

FSM SUPREME COURT APPELLATE DIVISION

In the Matter of the Search and Seizure of:	)	APPEAL CASE NO. P1-2020
	)	
WRECKED/DAMAGED HELICOPTER, shipping	)	
container holding the helicopter, and documents	)	
concerning said helicopter’s usage and ownership	)	
which are located at the Pacific Transfer and	)	
Storage facility in Pohnpei.	)	
_____	)	
DAVE’S HELICOPTER SERVICE, INC.,	)	
	)	
Appellant.	)	
_____	)	

ORDER DENYING DAVES’ MOTION TO MAINTAIN INJUNCTION AND STAY PENDING APPEAL

Decided: October 14, 2020

BEFORE:

Hon. Cyprian J. Manmaw, Specially Assigned Justice\*  
 Hon. Chang B. William, Specially Assigned Justice\*\*  
 Hon. Mayceleen JD. Anson, Specially Assigned Justice\*\*\*

\*Chief Justice, State Court of Yap, Colonia, Yap  
 \*\*Chief Justice, Kosrae State Court, Tofol, Kosrae  
 \*\*\*Associate Justice, Pohnpei Supreme Court, Kolonia, Pohnpei

APPEARANCES:

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For the Appellee: Josephine Leben James, Esq.  
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HEADNOTES

Appellate Review – Stay – Civil Cases

The appellate court may grant an injunction when an appeal is pending and such injunction is a preliminary injunction. When ruling on a request for an injunction pending appeal, the appellate court engages in the same inquiry as reviewing the grant or denial of a preliminary injunction; therefore, the following four factors are considered: 1) the likelihood of success on the merits of the party seeking injunctive relief; 2) the possibility of irreparable injury to the movant; 3) the balance of possible injuries or

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inconvenience to the parties that would flow from granting or denying the relief; and 4) any impact on the public interest. In re Wrecked/Damaged Helicopter, 23 FSM R. 65, 67 (App. 2020).

Appellate Review – Stay – Civil Cases

There are generally four factors to weigh before granting a stay pending an appeal: 1) whether the appellant has made a strong showing that he is likely to prevail on the merits of the appeal; 2) whether the appellant has shown that without the stay he will be irreparably harmed; 3) whether the issuance of the stay would substantially harm other parties interested in the proceedings; and 4) whether the public interest would be served by granting a stay. Ordinarily, the first factor is the most important, but a stay may be granted upon a lesser showing of a substantial case on the merits when the balance of the equities identified in factors 2, 3, and 4 weighs heavily in favor of granting the stay. In re Wrecked/Damaged Helicopter, 23 FSM R. 65, 67 (App. 2020).

Appellate Review – Stay – Civil Cases; Civil Procedure – Injunctions – Irreparable Harm

The appellant cannot demonstrate irreparable harm when the FSM Supreme Court trial division has set a return date for the helicopter fuselage, and, although the U.S. criminal case's trial date was vacated due to health risks and current travel restrictions in place, this does not refute the representations made at and accepted by the trial court that the helicopter fuselage will be returned, but it is expected that a more achievable return date for the helicopter fuselage may be set to accommodate a new trial date, if the current return date is no longer feasible. In re Wrecked/Damaged Helicopter, 23 FSM R. 65, 68 (App. 2020).

Appellate Review – Stay – Civil Cases; Civil Procedure – Injunctions – Irreparable Harm; Constitutional Law – Case or Dispute – Mootness

The appellant cannot demonstrate irreparable harm if the helicopter fuselage is removed possibly causing its appeal to become moot because, for the legal issues it may have involving FSM law, the appellant may rely on the exception to the mootness doctrine that has been upheld by the appellate court wherein an appeal may continue, even though it may be considered moot, if the court's ruling will have a continuing effect on future events, future litigation and will offer guidance to future litigants. In re Wrecked/Damaged Helicopter, 23 FSM R. 65, 68 (App. 2020).

Appellate Review – Stay – Civil Cases; Civil Procedure – Injunctions – Balance of Injuries

The greater harm does not weigh in the appellant's but rather the U.S. government's favor when, without the helicopter fuselage, it will not have its key evidence in its criminal trial and when the new developments vacating the September trial date in the U.S. case do not negate this, and when the appellant's argument that the stay until this appeal is heard will not be harmful because the stay will be brief is unpersuasive. In re Wrecked/Damaged Helicopter, 23 FSM R. 65, 68 (App. 2020).

Appellate Review – Stay – Civil Cases; Civil Procedure – Injunctions – Public Interest

There is a public interest in adhering to public laws and international treaties between countries and also a public interest in making sure that FSM judicial resources are not consumed with legal issues potentially outside of its jurisdiction but within the jurisdiction of another country that can address and resolve those issues. In re Wrecked/Damaged Helicopter, 23 FSM R. 65, 68 (App. 2020).

Appellate Review – Stay – Civil Cases; Civil Procedure – Injunctions

When it is unclear whether the appellant can demonstrate a strong showing or likelihood that it will prevail on the merits of its appeal, the remaining factors would have to weigh heavily in the appellant's favor for the stay to be granted if a lesser showing of a substantial case on the merits is made. But when the balance of equities identified in the other factors do not weigh heavily in the appellant's favor, the appellant's motion to maintain an injunction and stay pending appeal will be denied. In re Wrecked/Damaged Helicopter, 23 FSM R. 65, 68 (App. 2020).

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### COURT'S OPINION

#### PER CURIAM:

On June 29, 2020, Daves Helicopter Service, Inc. (hereinafter "Daves") filed a motion to maintain injunction and stay during appeal. Having missed the time allowed to respond, FSM filed a motion for enlargement of time on July 24, 2020 providing reasons for its failure and requesting to file its response on August 10, 2020. The FSM filed its opposition to motion to maintain injunction and stay pending appeal on August 10, 2020. The enlargement of time was granted on August 11, 2020. On September 14, 2020, Daves filed a supplement to its motion to maintain injunction and stay during appeal. On September 21, 2020, FSM filed its response thereto.

In its motion, Daves is requesting the appellate division to maintain the injunction dissolved at the trial division and to issue a stay to prevent the removal of the helicopter fuselage from Pohnpei. Daves' motion is made pursuant to Rule 8 of the FSM Rules of Appellate Procedure.

FSM Appellate Rule 8(a) provides, in pertinent parts:

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.

Under FSM Appellate Rule 8(a), the appellate court may grant an injunction when an appeal is pending and such injunction is a preliminary injunction. Berman v. Pohnpei, 18 FSM Intrm. 418, 420 (App. 2012). When ruling on a request for an injunction pending appeal, the appellate court engages in the same inquiry as reviewing the grant or denial of a preliminary injunction; therefore, the following four factors are considered: 1) the likelihood of success on the merits of the party seeking injunctive relief; 2) the possibility of irreparable injury to the movant; 3) the balance of possible injuries or inconvenience to the parties that would flow from granting or denying the relief; and 4) any impact on the public interest. Berman, 18 FSM Intrm. at 421.

Moreover, there are generally four factors to weigh before granting a stay pending an appeal: 1) whether the appellant has made a strong showing that he is likely to prevail on the merits of the appeal; 2) whether the appellant has shown that without the stay he will be irreparably harmed; 3) whether the issuance of the stay would substantially harm other parties interested in the proceedings; and 4) whether the public interest would be served by granting a stay. Ordinarily, the first factor is the most important, but a stay may be granted upon a lesser showing of a substantial case on the merits when the balance of the equities identified in factors 2, 3, and 4 weighs heavily in favor of granting the stay. Department of Treasury v. FSM Telecomm. Corp., 9 FSM Intrm. 353, 355 (App. 2000).

This motion to maintain injunction and stay is properly before the appellate division. The following same or similar four factors as provided above are weighed in consideration of a motion to maintain injunction and a motion to stay pending appeal. Upon review of the motion and the arguments as presented by both parties, Daves' motion to maintain injunction and stay pending appeal is denied.

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The Court is not convinced that Daves will suffer irreparable harm if the helicopter fuselage is removed from the FSM. The FSM Supreme Court trial division has accepted the representations of the U.S. government, through the FSM government, regarding the return of the helicopter fuselage. The FSM Supreme Court trial division has set a return date for the helicopter fuselage. Although Daves has filed a supplement to its motion providing recent developments with the U.S. case, i.e. the September trial date vacated due to health risks and current travel restrictions in place, this does not refute the representations made at and accepted by the trial court that the helicopter fuselage will be returned. It is expected that a more achievable return date for the helicopter fuselage may be set to accommodate a new trial date, if the current return date is no longer feasible. Moreover, Daves cannot demonstrate irreparable harm if the helicopter fuselage is removed possibly causing its appeal to become moot. For the legal issues it may have involving FSM law, Daves may rely on the exception to the mootness doctrine that has been upheld by the appellate court wherein an appeal may continue, even though it may be considered moot, if the court's ruling will have a continuing effect on future events, future litigation and will offer guidance to future litigants. See FSM Dev. Bank v. Adams, 12 FSM Intrm. 456, 460 (App. 2004); FSM v. Udot Municipality, 12 FSM Intrm. 29, 49 (App. 2003).

Furthermore, the greater harm does not appear to be on Daves but rather on the U.S. government in that without the helicopter fuselage it will not have its key evidence in its criminal trial. The new developments in the U.S. case as presented by Daves do not negate this, only that the September trial date is vacated and a future trial date will be later set by the Court. Additionally, the argument by Daves that the stay until this appeal is heard will not be harmful because the stay will be brief is unpersuasive. Daves does not know when this appeal will be heard. Daves cannot determine that the stay will be brief. Furthermore, there is a public interest in adhering to public laws and international treaties between countries. There is also a public interest in making sure that FSM judicial resources are not consumed with legal issues potentially outside of its jurisdiction but within the jurisdiction of another country that can address and resolve those issues.

Finally, it is unclear whether Daves can demonstrate a strong showing or likelihood that it will prevail on the merits of its appeal. Thus, if a lesser showing of a substantial case on the merits is made, the remaining factors would have to weigh heavily in Daves' favor for the stay to be granted. Based upon the determinations above, the balance of equities identified in factors 2, 3, and 4 do not weigh heavily in Daves' favor.

ACCORDINGLY, Daves' motion to maintain injunction and stay pending appeal is HEREBY DENIED. Furthermore, in light of the representations made by the parties regarding the recent development in the U.S. case, the FSM is directed to file a report providing an update on the return of the helicopter fuselage. This report shall be due every three months beginning on January 4, 2021.

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