

FSM SUPREME COURT TRIAL DIVISION

FSM DEVELOPMENT BANK, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 ARTSON S. TALLEY, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

CIVIL ACTION NO. 2018-2003

ORDER DENYING STAY

Larry Wentworth  
Associate Justice

Decided: December 4, 2020

APPEARANCES:

For the Plaintiff: Nora E. Sigrah, Esq.  
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Kolonia, Pohnpei FM 96941

For the Defendant: Yoslyn G. Sigrah, Esq.  
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HEADNOTES

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

By rule, a civil judgment is automatically stayed for 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. FSM Dev. Bank v. Talley, 23 FSM R. 100, 102 (Kos. 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. FSM Dev. Bank v. Talley, 23 FSM R. 100, 102 (Kos. 2020).

Appellate Review – Notice of Appeal; Appellate Review – Stay – Civil Cases – Money Judgment; Judgments

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. Generally, the filing of a notice of a appeal divests the trial court of jurisdiction over the appealed case, but, 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 a judgment's validity, the trial court retains jurisdiction to enforce the judgment. FSM Dev. Bank v. Talley, 23 FSM R. 100, 102-03 (Kos. 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. When a defendant has not posted a supersedeas bond and has not stated any basis upon which the court could exercise its discretion to stay the money judgment against them in absence of a bond, the defendant is not entitled to a stay under FSM Civil Rule 62(d). FSM Dev. Bank v. Talley, 23 FSM R. 100, 103 (Kos. 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. Talley, 23 FSM R. 100, 103 (Kos. 2020).

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

Even in the absence of a stay, the court has the ability, and the inclination, to also protect a judgment-debtor appellant 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 appeal's outcome, 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 can return the money directly to the appellant. FSM Dev. Bank v. Talley, 23 FSM R. 100, 103 (Kos. 2020).

Appellate Review – Stay – Civil Cases – Money Judgment; Judgments – Relief from Judgment – Independent Actions

The filing of an independent action for relief from judgment does not entitle a party or a judgment debtor to a stay. The presence of an independent action for relief from a judgment has no effect whatsoever on a judgment unless and until the party seeking relief ultimately prevails and even then only to the extent

that the party prevails. FSM Dev. Bank v. Talley, 23 FSM R. 100, 103 (Kos. 2020).

Appellate Review – Notice of Appeal; Appellate Review – Stay – Civil Cases – Money Judgment; Judgments – Relief from Judgment – Independent Actions

Neither a notice of appeal nor an independent action for relief from the judgment can be used solely as a tool to delay or avoid payment on or the satisfaction of a money judgment. FSM Dev. Bank v. Talley, 23 FSM R. 100, 103 (Kos. 2020).

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COURT'S OPINION

LARRY WENTWORTH, Associate Justice:

On November 12, 2020, Artson S. Talley filed Defendant's Motion to Stay, and on November 30, 2020, the FSM Development Bank filed Plaintiff's Opposition to Defendant's Motion to Stay. The motion to stay is denied. It lacks any merit.

The defendant moves to stay all collection proceedings against him because he has filed a notice of appeal from the trial court's June 17, 2020 decision denying relief from judgment and because he has also filed an independent action for relief from the judgment in which he seeks relief from the judgment in this case. Talley has not offered to post a supersedeas bond to secure this stay. See FSM Civ. R. 62(d).

I.

Instead, Talley argues that the filing of a notice of appeal has transferred jurisdiction over the case to the appellate division and therefore the judgment creditor, the bank, cannot collect on its judgment until jurisdiction is returned to the trial court.

This argument lacks merit. A notice of appeal does not, automatically or by itself, stay the collection of a money judgment or divest the trial court of jurisdiction to enforce the judgment that has been appealed. 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 an 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).

Talley did not obtain, and did not offer to obtain, a supersedeas bond. When a defendant has not posted a supersedeas bond and has not stated any basis upon which the court could exercise its discretion to stay the money judgment against them in absence of a bond, the defendant is not entitled to a stay under FSM Civil Rule 62(d). Adams v. Island Homes Constr., Inc., 12 FSM R. 348, 350 (Pon. 2004). 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. Pohnpei v. Ponape Constr. Co., 6 FSM R. 221, 223 (App. 1993).

But even in the absence of a stay, this court has the ability, and the inclination, to also protect a judgment-debtor appellant 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.

## II.

Talley also argues that his filing of an independent action for relief from the judgment in this case should also entitle him to a stay of the bank's efforts to enforce its judgment against him.

However, the filing of an independent action for relief from judgment does not entitle a party or a judgment debtor to a stay. FSM Dev. Bank v. Setik, 20 FSM R. 315, 319 (Pon. 2016). The presence of an independent action for relief from a judgment has no effect whatsoever on a judgment unless and until the party seeking relief ultimately prevails and even then only to the extent that the party prevails. See Setik, 20 FSM R. at 319; FSM Dev. Bank v. Carl, 20 FSM R. 70, 72 (Pon. 2015).

## III.

Neither a notice of appeal nor an independent action for relief from the judgment can be used solely as a tool to delay or avoid payment on or the satisfaction of a money judgment.

Accordingly, the defendant's motion to stay is denied.