's signature *with* authorization is *not* forgery) (emphasis added).

In evaluating the trial-court order of February 14, 2017, it does not appear that the court's decision was clearly unreasonable, arbitrary, or fanciful, or that the decision was based on an erroneous conclusion of law. *See* Panuelo v. Amayo, 12 FSM R. 365, 372 (App. 2004). Instead, it appears that the trial court order is based upon a reasonable interpretation of existing FSM law, including other decisions issued in other cases. Thus, the trial court's findings do not appear to be clearly erroneous. Any alleged error on the part of the trial court in the matter at hand, must be an abuse that is unusual and exceptional, as it is not the role of the appellate court to merely substitute its judgment for that of the trial judge. *Id.*

With regard to the other arguments raised by the Appellants, that the use of a signature stamp is inconsistent with the judicial guidance clause in the FSM Constitution, and that the trial court should not have accepted form judgments from the Appellee's counsel, the record here shows that these arguments are untimely, only now, for the first time, being raised in this appeal. These arguments were not previously presented to the trial court for its consideration. Thus, the trial court cannot now be cited with committing any error that is subject to review or reversal on appeal. As this Court has explained, when "a litigant raises an issue for the first time on appeal, he or she is deemed to have waived the right to challenge the issue . . . ." Amayo, 12 FSM R. at 372. The general rule is that an issue not raised below will not be considered for the first time on appeal. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 232 (App. 2017); Palsis v. Kosrae, 17 FSM R. 236, 241 n.2 (App. 2010) (an issue raised for the first time on appeal is waived); Hartman v. Bank of Guam, 10 FSM R. 89, 95 (App. 2001) (an issue raised for the first time on appeal is waived. An exception to this rule is in the case of plain error, or error that is obvious and substantial and that seriously affects the fairness, integrity, or public reputation of judicial proceedings); Damarlane v. United States, 7 FSM R. 510, 512-13 (App. 1996) (the record on appeal must be sufficient to permit the court to ensure that the issues on appeal were properly raised before the trial court).

Accordingly, we hereby dismiss this appeal, and affirm the trial court's entry of its judgment and any other orders issued in this case.

IV. CONCLUSION

In conclusion, for the reasons stated above, this appeal is hereby dismissed.

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