

FSM SUPREME COURT APPELLATE DIVISION

BERYSIN SALOMON and NANCY SALOMON,)	APPEAL CASE NO. P3-2020
)	(con. Appeal No. P3-2021)
Appellants-Defendants,)	
)	
vs.)	
)	
FEDERATED STATES OF MICRONESIA)	
DEVELOPMENT BANK,)	
)	
Appellee-Plaintiff.)	
_____)	
BERYSIN SALOMON and NANCY SALOMON,)	APPEAL CASE NO. P3-2021
)	
Appellants-Defendants,)	
)	
vs.)	
)	
FEDERATED STATES OF MICRONESIA)	
DEVELOPMENT BANK,)	
)	
Appellee-Plaintiff.)	
_____)	

ORDER RE: ENLARGEMENT OF TIME

Dennis L. Belcourt
Associate Justice

Decided: September 22, 2021

APPEARANCES:

For the Appellants: Yoslyn G. Sigrah, Esq.
P.O. Box 3018
Kolonias, 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 – Motions

A request to consolidate two appeal cases is moot when those cases have already been consolidated. Salomon v. FSM Dev. Bank., 23 FSM R. 426,427-28 (App. 2021).

Appellate Review – Briefs, Record, and Oral Argument; Appellate Review – Dismissal; Appellate Review – Motions

When the appellants ask for more time to file their brief because they have requested a transcript of the underlying trial court record, including all hearings and depositions that transpired in that case, but the transcript of all these proceedings has already been prepared and the court clerk had notified appellants' counsel more than two months earlier that these transcripts were prepared and available to be picked up for review, provided that payment for the transcription service was made, but the transcript has not been paid for, the court is inclined to deny the requested enlargement of time, but will instead give the appellants until September 30, 2021, in which to pay for and receive the requested transcripts, and to October 31, 2021, to file and serve their brief, and, if the appellants fail to take such action by September 30, 2021, then the appeal may be dismissed because the court will not entertain any further requested enlargements of time based upon the appellants' need for the requested transcripts. Salomon v. FSM Dev. Bank., 23 FSM R. 426, 428 (App. 2021).

Appellate Review – Motions

While Appellate Rule 26(b) grants the court broad discretion to grant an extension of time upon a showing of good cause, an enlargement is not automatic, and will be granted only for good cause shown. "Good cause" is a legally sufficient reason to show why a request should be granted, and, upon review, the court's primary consideration should be the diligence of the party seeking the enlargement. Salomon v. FSM Dev. Bank., 23 FSM R. 426, 428 (App. 2021).

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COURT'S OPINION

DENNIS L. BELCOURT, Associate Justice:

This matter comes before the Court on the Appellants' August 31, 2021 motion to consolidate the two (2) above-captioned cases, and to also enlarge the time period for the filing of the Appellants' brief, from August 30, 2021, to September 30, 2021. FSM App. R. 26 (enlargement of time). This motion is opposed by the Appellee, as set forth in its filing of September 13, 2021.

For the reasons stated below, the Appellants' request to consolidate the two (2) above-captioned cases is hereby denied as moot. The Appellants shall have until September 30, 2021, in which to pay for and pick up from the Court Clerk the transcript of the trial court proceedings that they requested and which they claim are needed by their counsel in order to prepare and file their brief in this case. Thereafter, the Appellants shall file their brief no later than October 31, 2021.

To begin, the Appellants' request to consolidate the two (2) above-captioned cases is moot. Urusemal v. Capelle, 12 FSM R. 577, 584 (App. 2004) (a case may not present questions that are moot or hypothetical, but rather must put forth issues that bear on the relationships of parties who have adverse legal interests).

Indeed, pursuant to the Court's Order of August 16, 2021, these cases have already been consolidated. Berman v. FSM Supreme Court (II), 7 FSM R. 11, 16 (App. 1995) (if an appellate court finds that any relief it could grant would be ineffectual, it must treat the case as moot). As such, the Appellants' August 31, 2021 request to consolidate these two (2) appellate matters is hereby denied, as moot.

That aside, with regard to their request to enlarge the time period for the filing of their brief, from August 30, 2021, to September 30, 2021, see FSM APP. R. 26, the Appellants explain that they have requested a transcript of the underlying trial court record, including all hearings and depositions that transpired in that case. The transcript of all these proceedings, however, has already been prepared. Indeed, counsel for the Appellants was notified by the Court Clerk more than two (2) months ago that these transcripts were prepared and available to be picked up for review, provided that payment for the transcription service was made. To date, however, the Appellants have not paid for the transcript that they requested. As such, the transcripts have not made their way to the Appellants' counsel for her review. The Appellee opposes the requested enlargement of time at issue here for this very reason. Although the Court is inclined to deny the requested enlargement of time at issue here, thereby resulting in a possible dismissal of this case, see Christopher Corp. v. FSM Dev. Bank, 20 FSM R. 384, 389 (App. 2016) (continued unfettered use of Appellate Rule 26(b) to enlarge time because of counsel's inability to find time to prepare a brief could quickly rise to a level of abuse causing undue delay, thus subjecting the appeal to dismissal), the Court also believes that this case should proceed to briefing and oral arguments so that the matter may be decided upon the merits. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 115 (App. 2008) (an appellate court is not required to just patiently wait until a self-described inexperienced (in appellate matters) counsel has finished a brief and then moved for an enlargement of time so that the court can then be called upon to decide the appeal on its merits; the policy preference for adjudications on the merits (and the case has already been adjudicated on the merits once, by the trial court) does not automatically negate all other considerations or make the procedural rules a nullity).

Accordingly, the Appellants shall have until September 30, 2021, in which to pay for and receive from the Court Clerk the transcripts that they requested. If the Appellants fail to take such action by September 30, 2021, then this appeal may be dismissed. Thereafter, the Appellants shall file and serve their brief in this case by October 31, 2021.

In conclusion, the Court will not entertain any further requested enlargements of time in this case based upon the Appellants' need for the transcripts at issue here. In addition, absent extraordinary circumstances, the Court will not entertain any further request for an enlargement of time by the Appellants for the filing of their brief beyond the October 31, 2021 filing deadline established in this Order. As this Court has explained, while Appellate Rule 26(b) grants the Court broad discretion to grant an extension of time upon a showing of good cause, an enlargement is not automatic, and will be granted only for good cause shown. Christopher Corp., 20 FSM R. at 387. The term "[g]ood cause" is a legally sufficient reason . . . to show why a request should be granted. . . ." *Id.* at 387. Upon review, "the court's primary consideration should be the diligence of the party seeking the enlargement." *Id.* at 387.

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