

FSM SUPREME COURT TRIAL DIVISION

FSM DEVELOPMENT BANK,)
)
Plaintiff,)
)
vs.)
)
YOSILYN CARL, as Administrator of the)
Estate of Linda Carl, and the ESTATE OF)
YOSHIRO CARL,)
)
Defendants.)
_____)

CIVIL ACTION NO. 2019-003

ORDER DENYING STAY

Larry Wentworth
Associate Justice

Decided: March 15, 2021

APPEARANCES:

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

For the Defendant:	Yoslyn G. Sigrah, Esq.
(Yosilyn Carl)	P.O. Box 3018
	Kolonia, Pohnpei FM 96941

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HEADNOTES

Appellate Review – Stay – Civil Cases – Money Judgment

By rule, a civil judgment is automatically stayed for ten days, and 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. Carl, 23 FSM R. 191, 194 (Pon. 2021).

Appellate Review – Stay – Civil Cases – Money Judgment

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. Carl, 23 FSM R. 191, 194 (Pon. 2021).

Appellate Review – Stay – Civil Cases – Money Judgment

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. Carl, 23 FSM R. 191, 194 (Pon. 2021).

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

The usual method to stay the collection of a money judgment is for the defendant to give a supersedeas bond. Unless such a bond is given and approved, the trial court retains jurisdiction to enforce the judgment, because until and unless a supersedeas bond is posted, the trial court retains jurisdiction over its judgments as well as proceedings in aid of the same. FSM Dev. Bank v. Carl, 23 FSM R. 191, 194-95 (Pon. 2021).

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

The general effect of filing a notice of appeal is to transfer the jurisdiction over the appealed case from the trial court to the appellate court, but there are a few matters over which the trial court retains jurisdiction even after such filing. One such matter is the enforcement of judgment where a supersedeas bond is not filed. FSM Dev. Bank v. Carl, 23 FSM R. 191, 195 (Pon. 2021).

Appellate Review – Stay – Civil Cases – Money Judgment

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 in absence of a bond, the defendant is not entitled to a stay because the purpose of requiring a supersedeas bond for a stay is to protect the 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. Carl, 23 FSM R. 191, 195 (Pon. 2021).

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

If a properly filed notice of appeal divested the trial court of jurisdiction to enforce the judgment, then there would be no need for Civil Procedure Rule 62 (or Appellate Rules 8(a) and 8(b)) requiring an appellant to move for a stay, and there would be no need for Rule 62(a)'s grant of an automatic ten-day stay to give

a judgment debtor time to move for a stay. Those rules are there because, while a properly filed notice of appeal divests the trial court of jurisdiction to alter or amend or to grant relief from a judgment, it does not divest the trial court of the authority to enforce the judgment if the judgment holder should request the court's aid in enforcing the judgment. FSM Dev. Bank v. Carl, 23 FSM R. 191, 195 (Pon. 2021).

Appellate Review – Stay – Civil Cases – Money Judgment

Rule 62 explicitly provides that when an appeal is taken, the appellant by giving a supersedeas bond may obtain a stay. The necessary implication is that without giving a supersedeas bond or unless otherwise ordered by the court, the order is not stayed, even though an appeal is pending. Otherwise a person could completely frustrate judicial proceedings by disobeying an order of the court during the pendency of an appeal without giving any security that it will be complied with in the event of affirmance. The law is not helpless in that respect. FSM Dev. Bank v. Carl, 23 FSM R. 191, 195 (Pon. 2021).

Appellate Review – Stay – Civil Cases – Money Judgment

In the absence of a stay obtained by a supersedeas bond or some other security, the judgment creditor may seek to enforce its judgment against the judgment debtor during the pendency of the judgment debtor's appeal. A properly filed notice of appeal is not to be used solely as a means to frustrate the enforcement of a money judgment. FSM Dev. Bank v. Carl, 23 FSM R. 191, 195 (Pon. 2021).

Appellate Review – Stay – Civil Cases – Money Judgment

While the pendency of an appeal does not prevent a judgment creditor from acting to enforce the judgment, a person who cannot furnish a supersedeas bond does not lose the right to appeal, although she does assume the risk of getting her money back again if the judgment is reversed. FSM Dev. Bank v. Carl, 23 FSM R. 191, 195 (Pon. 2021).

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

But even without a supersedeas bond and a stay, the court has the ability, and often the inclination, to also protect a judgment-debtor appellant from this risk during an appeal by requiring that all sums, which 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) to await 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. FSM Dev. Bank v. Carl, 23 FSM R. 191, 196 (Pon. 2021).

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COURT'S OPINION

LARRY WENTWORTH, Associate Justice:

On March 5, 2021, Yosilyn Carl, as the Administrator of the Estate of Linda Carl, filed her Motion to Stay Proceeding Pending Appeal, and on March 11, 2021, the FSM Development Bank filed Plaintiff's Opposition to Defendant Yosilyn Carl's Motion to Stay Proceedings Pending Appeal. The motion to stay is denied as without merit.

I.

Carl moves to stay all collection proceedings against her because she has filed a notice of appeal from the trial court's October 21, 2019 decision and December 30, 2019 judgment of \$50,215.98. Carl has

not offered to post a supersedeas bond, or any other type of security, to secure this stay. See FSM Civ. R. 62(d).

Instead, Carl argues that her filing of a notice of appeal has transferred all jurisdiction over the case to the appellate division and therefore the judgment creditor, the bank, cannot collect on its judgment until the appellate court returns jurisdiction to the trial court. Carl contends that her appeal means that the trial court must not take any action to enforce the judgment and must deny all of the judgment creditor's requests that its judgment be enforced.

II.

This argument lacks all 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, even though, as a general rule, a properly filed notice of appeal does transfer jurisdiction from the trial court to the appellate court. Damarlane v. United States, 8 FSM R. 14, 16 (App. 1997). 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). Unless such a bond is given and approved, the trial court "retains jurisdiction to enforce the judgment." Ehsa, 19 FSM R. at 130. "Until and unless a supersedeas bond is posted the trial court retains jurisdiction over its judgments as well as proceedings in aid of the same." State ex rel. Klein v. Chorpene, 450 N.E.2d 1161, 1163 (Ohio 1983).

The general effect of filing a notice of appeal is to transfer the jurisdiction over the appealed case from the [trial] court to th[e appellate] court, but there are a few matters over which the [trial] court retains jurisdiction even after such filing. One such matter is the enforcement of judgment where [a] supersedeas bond is not filed.

MDG Supply, Inc. v. Diversified Invs., Inc., 463 P.2d 525, 529 (Haw. 1969).

Carl did not obtain, and has not offered 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 in absence of a bond, the defendant is not entitled to a stay. Adams v. Island Homes Constr., Inc., 12 FSM R. 348, 350 (Pon. 2004) (citing FSM Civ. R. 62(d)). The purpose of requiring a supersedeas bond for a stay is to protect the 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).

If, as Carl argues, a properly filed notice of appeal divested the trial court of jurisdiction to enforce the judgment, then there would be no need for Civil Procedure Rule 62 (or Appellate Rules 8(a) and 8(b)) requiring an appellant to move for a stay, and there would be no need for Rule 62(a)'s grant of an automatic ten-day stay to give a judgment debtor time to move for a stay. Those rules are there because, while a properly filed notice of appeal divests the trial court of jurisdiction to alter or amend or to grant relief from a judgment, it does not divest the trial court of the authority to enforce the judgment if the judgment holder should request the court's aid in enforcing the judgment.

"Rule 62 . . . explicitly provides that when an appeal is taken, the appellant by giving a supersedeas bond may obtain a stay. The necessary implication is that without giving a supersedeas bond or unless otherwise ordered by the Court, the order is not stayed, even though an appeal is pending. Otherwise a person could completely frustrate judicial proceedings by disobeying an order of the Court during the pendency of an appeal without giving any security that it will be complied with in the event of affirmance. The law is not as helpless in that respect as counsel would urge."

MDG Supply, Inc., 463 P.2d at 529 (quoting Blackwelder v. Crooks, 151 F. Supp. 26, 28 (1957)). Thus, the law is not as helpless as Carl claims. In the absence of a stay obtained by a supersedeas bond or some other security, the bank may seek to enforce its judgment against Carl during the pendency of Carl's appeal. A properly filed notice of appeal is not to be used solely as a means to frustrate the enforcement of a money judgment.

III.

"While the pendency of an appeal does not prevent a judgment creditor from acting to enforce the judgment, "a person who cannot furnish a supersedeas bond does not lose the right to appeal, although [s]he does assume the risk of getting h[er] money back again if the judgment is reversed.'" FSM Dev. Bank v. Arthur, 16 FSM R. 132, 142 (Pon. 2008) (quoting 11 CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FEDERAL PRACTICE AND PROCEDURE § 2905, at 524-25 (2d ed. 1995)).

But even without a supersedeas bond and a stay, this court has the ability, and often the inclination, to also protect a judgment-debtor appellant from this risk during an appeal by requiring that all sums, which 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) to await 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.

IV.

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

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