JUDGMENTS

The courts must apply three guidelines in determining whether a decision should be given retroactive effect. First, the decision, to be applied non-retroactively, must establish a new principle of law, either by overruling clear past precedent on which litigants may have relied or by deciding an issue of first impression whose resolution was not clearly foreshadowed. Second, the court must weigh the merits and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation. Finally, the court must weigh the inequity imposed by retroactive application. Innocenti v. Wainit, 2 FSM R. 173, 185-86 (App. 1986).

Earlier legislation similar to the legislation at issue cannot serve as "past precedent" within the meaning of the first guideline for determining whether a decision should be given retroactive effect where that legislation has not been subjected to court review for constitutionality. Innocenti v. Wainit, 2 FSM R. 173, 185 (App. 1986).

The court may, in the interest of justice, make the application of its decision prospective where the court is overruling a previous decision or declaring a statute unconstitutional and the present ruling does not prejudice those who might have relied on such ruling or on such statute. Paulus v. Pohnpei, 3 FSM R. 208, 222 (Pon. S. Ct. Tr. 1987).

The action of a trial court in refusing to vacate a judgment will not be disturbed on appeal unless it clearly appears that the trial court has abused its discretion. Truk v. Robi, 3 FSM R. 556, 564 (Truk S. Ct. App. 1988).

Under Civil Rule 54(c) the court has full authority except in default judgments, to award the party granted judgment any relief to which it is entitled whether that party prayed for it or not. Billimon v. Chuuk, 5 FSM R. 130, 137 (Chk. S. Ct. Tr. 1991).

Where a judge's pretrial order states that the only issue for trial is the ownership of land within certain boundaries as described on a certain map later litigants cannot claim that the determination of title does not include land that they admit is within those boundaries. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 49-50 (App. 1995).

Unclaimed balances of judgments paid into court may escheat to the government. Mid-Pacific Constr. Co. v. Senda, 7 FSM R. 371, 375 (Pon. 1996).

An order granting summary judgment does not constitute a judgment. Before an adjudication can become an effective judgment, the judgment must be set forth in writing on a separate document, and the judgment so set forth must be entered in the civil docket. Bank of the FSM v. Kengin, 7 FSM R. 381, 382 (Yap 1996).

Because dicta does not create a precedent and is not binding, no rehearing can be granted on dicta in an opinion. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 481, 484 (App. 1996).

In the Chuuk State Supreme Court a trial judge has the discretion to order on his own motion a hearing for the plaintiff to prove to the court by the applicable legal standard the amount of damages or other relief sought to be awarded by an offer of judgment. Rosokow v. Chuuk, 7 FSM R. 507, 509-10 (Chk. S. Ct. App. 1996).

All judgments, by statute, accrue nine percent simple interest a year from date of entry of judgment until satisfied. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 670 (App. 1996).

When a second action and judgment is necessary to enforce and satisfy an earlier judgment, the statutory interest on judgments will be computed from the date of entry of the original judgment. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 670 (App. 1996).

A judgment that is reversed and remanded stands as if no trial has yet been held. A party whose convictions have been reversed stands in the position of an accused who has not yet been tried. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 5 (App. 1997).

An obligation of the state to pay a litigant a sum in exchange for dismissal of claims sought that arises from the judgment of dismissal of that case is not contrary to the legislative intent expressed in any provision of the Financial Management Act. Otherwise, no settlement of litigation requiring payment by the state could ever be made. Ham v. Chuuk, 8 FSM R. 300i, 300k (Chk. S. Ct. App. 1998).

It is the purpose of the Financial Management Act to ensure that public funds are only used or promised in a manner provided by law and a judgment of the Chuuk State Supreme Court trial division is a manner provided by law. Ham v. Chuuk, 8 FSM R. 300i, 300k (Chk. S. Ct. App. 1998).

The FSM does not have a statute which prescribes when a plaintiff may obtain prejudgment interest, but prejudgment interest has been awarded in the FSM. Coca-Cola Beverage Co. (Micronesia) v. Edmond, 8 FSM R. 388, 392 (Kos. 1998).

As a general rule, a judgment for a defendant based on lack of jurisdiction does not bar the plaintiff from bringing another action on the same cause in another court having jurisdiction. National Fisheries Corp. v. New Quick Co., 9 FSM R. 147, 148 (Pon. 1999).

A judgment entered upon a dismissal for lack of jurisdiction should recite that fact, so as to make clear that the dismissal is without prejudice to a different suit in a court that does have jurisdiction. Similar reasoning applies to the granting of a motion to dismiss for improper forum. National Fisheries Corp. v. New Quick Co., 9 FSM R. 147, 148 (Pon. 1999).

Before the Chuuk State Supreme Court can enter a judgment against the state's public funds pursuant to an offer and acceptance of judgment under Civil Procedure Rule 68, a hearing for the purpose of having the benefit of evidence or hearing testimony as to the value of the plaintiff's claim, or the validity thereof, is an absolute necessity. Kama v. Chuuk, 9 FSM R. 496, 499 (Chk. S. Ct. Tr. 1999).

Attorney fee awards that are part of money judgments are entitled to bear interest at the judgment rate until satisfied. Aggregate Sys., Inc. v. FSM Dev. Bank, 9 FSM R. 569, 570 (Chk. 2000).

Unsatisfied judgments accrue nine percent simple interest from date of entry because the statute does not authorize compounding. Aggregate Sys., Inc. v. FSM Dev. Bank, 9 FSM R. 569, 570 (Chk. 2000).

The generally recognized rule is that interest should not bear interest, but compound interest may be awarded if authorized by statute. When the statute reads "nine percent a year" it is not an express authorization to compound interest annually, but is instead, without more, merely a statement of the rate of simple interest. Aggregate Sys., Inc. v. FSM Dev. Bank, 9 FSM R. 569, 570 (Chk. 2000).

Judgments in the Federated States of Micronesia are valid and enforceable for twenty years, and therefore generally do not need to be "revived." Walter v. Chuuk, 10 FSM R. 312, 315 (Chk. 2001).

A revived or renewed judgment is not a novation of contract. Walter v. Chuuk, 10 FSM R. 312, 315 (Chk. 2001).

Under early common law and prior to the creation of the writ of scire facias, it was necessary to sue on the judgment in a new action, affording the defendant an opportunity of proving that he had discharged it, if he had really done so. The purpose of a writ of scire facias or of a revival of the judgment is to give a dormant judgment a new vitality so that it may be executed upon, although it is not a new action or judgment. Walter v. Chuuk, 10 FSM R. 312, 315-16 (Chk. 2001).

An action upon a judgment must be commenced within 20 years after the cause of action accrued. Walter v. Chuuk, 10 FSM R. 312, 316 (Chk. 2001).

Enforcement of a judgment may also be effected, if the court deems justice requires and so orders, by a civil action on the judgment or in any other manner known to American common law or common in courts in the United States. Walter v. Chuuk, 10 FSM R. 312, 316 (Chk. 2001).

There is no provision in FSM law that makes a judgment dormant or that extinguishes a judgment-creditor's right to execution before the twenty-year statute of limitations has run. A dormant judgment is one upon which the statute of limitations has not yet run but which, because of lapse of time during which no enforcement action has been taken, may not be enforced unless certain steps are taken by the judgment holder to revive the judgment. Walter v. Chuuk, 10 FSM R. 312, 316 (Chk. 2001).

An eight-year-old judgment not being dormant in the FSM (although some other jurisdiction may consider it dormant), it cannot be revived by an FSM court. The general rule is that a judgment, to be revived, must be dormant; if a judgment is not dormant, revivor is not necessary. An FSM judgment creditor may proceed by bringing a new action on the judgment. Walter v. Chuuk, 10 FSM R. 312, 316 (Chk. 2001).

Neither Rule 68, nor any principle of contract law, requires an acceptance to be on a different piece of paper from the offer of judgment in order for it to be valid. Kama v. Chuuk, 10 FSM R. 593, 599 (Chk. S. Ct. App. 2002).

When the original trial judge had the discretion to hold, or not to hold, a Rule 68(b) hearing and when it appears that, based on the memorandum submitted with the offer and acceptance and the attorney general's authority to settle claims against the state, the trial judge exercised his discretion not to hold a Rule 68(b) hearing and instead issued the judgment, the holding that

a Rule 68(b) hearing was an absolute necessity was an erroneous conclusion of law. Kama v. Chuuk, 10 FSM R. 593, 599 (Chk. S. Ct. App. 2002).

In the FSM, a court judgment remains in effect for twenty years, which gives a judgment holder plenty of time to collect her judgment so that for although the judgment gives the plaintiff $5,000 worth of auto repairs and she may not have a vehicle now, that is not to say that she will never have one at any time in the future and be able to collect on her judgment. Farata v. Punzalan, 11 FSM R. 175, 178 (Chk. 2002).

When the trial court concluded that its ruling would not change what had been established long ago and continued until today and what had been habitually practiced on an island but did not make a finding of what had been established long ago and what had been the habitual and normal practice on the island, the case will be remanded to the trial court for it to determine if the appellants had customary and traditional use rights to the island and what the extent of those rights is. Rosokow v. Bob, 11 FSM R. 210, 216-17 (Chk. S. Ct. App. 2002).

In the FSM, judgments, by statute, remain valid and enforceable for twenty years from date of entry. In re Engichy, 11 FSM R. 520, 525 (Chk. 2003).

While the court may determine (and has in the absence of statute) the priority of its judgments as to a debtor, the court is reluctant to assume that it may order the discharge of a judgment against a debtor when, by statute, the judgment is to remain valid and enforceable for twenty years. In re Engichy, 11 FSM R. 520, 525 (Chk. 2003).

Any post-judgment charges for attorney's fees and costs – any attorney's fees and costs beyond those awarded in the judgments themselves – must first be determined as reasonable and awarded by the court before the judgment-creditors are entitled to these amounts. In re Engichy, 11 FSM R. 520, 534 (Chk. 2003).

A court has the inherent power to tailor its decision and remedies to prevent any adverse impact on the affairs of the public because it may, if it determines that the best interests of the parties and of the public require it, render a judgment in plaintiffs' favor on constitutional and statutory claims, and make the application of the judgment prospective only. Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 580 (Chk. S. Ct. Tr. 2003).

In any case brought under 11 F.S.M.C. 701 *et seq.*, a plaintiff must prove each element of his case by the preponderance of the evidence. In the case of a stipulated judgment under a settlement agreement, an equally basic jurisprudential principle dictates that a stipulated judgment will be entered only if it is well grounded both in law and in fact. Estate of Mori v. Chuuk, 12 FSM R. 24, 26 (Chk. 2003).

A quiet title court judgment is only good against the parties to the case and those in privity with them, while a certificate of title to registered land is presumptively valid against the world. Dereas v. Eas, 12 FSM R. 629, 633 (Chk. S. Ct. Tr. 2004).

Every judgment must be set forth on a separate document. Nikichiw v. O'Sonis, 13 FSM R. 132, 136 n.2 (Chk. S. Ct. App. 2005).

The principle of stare decisis is one of the guiding lights of our jurisprudence, and without a

principled and compelling reason for overruling a long line of FSM cases, the court is disinclined to do so. Gilmete v. Carlos Etscheit Soap Co., 13 FSM R. 145, 149 (App. 2005).

The courts are not given the responsibility of interpreting the law, but deprived of the authority to apply it. The judiciary's power to pass judgment goes hand in hand with its power to enforce those judgments as justice requires. Chuuk v. Davis, 13 FSM R. 178, 185 (App. 2005).

A court which lacks personal jurisdiction over a defendant cannot enter a valid judgment against that defendant. Lee v. Lee, 13 FSM R. 252, 256 (Chk. 2005).

Civil Rule 71 only permits enforcement of orders and judgments against non-parties "when obedience to an order may be lawfully enforced against a person who is not a party." The key word here is "lawfully." Ordinarily a judgment may be enforced only against a party. However, an injunction may be enforced upon parties to the action, their officers, agents, servants, employees and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise. Ruben v. Petewon, 13 FSM R. 383, 389 (Chk. 2005).

In the case of an injunction, non-parties who are persons who are the defendant's "officers, agents, servants, employees and attorneys," or "persons in active concert or participation" with the defendant and successors to a party, are the only non-parties against whom judgments and orders may be lawfully enforced, that is, enforced without violating the non-party's constitutional right to due process and Rule 71. Ruben v. Petewon, 13 FSM R. 383, 389 (Chk. 2005).

Previously awarded attorney's fees as sanctions for repeated non-compliance with the court's orders compelling discovery will, if unpaid, be added to the judgment. Pohl v. Chuuk Public Utility Corp., 13 FSM R. 550, 556 (Chk. 2005).

If a detrimental reliance cause of action was pled and tried, or tried by the parties' express or implied consent, the plaintiff is entitled to have the trial court rule on this cause of action when the plaintiff's judgment is reversed for the statutory claim. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 26 (App. 2006).

A defendant may, without waiving defendant's right to offer evidence in the event the motion is not granted, move to dismiss the plaintiff's case after the plaintiff has completed his case-in-chief on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court must make findings as provided in Rule 52(a). Hauk v. Lokopwe, 14 FSM R. 61, 64 (Chk. 2006).

If the awarded sanctions are unpaid at judgment and payable to the prevailing party they should be included as taxable costs. If the sanctions are unpaid at judgment and payable to the non-prevailing party, they ought to be deducted from the money judgment due the prevailing party. Adams v. Island Homes Constr., Inc., 14 FSM R. 473, 475 (Pon. 2006).

When unpaid Rule 37 sanctions are not specifically named and included as costs in either the judgment or the later order that fixed and entered the costs and fees that were to be added to the judgment, they should be included in the original judgment by implication, if not specifically, since the court was unaware that the sanctions fixed seven months earlier had not

been paid. It would be better practice for the plaintiffs to ask that the amount of unpaid sanctions be specifically included in the court's judgment. Adams v. Island Homes Constr., Inc., 14 FSM R. 473, 475-76 (Pon. 2006).

Chuuk State Supreme Court Civil Procedure Rule 62(a) automatically stays court enforcement of all money judgments for ten days. Billimon v. Marar, 15 FSM R. 87, 89 (Chk. 2007).

Rule 52(a) requires a trial judge, after trial, to make special findings of fact and separate conclusions of law. Mathias v. Engichy, 15 FSM R. 90, 95 (Chk. S. Ct. App. 2007).

The requirement that the trial court "find the facts specially" serves three major purposes: 1) to aid appellate court review by affording it a clear understanding of the ground or basis of the trial court's decision; 2) to make definite precisely what the case has decided in order to apply the doctrines of estoppel and res judicata in future cases and promote confidence in the trial judge's decision-making; and 3) to evoke care on the trial judge's part in ascertaining the facts. Mathias v. Engichy, 15 FSM R. 90, 95 (Chk. S. Ct. App. 2007).

The trial court satisfies its responsibility to make specific findings of fact when the findings are sufficiently detailed to inform the appellate court of the basis of the decision and to permit intelligent appellate review, but the trial court need not mention evidence it considers of little or no value. As long as the trial court clearly relates the findings of fact upon which the decision rests and articulates in a readily intelligible manner the conclusions it draws by applying the controlling law to the facts as found, no more is needed. The trial court has the obligation to ensure that the basis for its decision is set out with enough clarity to enable the reviewing court to perform its function. Mathias v. Engichy, 15 FSM R. 90, 96 (Chk. S. Ct. App. 2007).

Since a trial court can only hold that, as between the parties to the case, who has the better claim to ownership, but that is all the trial court can decide regarding ownership, its ruling cannot apply to any claims to ownership by non-parties. Since the state never claimed title to Unupuku, a judgment against the state for title, even if it were valid against the state, would be utterly meaningless. It is certainly no good against anyone else. Ruben v. Hartman, 15 FSM R. 100, 111 (Chk. S. Ct. App. 2007).

A judgment can only be enforced against a party to the case. For a judgment to be enforceable, the court rendering the judgment must have jurisdiction over the subject matter of the action and personal jurisdiction over the parties to the action and against whom the judgment is to be enforced. Ruben v. Hartman, 15 FSM R. 100, 111 (Chk. S. Ct. App. 2007).

Once a judgment has been entered does not mean it is enforceable against anyone and everyone who is not a party. Ruben v. Hartman, 15 FSM R. 100, 111 (Chk. S. Ct. App. 2007).

An order or judgment that may be lawfully enforced against someone who is not a party is an injunction may be enforced upon parties to the action, their officers, agents, servants, employees and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise and against a non-party opponent for costs incurred by his misbehavior. Ruben v. Hartman, 15 FSM R. 100, 112 (Chk. S. Ct. App. 2007).

A trial court can determine no more than who among the parties before it has a better claim

to title or in the case of trespass, possession. A court cannot determine who has title good against the world. Land registration (determination of title presumptively good against the world) is the province of the Land Commission and its procedures, not of a court. Ruben v. Hartman, 15 FSM R. 100, 112 (Chk. S. Ct. App. 2007).

In order for a judgment granting ownership to land to which someone else has a certificate of title to be valid, the judgment would first have to have set aside the other's certificate of title and as a general rule a certificate of title can be set aside only on the grounds of fraudulent registration. When the pleadings never addressed, or even mentioned the existence of, the certificate of title, this was a fatal flaw. Ruben v. Hartman, 15 FSM R. 100, 113 (Chk. S. Ct. App. 2007).

When a fees and costs order was hand carried, along with some other papers, by a traveler to Yap and those other papers were received, as expected, by the court staff in Yap on the next day, March 23, 2007 and an inquiry the next day satisfied the court that the papers had been received and dealt with, but the fees and costs award did not come to the clerk's attention, or into her possession, until June 5, and was then entered on June 6, 2007, the court can direct that the order awarding fees and costs be entered *nunc pro tunc* as of March 23, 2007, the day the court expected the order to be, and thought it had been, entered because a court may issue an order *nunc pro tunc* to supply a record of an action previously done but omitted from the record through inadvertence or mistake, to have effect as of the former date. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 133, 134 (Yap 2007).

Trust Territory judicial decisions are not stare decisis, that is, they are not binding precedent on FSM courts. Nakamura v. Moen Municipality, 15 FSM R. 213, 218 (Chk. S. Ct. App. 2007).

Civil Procedure Rule 52(a) requires a trial judge, after trial, to make special findings of fact and separate conclusions of law before a judgment is entered. Murilo Election Comm'r v. Marcus, 15 FSM R. 220, 225 (Chk. S. Ct. App. 2007).

When the Trust Territory judgment that the appellant relies upon explicitly states that the judgment will not affect any rights of way there may be over the lands in question and when it is undisputed that the appellees were granted their right of way prior to the Trust Territory judgment, the Trust Territory judgment did nothing to alter the preexisting right of way. Akinaga v. Heirs of Mike, 15 FSM R. 391, 397-98 (App. 2007).

"Law of the case" refers to the principle that once issues are decided in a case, they will not be redetermined later in the same case. This is a policy relied on by courts out of concern for judicial economy and to avoid the confusion that would result if a court reversed its own decisions during the course of a case. In the absence of statute the phrase, "law of the case," as applied to the effect of previous orders on the later action of the court rendering them in the same case, merely expresses the practice of courts generally to refuse to reopen what has been decided, not a limit to their power. Heirs of Wakap v. Heirs of Obet, 15 FSM R. 450, 453 (Kos. S. Ct. Tr. 2007).

When an issue is decided at trial and later reversed on appeal due to legal error, the findings of fact still bind the trial court on remand as law of the case. Heirs of Wakap v. Heirs of Obet, 15 FSM R. 450, 453-54 (Kos. S. Ct. Tr. 2007).

When the original decision had been reviewed by the Kosrae State Court on appeal and

remanded for the purpose of considering new evidence and when the only new evidence was rejected, the findings of fact made in the original decision should bind the Land Court on remand. When, in its second decision, it reconsidered the evidence previously offered and made different, conflicting findings than in the original decision, applying the principle of law of the case, the findings in favor of the appellants' ownership of the subject parcel in the original decision are upheld. Heirs of Wakap v. Heirs of Obet, 15 FSM R. 450, 454 (Kos. S. Ct. Tr. 2007).

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When the Land Court's first decision, assessed the evidence and made findings of fact supporting the appellants' ownership of the parcel and its second decision, issued two years later, rejected new evidence and assessed the identical evidence to make findings of fact supporting the appellees' ownership of the parcel, the matter presents the kind of confusion that results when a court reopens what it has already decided. Evidence often conflicts and may reasonably support inconsistent findings. But the Land Court cannot redetermine factual issues decided earlier in the case without new evidence to support a different decision. When the Kosrae State Court was presented with the question of whether the original decision was based on substantial evidence at the time of the first appeal and remanded the case back to Land Court for the purpose of looking at new evidence but did not remand based on a lack of substantial evidence to support the original decision, the doctrine of law of the case applies to uphold the original findings of fact as based on substantial evidence and the original determination of title in favor of the appellants. Heirs of Wakap v. Heirs of Obet, 15 FSM R. 450, 454 (Kos. S. Ct. Tr. 2007).

When the original judgment with respect to trebling the pepper business lost profits damages was ultimately correct in its entirety as the same amount was awarded by the later judgment on remand, that leads to the conclusion that the trebled damages were fully ascertained as of the date of the original judgment. AHPW, Inc. v. Pohnpei, 15 FSM R. 520, 524 (Pon. 2008).

An order in aid of judgment is not appropriate when the prevailing party seeks an order evicting an alleged successor-in-interest and non-party because an order in aid of judgment is only appropriate when seeking satisfaction of a money judgment and the matter does not involve a money judgment. Salik v. U Corp., 15 FSM R. 534, 537 (Pon. 2008).

A judgment affecting an interest in land becomes enforceable, by registering the judgment with the appropriate land authority. Salik v. U Corp., 15 FSM R. 534, 537 (Pon. 2008).

An option for enforcing a judgment as provided by statute is the filing of a new civil action based on the judgment. This option is most appropriate avenue and is likely to lead to an efficient and just resolution when the earlier judgment dismissed claims raised by the plaintiff in connection with a land use agreement he had entered into with the defendant and the defendant, some two decades later, seeks to use this judgment to prevent the others, who are not parties to the action and seemingly not involved in the underlying dispute until recently, from using land that may or may not be subject to the judgment and a dispute clearly exists as to whether the other should be deprived of using the land in dispute even if that land is subject to the judgment because new evidence is needed to resolve this dispute between the defendant and the other. Salik v. U Corp., 15 FSM R. 534, 538 (Pon. 2008).

When the prevailing party's proposed form of judgment includes matters that are tantamount to new findings of fact not found anywhere in the former justice's oral findings and conclusions, the court will decline to enter the submitted proposed form of judgment. Salik v. U Corp., 15 FSM R. 534, 538 (Pon. 2008).

The court is required to find the facts specially and state its conclusions of law thereon but is not required to be reduce findings and conclusions to writing. A justice is under no obligation to reduce his findings and conclusions to writing so long as he stated the findings and conclusions orally in open court. Salik v. U Corp., 15 FSM R. 534, 538 (Pon. 2008).

A successor judge may not make findings of fact and conclusions of law and enter judgment solely upon the record developed by his predecessor except upon agreement of the parties, and a second judge is prohibited from making factual determinations as to a first judge's intent when he interprets an order issued by the first judge. Salik v. U Corp., 15 FSM R. 534, 539 (Pon. 2008).

Although the plaintiffs' summary judgment motion was granted, no judgment will be entered at this time when one cause of action remains outstanding and unadjudicated. Ruben v. Petewon, 15 FSM R. 605, 609 (Chk. 2008).

Under Rule 58, upon a decision by the court the clerk must enter judgment as directed by the rule or the court, and every judgment must be set forth on a separate document. A judgment is effective only when so set forth and when entered as provided in Rule 79(a). FSM Dev. Bank v. Kaminanga, 16 FSM R. 45, 46 (Chk. 2008).

The court can, as an act of grace to prevent undue hardship, permit withholding from payment to the judgment-creditor any sums that might be due in taxes because of the order in aid of judgment since the court may make provision for tax payments to non-parties in its court judgments when a judgment causes a party to incur tax liability. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 137-38 (Pon. 2008).

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. But a person who cannot furnish a supersedeas bond does not lose the right to appeal, although he does assume the risk of getting his money back again if the judgment is reversed. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 142 (Pon. 2008).

When one of two defendants against whom a judgment is to be entered is a d/b/a of the other, the other is essentially the only defendant against whom the judgment will be entered. Oceanic Lumber, Inc. v. Vincent & Bros. Constr. Co., 16 FSM R. 222, 223 n.1 (Chk. 2008).

Generally, parties must bear their own attorney's fees unless otherwise authorized by law or by contract between the parties. Thus, when the sales contract provides that the buyer will pay the seller's attorney's fees and costs if an attorney is hired to collect the debt, the court will determine and award the seller its reasonable attorney's fees, which, except in unusual circumstances involving bad faith and vexatious litigation, will not exceed 15% of the outstanding principal and interest. Oceanic Lumber, Inc. v. Vincent & Bros. Constr. Co., 16 FSM R. 222, 225 (Chk. 2008).

If, after the plaintiff has completed the presentation of plaintiff's evidence, the defendant, without waiving the defendant's right to offer evidence in the event the motion is not granted, moves for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief, and if the court then renders judgment on the merits against the plaintiff, the court must make findings as provided in Rule 52(a). Ehsa v. Kinkatsukyo, 16 FSM R. 450, 453 (Pon. 2009).

Trial court judgments that were, in part, based on documents that were never authenticated by affidavit or by testimony and their accuracy was never vouched for by affidavit, or testimony, or other evidence will be vacated. George v. Albert, 17 FSM R. 25, 32 (App. 2010).

When the receipts relied upon by the trial court were never identified, marked, described, or admitted at trial or evidentiary hearing; when those receipts were provided to the court post-trial and were never authenticated, introduced, or admitted into evidence; and when neither side had the opportunity to examine witnesses, or to produce witnesses to testify, on the accuracy, meaning, or completeness of the receipts or about the receipts that the trial court disallowed because someone else had signed them, the documents supplied to the court after trial were not evidence that was properly before that court and thus were not evidence in the record and the trial court's use of these documents violated due process. There is therefore no substantial evidence in the record to support the judgment amount. The judgment amount finding is thus clearly erroneous, and the judgment will be vacated since that figure is not supported by substantial evidence in the record, and, in fact, is not supported by any evidence in the record. George v. Albert, 17 FSM R. 25, 32-33 (App. 2010).

The usual rule is that the parties are responsible for their own attorney's fees. Generally, a prevailing party will be awarded attorney's fees only if they are authorized by contract or by statute, or when the opposing party has acted vexatiously, or in bad faith, or presses frivolous claims, or employs oppressive litigation practices. George v. Albert, 17 FSM R. 25, 34 (App. 2010).

The prevailing plaintiff will not be awarded attorney's fees when the defendant did not act vexatiously or in bad faith, or press frivolous claims, or employ oppressive litigation practices and when no statute or contractual provision authorized attorney's fees in the case. George v. Albert, 17 FSM R. 25, 34 (App. 2010).

Whether a defendant is liable to the plaintiff for an attorney's fee award is properly part of the matters that must be heard at trial and decided before judgment. The amount of the attorney's fees to be awarded will, however, be determined in response to a post-judgment motion. George v. Albert, 17 FSM R. 25, 34 (App. 2010).

The court renders judgment and grants relief based on what has been proven, not on what

was pled. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 49 (Chk. 2010).

A court cannot order as relief a de facto practice that is actually contrary to law, even if it has been the usual practice. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 176, 179 (Pon. 2010).

Trust Territory High Court decisions are not stare decisis in the Federated States of Micronesia, but their rationale may be adopted when persuasive. Roosevelt v. Truk Island Developers, 17 FSM R. 207, 212 (Chk. 2010).

A default judgment is not a judgment obtained on the merits. In fact, it makes no claim as to the merits of the case at all. Instead, defaults and default judgments are procedural mechanisms which enable courts to avoid delay by an unresponsive party and to deter parties from using delay as a litigation strategy. Narruhn v. Chuuk, 17 FSM R. 289, 298 (App. 2010).

The Barrett decision does not stand for the proposition that a judgment is a property right which affords judgment-creditors due process rights under the national Constitution. The FSM Supreme Court has not to date, made such a determination. Narruhn v. Chuuk, 17 FSM R. 289, 299 (App. 2010).

Dicta are expressions in the court's opinion which go beyond the facts before the court and therefore are individual views of the author of the opinion and are not binding in subsequent cases. Narruhn v. Chuuk, 17 FSM R. 289, 300 n.4 (App. 2010).

A person with a judgment may initiate contempt proceedings when enforcement of a favorable judgment is required to prevent irreparable injury to the winning party's interests and is otherwise in the interests of justice. Damarlane v. Pohnpei Transp. Auth., 17 FSM R. 307, 309 (Pon. 2010).

A default judgment is not a judgment obtained on the merits. In fact, it makes no claim as to the merits of the case at all. Stephen v. Chuuk, 17 FSM R. 496, 499 (App. 2011).

A statement by a court that, to the extent that it is not dicta, is a finding of fact, a conclusion of law, and a reprimand, cannot be used as a basis for any future action when it is vacated on appeal. In re Sanction of George, 17 FSM R. 613, 617 (App. 2011).

Damages are contractual in nature when they arose either from the various lease agreements between the plaintiff and the state or from the settlement agreement between them even though the settlement agreement included a claim for a state court partial (and thus probably not final and enforceable) judgment for some of the unpaid periods of the leases because this court used the parties' memorandum of understanding for its determination of damages. Thus the damages judgment in this case was not based on a state court "judgment" but on the parties' contractual stipulation about the amount the state owed the plaintiff as of March 9, 2006. Stephen v. Chuuk, 18 FSM R. 22, 25 & n.1 (Chk. 2011).

Once the parties have finished presenting all their evidence, the trial court's duty is to weigh the evidence and make its findings of fact and conclusions of law and to render judgment on whether the plaintiff has shown a right to relief. Thus, a Rule 41(b) motion to dismiss during closing arguments is pointless. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 117 (App. 2011).

The property right created by a judgment against a government entity is not a right to payment at a particular time but merely the recognition of a continuing debt of that government entity. Kama v. Chuuk, 18 FSM R. 326, 332 (Chk. S. Ct. Tr. 2012).

Since the court, adhering to the authority vested in the judicial branch, should only interpret the laws regarding property in Chuuk and should not take over the legislative branch's role, when there has been no legislative intent shown of a specific desire to ascribe a property right to judgments, therefore, absent a specific Chuuk State legislation creating a specific property right, such a right cannot be ascribed to judgments. Kama v. Chuuk, 18 FSM R. 326, 332 (Chk. S. Ct. Tr. 2012).

Although no state shall deprive any person of life, liberty, or property without due process of law is the mandate of the constitution, a party cannot be said to be deprived of his property in a judgment because at the time he is unable to collect it. Kama v. Chuuk, 18 FSM R. 326, 333 (Chk. S. Ct. Tr. 2012).

Plaintiffs are not deprived of their judgments, so long as they continue to be existing liabilities against the entity. Therefore a failure to timely fulfill a judgment does not constitute a taking in violation of the due process clause as there continues to be an existing liability against the state. Kama v. Chuuk, 18 FSM R. 326, 333 (Chk. S. Ct. Tr. 2012).

When the issued judgment s valid, it represents an existing liability against the State of Chuuk. Kama v. Chuuk, 18 FSM R. 326, 333 (Chk. S. Ct. Tr. 2012).

When no property right can be ascribed to the judgment at issue; the due process standard is not applicable. Kama v. Chuuk, 18 FSM R. 326, 333 (Chk. S. Ct. Tr. 2012).

A judgment can be confirmed when it is undisputed that the judgment exists even though a mere recognition of an existing legal obligation would be redundant. Kama v. Chuuk, 18 FSM R. 326, 335 (Chk. S. Ct. Tr. 2012).

When no evidence was presented that supports the liability of the Director of Public Safety in his official capacity, judgment for an illegal arrest by the Pohnpei state police will be entered solely against the Pohnpei state government. Alexander v. Pohnpei, 18 FSM R. 392, 400 (Pon. 2012).

Whatever arrangements regarding who would be responsible for the payment of the plane tickets that might have been made between an employee's mother and sister and an employee who charged plane tickets for her mother and her sister to her employer does not affect the employee's liability to her employer for all of the tickets because the employee cannot shift liability to another party without her employer's agreement although the employee will be credited for any payments she and her sister made since the employer is not entitled to double recovery. Ihara v. Vitt, 18 FSM R. 516, 531 (Pon. 2013).

No ruling can be made or judgment entered against persons over whom the court does not have personal jurisdiction. William v. Kosrae State Hosp., 18 FSM R. 575, 579 n.1 (Kos. 2013).

When facts are designated established and then those facts are used to render summary judgment, the judgment then rendered is a decision on the merits. Mori v. Hasiguchi, 19 FSM

R. 16, 24 (Chk. 2013).

While the better view may be that the dollar value in the judgment reflect the amount the Japanese yen is valued at on the day the court enters judgment because that is the only way the plaintiff would receive the Japanese yen amount equal to the yen she spent on necessary medical bills and other services, the court will not decide this issue when the plaintiff's damages total between $28,454.13 and $30,310.37 depending on the conversion date, and the FSM has waived its sovereign immunity only to the extent of the first $20,000 in damages so only a $20,000 judgment can be entered. Lee v. FSM, 19 FSM R. 80, 85-86 (Pon. 2013).

As a general rule, when one of several defendants who is alleged to be jointly liable defaults, judgment should not be entered against that defendant until the matter has been adjudicated with regard to all defendants, or all defendants have defaulted. This principle guards against inconsistent judgments when the relationship between the parties requires joint and several liability. Damarlane v. Damarlane, 19 FSM R. 97, 110 (App. 2013).

"Law of the case" refers to the principle that once issues are decided in a case, they will not be redetermined later in the same case. This is a policy relied on by courts out of concern for judicial economy and to avoid the confusion that would result if a court reversed its own decisions during the course of a case. In the absence of statute the phrase, "law of the case," as applied to the effect of previous orders on the later action of the court rendering them in the same case, merely expresses the practice of courts generally to refuse to reopen what has been decided, not a limit to their power. Berman v. FSM Nat'l Police, 19 FSM R. 118, 126 (App. 2013).

When a trial court has already ruled against the plaintiffs on all the issues and arguments they raised in their summary judgment motion, it could refuse to reopen what it had already been decided unless there was new evidence presented or a there had been a change in the controlling law. This is true even though any decision, however designated, which adjudicates fewer than all the claims does not terminate the action as to any of the claims or parties, and is subject to revision at any time before the entry of judgment adjudicating all the claims. Berman v. FSM Nat'l Police, 19 FSM R. 118, 126-27 (App. 2013).

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. FSM Dev. Bank v. Ehsa, 19 FSM R. 128, 130 (Pon. 2013).

When the issue of the trial court's jurisdiction is being appealed on various constitutional grounds but there has been no determination that the trial court lacks jurisdiction, the trial court retains jurisdiction to enforce the judgment and is not acting without authority or jurisdiction. The extraordinary writ of prohibition will not serve as a substitute for that appeal. Ehsa v. Johnny, 19 FSM R. 175, 177-78 (App. 2013).

When, although the judge signed the judgment on September 13, 2007, the clerk did not enter it until September 17, 2007, September 17, 2007 is the judgment date. George v. Sigrah, 19 FSM R. 210, 215 n.2 (App. 2013).

When the plaintiffs failed to raise the issue of nuisance, or damages arising from nuisance, at trial, that count of the complaint is waived. Harden v. Inek, 19 FSM R. 244, 252 (Pon. 2014).

It is not necessary for the court to make findings on undisputed or stipulated facts. Nor are findings required on issues that are not material. Harden v. Inek, 19 FSM R. 278, 281 (Pon. 2014).

Uncontested findings need only be included in the court's findings of fact if they form a basis for its conclusion of law. Harden v. Inek, 19 FSM R. 278, 281 (Pon. 2014).

Under the Kosrae statute, a judgment from a Trust Territory court with jurisdiction over Kosrae land matters should be accorded res judicata status. Even if it did not, the general legal doctrine of res judicata, which the statute does not abolish, would accord res judicata status to Trust Territory High Court judgments when the elements are met. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 302 (App. 2014).

A Trust Territory High Court judgment is entitled to res judicata effect unless (or until) that judgment is successfully collaterally attacked. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 303 (App. 2014).

An argument that citizens' rights must be upheld over a Trust Territory High Court judgment because the Trust Territory High Court was not a constitutional court must be rejected when there were no constitutional courts in 1960 when the judgment was issued and the Trust Territory courts were the only functioning court system then. The impropriety of the Trust Territory High Court deciding cases when both the Trust Territory High Court and constitutional FSM courts were simultaneously in existence and functioning thus offers no support. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 303-04 (App. 2014).

Rule 69 applies only to money judgments. Thus, it is generally not applicable to judgments that direct specific acts, which are covered by Rule 70. FSM Dev. Bank v. Carl, 20 FSM R. 70, 74 n.2 (Pon. 2015).

A judgment for a defendant based on lack of jurisdiction does not bar the plaintiff from bringing another action on the same cause in another court having jurisdiction. Chuuk Health Care Plan v. Waite, 20 FSM R. 282, 285 n.4 (Chk. 2016).

A trial judge is not required to limit his analysis to the causes of action pled in the complaint because, under the rules, except as to a party against whom a judgment is entered by default, every final judgment must grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 430 (App. 2016).

To grant a judgment against the state government for funds that the national government admits that it still holds and is willing to pay would permit double recovery. Eot Municipality v. Elimo, 20 FSM R. 482, 489 n.2 (Chk. 2016).

Stare decisis is the doctrine of precedent, under which it is necessary for a court to follow earlier judicial decisions when the same points of law arise again in litigation. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 514-15 (App. 2016).

There is no Chuuk statute making judgments against the state (or a municipality) a vested property interest, and there are no statutes requiring that judgments be paid within a certain time, or providing the means to effect payment if the governmental entity does not have the funds available. Kama v. Chuuk, 20 FSM R. 522, 529 (Chk. S. Ct. App. 2016).

The state's failure to appropriate funds to pay a judgment debt does not constitute a taking in violation of the due process clause because the property right created by a judgment against a government entity is merely the recognition of a continuing debt of that government entity. Kama v. Chuuk, 20 FSM R. 522, 529 (Chk. S. Ct. App. 2016).

A money judgment against the state is not property such that its non-payment constitutes a taking, but a money judgment against the state is a recognition of the state government's continuing debt or obligation. Kama v. Chuuk, 20 FSM R. 522, 529-30 (Chk. S. Ct. App. 2016).

If a judgment creditor wants Chuuk to furnish money to pay his judgment now, he must seek an appropriation from the Chuuk Legislature that includes it or that can be used to pay it. Kama v. Chuuk, 20 FSM R. 522, 530-31 (Chk. S. Ct. App. 2016).

Since the principle that funds appropriated for other purposes cannot be redirected to pay judgments is inherent in the separation-of-powers scheme in the Chuuk Constitution, the Chuuk State Supreme Court cannot levy any writs on Chuuk state funds because those writs would be levied on money that the Chuuk Legislature has already appropriated for another purpose. Kama v. Chuuk, 20 FSM R. 522, 531 (Chk. S. Ct. App. 2016).

The statutory presumption that judgments over twenty years old have been satisfied is a rebuttable presumption. Kama v. Chuuk, 20 FSM R. 522, 534 (Chk. S. Ct. App. 2016).

A money judgment against the state is not a property interest but an existing, continuing liability against the state, and a failure to timely satisfy that judgment does not constitute a taking in violation of due process or equal protection. Kama v. Chuuk, 20 FSM R. 522, 534 (Chk. S. Ct. App. 2016).

To grant a judgment against the state government for funds that the national government admits that it still holds and is willing to pay would permit double recovery. Onanu Municipality v. Elimo, 20 FSM R. 535, 540 n.4 (Chk. 2016).

If, and when, a party is awarded its expenses under Rule 37, and if that party is not paid those expenses reasonably promptly, that expense award will, at final judgment, be deducted from any money judgment awarded to the opposing party or added to any money judgment awarded to the party. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 575 (Pon. 2016).

While Trust Territory High Court opinions are not binding precedent on the FSM Supreme Court, they serve as useful advisory precedent, especially considering they contain important information regarding the customs and traditions of the people of Micronesia. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 642 n.2 (Pon. 2016).

When the plaintiff obtains a judgment in his favor, his claim "merges" in that judgment; he may seek no further relief on that claim in a separate action. Waguk v. Waguk, 21 FSM R. 60, 69 (App. 2016).

When a judgment is rendered for a defendant, the plaintiff's claim is extinguished; the judgment acts as a "bar." Waguk v. Waguk, 21 FSM R. 60, 69 (App. 2016).

A proposition that it is mandatory that separate sections specifically entitled "Findings of Fact" and "Conclusions of Law" appear within an order, is misguided. Kosrae Civil Procedure Rule 52 plainly states that if an opinion or memorandum of decision is filed, it is sufficient if the findings of fact and conclusion of law appear therein. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 119 (App. 2017).

A presiding judge is under no obligation to reduce his findings and conclusions to writing, so long as he has stated the findings and conclusions orally in open court. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 119 (App. 2017).

Once the parties have finished presenting all their evidence, the trial court's duty is to weigh the evidence and make its findings of fact and conclusions of law and to render judgment on whether the plaintiff has shown a right to relief. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 119 (App. 2017).

When an order in question disposes of all the claims against one of several parties, it clearly has the requisite finality to be appealable under Civil Procedure Rule 54(b) if the trial court has made a proper certification under that rule. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 224 (App. 2017).

A decree *nisi* is a court's decree that will become absolute unless the adversely affected party shows the court, within a specified time, why it should be set aside. Fuji Enterprises v. Jacob, 21 FSM R. 355, 360 n.4 (App. 2017).

A notice of appeal divests trial court of jurisdiction, except to take action in aid of the appeal. Examples of orders in aid of an appeal include, but are not limited to, applications for release from jail pending appeal, applications for stays pending appeal, taxation of costs on a judgment after notice of appeal filed, considering and denying a Rule 60(b) relief from judgment motions (but not granting one unless the case is remanded), and, since the mere filing of a notice of appeal does not affect a judgment's validity, the trial court also retains jurisdiction to enforce the judgment, unless a stay has been granted. Setik v. FSM Dev. Bank, 21 FSM R. 505, 518 (App. 2018).

While trial division decisions are precedents, they are not binding precedents since they are only trial court decisions. They are thus not "controlling law." Setik v. Mendiola, 21 FSM R. 537, 561 (App. 2018).

The court's denial of a person's motion to dismiss him "in his individual capacity" put that person on notice that any judgment in the plaintiff's favor would, unless the court ordered otherwise, be against him personally. Smith v. Nimea, 22 FSM R. 131, 134 (Pon. 2019).

When prior judge's findings all indicate that the individual defendant was the plaintiff's actual employer and liable to him on the judgment, the court will conclude that the prior judge considered his judgment to be against either just the individual defendant or against both him and the co-defendant corporation, jointly and severally, since the judgment was based on the holding that the individual defendant was the employer and thus liable under the employment contract. That being the "law of the case," the court will direct that a clarified judgment be

entered naming the individual defendant as the judgment debtor and include the corporation as a joint and several judgment debtor since it was the plaintiff's nominal employer. Smith v. Nimea, 22 FSM R. 131, 135 (Pon. 2019).

Even though the plaintiff did not plead an ejectment cause of action, the court could, if he proves he has a greater current possessory right to the land, grant the plaintiff actual possession of land through an ejectment remedy because, except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings. Irons v. Corporation of the President of the Church of Latter Day Saints, 22 FSM R. 158, 163 (Chk. 2019).

The court can, in a proper case, after notice and after severing a previously consolidated case, then dismiss that severed case, but when there was no order of severance, the cases remained consolidated and any dismissals were the partial adjudication of one (consolidated) case. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 180 (Pon. 2019).

A judgment of any court is presumed to be paid and satisfied at the expiration of twenty years after it is rendered. FSM Dev. Bank v. Carl, 22 FSM R. 365, 374 (Pon. 2019).

Since except as to a party against whom a judgment is entered by default, every final judgment must grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings, when the sum of expenses that the party is entitled to is larger than the amount sought, the court will grant judgment for the larger figure. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 479 (Pon. 2020).

Since an attorney is the real party in interest for any sanction imposed on her personally, the court cannot include the sanction, for which the attorney's clients are not liable, in the judgment against the clients and will enter the sanction solely against the liable attorney. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 479 (Pon. 2020).

A litigant's judgments against Chuuk are not vested property rights, and Chuuk's failure to pay those judgments is not a due process or civil rights violation. Suzuki v. Chuuk, 22 FSM R. 491, 494 (Chk. 2020).

When the only basis the plaintiff asserts for subject-matter jurisdiction is that his state court judgments are property and the state's failure to pay is a taking of his property without due process, the plaintiff's suit does not involve subject matter over which the FSM Supreme Court has jurisdiction because the plaintiff's state court judgments are not property, and the state's failure to pay his judgments against it does not violate his due process or civil rights. Suzuki v. Chuuk, 22 FSM R. 491, 494 (Chk. 2020).

"Law of the case" refers to the principle that once issues are decided in a case, they will not be redetermined later in the same case. This is a policy relied on by courts out of concern for judicial economy and to avoid the confusion that would result if a court reversed its own decisions during the course of a case. In the absence of a statute, the phrase, "law of the case," as applied to the effect of previous orders on the later action of the court rendering them in the same case, merely expresses the practice of courts generally to refuse to reopen what has been decided, not a limit to their power. FSM v. Kuo Rong 113, 22 FSM R. 515, 521 (App. 2020).

Under the law of the case doctrine, unless corrected by an appellate tribunal, a legal decision made at one stage of a civil or criminal case constitutes the law of the case throughout the pendency of the litigation. Strictly speaking, the doctrine is not implicated for interlocutory orders because they remain open to trial court reconsideration, and do not constitute the law of the case. FSM v. Kuo Rong 113, 22 FSM R. 515, 521-22 (App. 2020).

A court judgment is not a vested property right or interest because a party has no absolute right to a trial court judgment; otherwise, an appeal would be futile. FSM v. Kuo Rong 113, 22 FSM R. 515, 525 (App. 2020).

– Action on a Judgment

An action on a judgment may be maintained up to twenty years after the date of entry of the judgment. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 672 (App. 1996).

An action on a judgment filed more than twenty years after the judgment was announced, but less than twenty years after the written judgment was served on the parties is timely filed and not barred by the statute of limitations. Sigrah v. Kosrae State Land Comm'n, 11 FSM R. 169, 174 (Kos. S. Ct. Tr. 2002).

FSM statutory law recognizes the existence of an action on a judgment because it provides a time limit – 20 years – within which one must be brought. FSM Dev. Bank v. Carl, 22 FSM R. 365, 371 (Pon. 2019).

An action may be maintained up to twenty years after the date of entry of the judgment. FSM Dev. Bank v. Carl, 22 FSM R. 365, 371 (Pon. 2019).

When a valid and final personal judgment is rendered in the plaintiff's favor, the plaintiff cannot thereafter maintain an action on the original claim or any part thereof, although the plaintiff may be able to maintain an action upon the judgment. FSM Dev. Bank v. Carl, 22 FSM R. 365, 371-72 (Pon. 2019).

An action on a judgment is a new and independent action, and not merely a means of enforcing a judgment, as is a writ of execution. FSM Dev. Bank v. Carl, 22 FSM R. 365, 372 (Pon. 2019).

To be available as a cause of action, the judgment must be a definite and personal judgment for the payment of money, final in its character and not merely interlocutory, remaining unsatisfied, and capable of immediate enforcement. FSM Dev. Bank v. Carl, 22 FSM R. 365, 372 (Pon. 2019).

An action based on a judgment is an action based on contract. The judgment becomes a debt which the judgment debtor is obligated to pay and the law implies a contract on his part to pay it. FSM Dev. Bank v. Carl, 22 FSM R. 365, 372 (Pon. 2019).

A suit on a judgment is separate and independent from the underlying cause of action that led to the judgment, and is deemed distinct from the original suit in which the prior judgment was rendered. It must be commenced and prosecuted in the same way as any other civil action

brought to recover judgment on a debt. FSM Dev. Bank v. Carl, 22 FSM R. 365, 372 (Pon. 2019).

In an action on a judgment, the original cause of action is merged in the judgment, and, unless void, the judgment is conclusive. FSM Dev. Bank v. Carl, 22 FSM R. 365, 372 (Pon. 2019).

An action on a judgment is not an action on the original claim, which has merged into the original judgment. It is a new and independent action. FSM Dev. Bank v. Carl, 22 FSM R. 365, 372 (Pon. 2019).

An action on a judgment must be prosecuted by the owner of it, and it must be brought against the defendant of record in the judgment or the defendant's successor in interest, and not an entity or person not named in the judgment. FSM Dev. Bank v. Carl, 22 FSM R. 365, 372 (Pon. 2019).

An action on a judgment is especially apt for resolution by means of a motion for summary judgment. Usually, the plaintiff establishes his prima facie case by producing certified copies of the judgment on which the action is based and the identity of the defendant as obligee. FSM Dev. Bank v. Carl, 22 FSM R. 365, 373 (Pon. 2019).

When, in an action on a judgment, the plaintiff has produced a copy of the judgment on which the action is based, but it is not certified, that deficiency may be disregarded where the original judgment on which the action is based was entered in the same court and venue in which the action on the judgment is filed, and thus the copy's accuracy can easily be verified. FSM Dev. Bank v. Carl, 22 FSM R. 365, 373 (Pon. 2019).

When one co-defendant's "affirmative defense" may more accurately be a cross-claim against its co-defendant, to which the co-defendant has not responded (or even been specifically asked to respond), it may be disregarded for the purpose of the plaintiff's summary judgment motion against the two co-defendants. FSM Dev. Bank v. Carl, 22 FSM R. 365, 373 (Pon. 2019).

The defenses against an action on a judgment are limited. In an action on a judgment, the original cause of action is merged in the judgment, and, unless void, the judgment is conclusive, and no defense is available which was, or might have been, urged in defense of the original action. FSM Dev. Bank v. Carl, 22 FSM R. 365, 373 (Pon. 2019).

In an action on the judgment, the defendant cannot avail himself of defenses he might have interposed, or did interpose, in the first action. It is immaterial whether the defendant interposed the defense or failed to do so or even defaulted in the original action. Nor does the fact that the judgment was erroneous preclude the plaintiff from maintaining an action upon it. FSM Dev. Bank v. Carl, 22 FSM R. 365, 374 (Pon. 2019).

In an action on the judgment, the defendant may interpose matters which have arisen since the rendition of the judgment and constitute defenses to its enforcement such as payment, release, accord and satisfaction, or the statute of limitations. FSM Dev. Bank v. Carl, 22 FSM R. 365, 374 (Pon. 2019).

Generally, the equitable defense of laches is only available to a defendant when the plaintiff

has sought some form of equitable relief and is not available as a defense against actions at law. Because an action on a judgment is an action at law, the equitable defense of laches is not available as a matter of law. The same is true for an estoppel defense. FSM Dev. Bank v. Carl, 22 FSM R. 365, 374 (Pon. 2019).

The defenses of fraud, misrepresentation, and illegality are unavailable as defenses to an action on a judgment unless they are part of the recognized defenses – payment, release, accord and satisfaction, or the statute of limitations (the court also recognizes that a discharge in bankruptcy of a judgment debt would likely constitute a good defense as a release) – but fraud would be an available defense if there was fraud on the court in obtaining the judgment. FSM Dev. Bank v. Carl, 22 FSM R. 365, 374 (Pon. 2019).

An action on a judgment's main purpose is to obtain a new judgment, which will facilitate the ultimate goal of securing satisfaction of the original cause of action. FSM Dev. Bank v. Carl, 22 FSM R. 365, 374 (Pon. 2019).

A party has a right to maintain an action on a judgment when some advantage will be secured thereby. Often the advantage to be secured is to domesticate a judgment from another jurisdiction so that the other jurisdiction's judgment can be enforced domestically against the defendant or the defendant's property. FSM Dev. Bank v. Carl, 22 FSM R. 365, 374-75 (Pon. 2019).

A judgment for the plaintiff awarding him a sum of money creates a debt in that amount in his favor. The plaintiff may maintain proceedings by way of execution for enforcement of the judgment, the plaintiff may also be able to maintain an action upon the judgment. Ordinarily no useful purpose is served by bringing an action in the same state upon the judgment instead of executing upon it, but if the statute of limitations period has almost run, the plaintiff can bring an action upon the judgment and obtain a new judgment upon which the limitations period will run again. FSM Dev. Bank v. Carl, 22 FSM R. 365, 375 (Pon. 2019).

While ordinarily no advantage is gained by bringing an action in the same court upon a judgment, if the statute of limitation period has almost run upon the judgment, the judgment creditor can start the limitation period anew by bringing an action upon the judgment and obtaining a new judgment. FSM Dev. Bank v. Carl, 22 FSM R. 365, 375 (Pon. 2019).

The twenty-year statute of limitations would be an effective affirmative defense against an action on a February 11, 1999 judgment filed after February 11, 2019, but when the action on a judgment was filed January 8, 2019, it was begun within the statutory period, and is thus timely and may proceed to judgment. This is because once an action on a judgment has begun within the statutory period, the creditor's right to recover remains alive, even though the limitation period may subsequently expire. FSM Dev. Bank v. Carl, 22 FSM R. 365, 375 (Pon. 2019).

The institution of an action on a judgment within the statutory period tolls the statute although it is not followed by rendition of judgment, or even service of an answer, within such time. FSM Dev. Bank v. Carl, 22 FSM R. 365, 375 (Pon. 2019).

The institution of an action on a judgment within the twenty-year statutory period set by 6 F.S.M.C. 802(1)(a) tolls that limitation statute even though the court has not yet rendered a judgment and even despite that a defendant did not file and serve her answer within the

statutory time period. Because the timely filing of the action tolled the statutory time period, the statute, 6 F.S.M.C. 801, that creates a presumption of satisfaction after the twenty years has passed, does not come into play. FSM Dev. Bank v. Carl, 22 FSM R. 365, 375 (Pon. 2019).

The defenses of payment, release, and accord and satisfaction are defenses that are available against an action on a judgment. FSM Dev. Bank v. Carl, 22 FSM R. 365, 375-76 (Pon. 2019).

Although release and accord and satisfaction are both defenses that are available against an action on a judgment, when they were mentioned as affirmative defenses in a defendant's answer, but were neither raised nor mentioned in her opposition to the plaintiff's summary judgment motion, these defenses are deemed waived or abandoned. FSM Dev. Bank v. Carl, 22 FSM R. 365, 376 (Pon. 2019).

In an action on a judgment there is a rebuttable presumption that a judgment remains in full force and unsatisfied. The plaintiff does not bear the burden of proving that the judgment has not been satisfied. FSM Dev. Bank v. Carl, 22 FSM R. 365, 376 (Pon. 2019).

– Action on a Judgment – Foreign

Comity is a recognition which one nation extends within its own territory to the legislative, executive, or judicial acts of another. It is not a rule of law, but one of practice, convenience, and expediency. Under principles of comity, courts will enforce foreign judgments, but not when the foreign court lacked jurisdiction, or where enforcement of the foreign judgment would violate a public policy, or where granting comity would result in prejudice to the forum's citizens. J.C. Tenorio Enterprises, Inc. v. Sado, 6 FSM R. 430, 431-32 (Pon. 1994).

An FSM court may reduce the amount of attorney's fees provided for under a foreign judgment, where that judgment is unenforceable as against public policy to the extent that the attorney fees in excess of 15% of debt are repugnant to fundamental notions of what is decent and just in the FSM. J.C. Tenorio Enterprises, Inc. v. Sado, 6 FSM R. 430, 432 (Pon. 1994).

Averment of a foreign judgment states a claim upon which relief could be granted. Allegations that the foreign judgment was obtained without notice are outside the complaint and cannot be considered in evaluating a Rule 12(b)(6) motion to dismiss. Latte Motors, Inc. v. Hainrick, 7 FSM R. 190, 192 (Pon. 1995).

A certified copy of a judgment from a foreign court is admissible evidence as a properly authenticated public record of that jurisdiction. Joeten Motor Co. v. Jae Joong Hwang, 7 FSM R. 326, 327 (Chk. S. Ct. Tr. 1995).

The FSM Supreme Court will not enforce the part of a Northern Marianas' judgment imposing a CNMI statutory treble damages penalty for writing bad checks when the FSM has no similar public policy. Recovery will be limited to the outstanding principal amount of the bad checks and the plaintiff's undisputed additional costs – bank charges and court costs. Coca-Cola Beverage Co. (Micronesia) v. Edmond, 8 FSM R. 388, 391 (Kos. 1998).

When the FSM Supreme Court's concern in inquiring into a Guam bankruptcy case was not to determine whether the principles of comity should be applied, but rather whether any order

the court might issue would subject a party to liability for contempt in the other court because the party was required by two courts to obey contradictory orders and when that concern has been assuaged, the court will take no position on whether, and under what circumstances, it might recognize U.S. bankruptcy law or proceedings and whether or when comity would apply in such a case. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 361, 366 (Chk. 2003).

Under principles of comity, the FSM Supreme Court will enforce foreign judgments, but not when the foreign court lacked jurisdiction, or where enforcement of the foreign judgment would violate a public policy, or where granting comity would result in prejudice to the forum's citizens. Northern Marianas Housing Corp. v. Finik, 12 FSM R. 441, 444 (Chk. 2004).

The FSM Supreme Court will not enforce a foreign judgment entered by a court that lacked personal jurisdiction over the defendant when it entered its judgment against her. Northern Marianas Housing Corp. v. Finik, 12 FSM R. 441, 446-47 (Chk. 2004).

Since the only prejudgment interest recognized so far in breach of contract cases is where the contract itself specifically provides for such a remedy, the part of a foreign judgment containing such prejudgment interest may thus be unenforceable in the FSM as against public policy. Northern Marianas Housing Corp. v. Finik, 12 FSM R. 441, 447 (Chk. 2004).

Under principles of comity, courts will enforce foreign judgments, but not when the foreign court lacked jurisdiction, or where enforcement of the foreign judgment would violate a public policy, or where granting comity would result in prejudice to the forum's citizens. Dison v. Bank of Hawaii, 19 FSM R. 157, 162 (App. 2013).

A party has a right to maintain an action on a judgment when some advantage will be secured thereby. Often the advantage to be secured is to domesticate a judgment from another jurisdiction so that the other jurisdiction's judgment can be enforced domestically against the defendant or the defendant's property. FSM Dev. Bank v. Carl, 22 FSM R. 365, 374-75 (Pon. 2019).

– Alter or Amend Judgment

Because until a final judgment has been entered a trial court has plenary power over its interlocutory orders, it may, without regard to the restrictive time limits in Rule 59, alter, amend, or modify such orders any time prior to the entry of judgment. Youngstrom v. Phillip, 8 FSM R. 198, 201 (Kos. S. Ct. Tr. 1997).

A court may alter or amend a judgment under Rule 59 on any of four grounds: 1) to correct a manifest error of law or fact upon which the judgment is based; 2) the court is presented with newly discovered or previously unavailable evidence; 3) to prevent a manifest injustice; or 4) there is an intervening change in the controlling law. Chuuk v. Secretary of Finance, 9 FSM R. 99, 100 (Pon. 1999).

A timely motion to alter or amend judgment is one served not later than 10 days after entry of the judgment. O'Sonis v. Bank of Guam, 9 FSM R. 356, 359 (App. 2000).

A post-judgment motion for supplemental attorney's fees is not a motion to alter or amend judgment under FSM Civil Procedure Rule 59(e), and does not extend the time for the filing of

the notice of appeal under Appellate Procedure Rule 4(a)(4). O'Sonis v. Bank of Guam, 9 FSM R. 356, 359 (App. 2000).

A motion that a judgment be amended to include a statement of the statutory interest and that its title be corrected to read "judgment" instead of "proposed order," is not one to amend, but rather more properly one to correct a judgment. As such Rule 60 applies, not Rule 59. Walter v. Chuuk, 10 FSM R. 312, 315 (Chk. 2001).

The ten day time limit for a motion to alter or amend a judgment does not apply to an order which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties because that order does not terminate the action as to any of the claims or parties, and is subject to revision at any time before the entry of judgment. The appropriate means by which to raise concerns about such an order is not by a Rule 59 motion to alter or amend judgment, but by a Rule 54 motion for reconsideration. A motion for reconsideration can be brought any time before entry of judgment, and is not subject to the 10 day limit. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 470 (Pon. 2001).

A Rule 59 motion must be brought within ten days of entry of judgment and can either be for a new trial or to alter or amend the judgment. Farata v. Punzalan, 11 FSM R. 175, 177 (Chk. 2002).

A motion to alter or amend the judgment will be denied when it does not state what the judgment should be altered to or amended to read, but only states the movant's dissatisfaction with its current form and asks that the judgment be opened. Farata v. Punzalan, 11 FSM R. 175, 178 (Chk. 2002).

Although the trial court, absent a remand, lacks jurisdiction to vacate or alter its judgment pending appeal, the trial court retains the power throughout the pendency of the appeal to simply preserve the status quo by granting a stay of the judgment. Konman v. Esa, 11 FSM R. 291, 296 (Chk. S. Ct. Tr. 2002).

The defendants have not presented adequate grounds to support their motion to alter judgment or for a new trial when there has been no manifest error of law or fact made by the court in its memorandum and judgment and when there has been no newly discovered evidence presented by the defendants in support of their motion. Livaie v. Weilbacher, 13 FSM R. 249, 251 (Kos. S. Ct. Tr. 2005).

When the court's findings have not been disputed and have not been amended, a motion to reconsider and modify an order will be denied. Akinaga v. Heirs of Mike, 14 FSM R. 91, 93 (Kos. S. Ct. Tr. 2006).

A party may seek the addition of supplemental findings to a judgment within ten days of the judgment being entered. Such action should only be taken by the judge who presided over the proceedings and who entered the judgment and while the facts underlying the proceedings are fresh within the presiding judge's mind. A motion for amended judgment or supplemental findings under Rule 52(b), nearly two decades after entry of judgment and with a new presiding judge, is untimely and inappropriate. Salik v. U Corp., 15 FSM R. 534, 539 (Pon. 2008).

A letter that does not certify that it has been served upon the plaintiff as required and that does not certify that the defendant sought the plaintiff's acquiescence, as required, is

procedurally deficient because the court will treat the letter as a motion for amended judgment and/or supplemental findings. Salik v. U Corp., 15 FSM R. 534, 540 (Pon. 2008).

A motion to reconsider that was filed 22 days after the judgment had been entered, cannot be a Rule 54(b) motion to reconsider since those motions must be made before entry of judgment, or a Rule 59(e) motion to alter or amend judgment since a Rule 59(e) motion must "be served not later than 10 days after entry of the judgment." It can only be a Rule 60(b) motion for relief from judgment. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 588 (App. 2008).

A timely-filed motion to reconsider an order of dismissal is considered a Rule 59(e) motion to alter or amend a judgment. Alanso v. Pridgen, 15 FSM R. 597, 600 (App. 2008).

The timely filing of a motion to alter or amend judgment destroys a previously filed notice of appeal and even a subsequent notice of appeal if that notice is filed while the motion to alter or amend is still pending. Alanso v. Pridgen, 15 FSM R. 597, 600 (App. 2008).

An order of dismissal is not a final decision if a timely motion under Rule 59 has been made and not disposed of, since the case lacks finality. For that reason, the subsequent filing of a notice of appeal is a nullity and does not deprive the trial court of power to rule on the motion. Alanso v. Pridgen, 15 FSM R. 597, 600 (App. 2008).

A motion to reconsider made more than ten days after entry of judgment can only be considered a Rule 60(b) motion for relief from judgment. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 120 n.1 (App. 2008).

A motion to reconsider or vacate a judgment filed within ten days of the judgment is a Rule 59 motion to alter or amend judgment and a motion filed after ten days is a Rule 60(b) motion for relief from judgment. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 138 n.3 (Pon. 2008).

A Rule 52(b) motion is one that asks the court to amend the findings of fact that the court has already made as required by Rule 52(a). The Rule 52(b) term "motion for judgment," when referring to a motion made after the start of trial, refers to a Rule 41(b) motion, not to a motion made after closing arguments. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 17 FSM R. 247, 250 (Yap 2010).

A Rule 52(b) motion is timely – that is, is made at a time permitted by the rule – when it is made after the court has indicated the action it would take but has not yet entered judgment, but when the court has neither issued its written findings of fact nor indicated what those findings will be, such a motion is premature since the court's findings, when issued, may be favorable and no motion would be needed. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 17 FSM R. 247, 250 (Yap 2010).

A motion for judgment as a matter of law that is made too late to be cognizable under Rule 41(b) and that is made too early to be cognizable under Rule 52(b), will, on the opposing party's motion, be stricken, but may be renewed, if need be, after the court has entered its findings. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 17 FSM R. 247, 251 (Yap 2010).

The grounds on which a court may grant a new trial or alter or amend the judgment is either when the court has made a manifest error of law or fact, or for newly discovered evidence. Senate v. Elimo, 18 FSM R. 199, 201 (Chk. S. Ct. Tr. 2012).

A litigant may, under Rule 59(e), move for reconsideration of an order granting summary judgment or move to alter or amend the judgment derived from that order and the court has a responsibility to hear that motion. Senate v. Elimo, 18 FSM R. 199, 201 (Chk. S. Ct. Tr. 2012).

Summary judgment will ordinarily not be altered or vacated on the basis of supplemental exhibits or affidavits filed after summary judgment is granted, particularly when the party seeking to alter or amend the judgment has made absolutely no showing that the additional evidence offered could not have been timely submitted in the exercise of reasonable diligence. Motions for reconsideration cannot in any case be employed as a vehicle to introduce new evidence that could have been adduced during pendency of the summary judgment motion. Senate v. Elimo, 18 FSM R. 199, 201 (Chk. S. Ct. Tr. 2012).

A motion to alter or amend judgment will be denied when no valid reason was given why the movant could not have produced, as part of his summary judgment motion or his opposition to his opponent's summary judgment motion, the evidence now relied on to seek reconsideration because it was all available to him before the cross motions for summary judgment were filed and before those motions were heard. Senate v. Elimo, 18 FSM R. 199, 202 (Chk. S. Ct. Tr. 2012).

A litigant may not sit idly by during the course of litigation and then seek to present additional defenses in the event of an adverse outcome. Senate v. Elimo, 18 FSM R. 199, 202 (Chk. S. Ct. Tr. 2012).

Summary judgment will not be altered on the basis of a movant's supplemental exhibits and affidavits since that additional evidence could have been timely submitted if he had exercised due diligence. Senate v. Elimo, 18 FSM R. 199, 202 (Chk. S. Ct. Tr. 2012).

The court must decline to amend its findings when the proposed finding would require speculation about future events. Harden v. Inek, 19 FSM R. 278, 282 (Pon. 2014).

The trial court may, in an effort to assist the appellate division in its review of the matter, amend its findings even though the amendments requested by the defendants did not form the basis for the court's conclusions of law. Harden v. Inek, 19 FSM R. 278, 282 (Pon. 2014).

One of the grounds for amending a judgment under FSM Civil Rule 59(e) is to prevent a manifest injustice. This ground is a catch-all basis for relief, and is usually coupled with another ground. Harden v. Inek, 19 FSM R. 278, 282 (Pon. 2014).

To alter or amend a judgment to prevent a manifest injustice, it is not enough for the defendants to show that the court's reasoned decision would result in hardship; rather, a successful Rule 59(e) motion will present a flaw in the fact finding or decision making process, and demonstrate that failure to correct the flaw would lead to manifest injustice. Harden v. Inek, 19 FSM R. 278, 282 (Pon. 2014).

A motion to alter, or amend, under FSM Civil Rule 59(e), or reconsideration of a mistake through inadvertence under FSM Civil Rule 60(b) are post-judgment motions that are

appropriately filed in the trial division, not the appellate division, and, under the final judgment rule, these post-judgment motions prohibit filing an appeal until they have been either granted or denied. Mori v. Hasiguchi, 19 FSM R. 416, 418 (App. 2014).

A timely filed motion to reconsider a final order is considered an FSM Civil Rule 59(e) motion to alter or amend a judgment. Ehsa v. FSM Dev. Bank, 19 FSM R. 421, 422 (Pon. 2014).

The court may alter or amend a final order under Rule 59(e) on any of the following four grounds: 1) to correct a manifest error of law or fact upon which the judgment is based; 2) the court is presented with newly discovered or previously unavailable evidence; 3) to prevent a manifest injustice; or 4) there is an intervening change in controlling law. Ehsa v. FSM Dev. Bank, 19 FSM R. 421, 422 (Pon. 2014).

A Rule 59(e) motion may not be used to relitigate old matters, and arguments that could have been raised before may not be raised for the first time in a motion for reconsideration. Ehsa v. FSM Dev. Bank, 19 FSM R. 421, 423 (Pon. 2014).

Since the plaintiffs' argument that the delay in the imposition of sanctions is evidence of the reasonableness of their complaint is an extension of their argument of a meritorious complaint, it will be considered on a motion for reconsideration, but when the plaintiffs' argument that the delay in imposing sanctions prejudiced them is clearly a new argument that could and should have been raised in their original opposition, this latter timeliness argument is a new issue that the court must decline to consider. Ehsa v. FSM Dev. Bank, 19 FSM R. 421, 424 (Pon. 2014).

The defendants do not present adequate grounds to support a motion to alter judgment or a motion for a new trial when there has been no manifest error of law or fact made by the court in its memorandum and judgment and when there has been no newly discovered evidence presented by the defendants in support of their motion. Moylan's Ins. Underwriters (FSM), Inc. v. Gallen, 20 FSM R. 3, 6 (Pon. 2015).

The court may alter or amend a judgment under Rule 59(e) on any of four grounds: 1) to correct a manifest error of law or fact upon which the judgment is based; 2) the court is presented with newly discovered or previously unavailable evidence; 3) to prevent a manifest injustice; or 4) there is an intervening change in controlling law. FSM Dev. Bank v. Setik, 20 FSM R. 315, 317 (Pon. 2016).

A Rule 59(e) motion may not be used to relitigate old matters. FSM Dev. Bank v. Setik, 20 FSM R. 315, 317-18 (Pon. 2016).

A trial court has jurisdiction to consider and deny a Rule 59(e) motion after an appeal has been filed. FSM Dev. Bank v. Setik, 20 FSM R. 315, 318 (Pon. 2016).

When the movants have failed to satisfy any of the four grounds for altering or amending a judgment, a reconsideration of the court's order transferring title is unwarranted and the motion for reconsideration of that order will be denied. FSM Dev. Bank v. Setik, 20 FSM R. 315, 319 (Pon. 2016).

Regardless of whether the issued writ of habeas corpus is a final order, the court may entertain FSM Civil Rule 59 and 60 motions while the matter is subject to an appeal and, if it

determines such motion(s) shall prevail, it must so indicate in the record for the appellate court's consideration. Timsina v. FSM, 22 FSM R. 383, 386 (Pon. 2019).

– Collateral Attack

In a case in which the High Court of the Trust Territory of the Pacific Islands did not transfer the case to the FSM Supreme Court or to the Truk State Court because it failed to act in conformity with the purpose of Secretarial Order No. 3039 which was to provide maximum permissible self government to the newly self-governing entities, and because the High Court's determination that the case was in active trial and therefore need not be transferred was incorrect, the High Court is not deprived of jurisdiction where the presently objecting party failed to make any objection before the High Court and where the judgment by the High Court is being collaterally attacked. United Church of Christ v. Hamo, 3 FSM R. 445, 451-52 (Truk 1988).

In some cases failure to join an indispensable party may subject a judgment to collateral attack, but failure to join a necessary party will not. A necessary party is one who has an identifiable interest in the action and should normally be made a party to the lawsuit, but whose interests are separable from the rest of the parties or whose presence cannot be obtained; whereas an indispensable party is one to whom any judgment, if effective, would necessarily affect his interest, or would, if his interest is eliminated, constitute unreasonable, inequitable, or impractical relief. Nahnken of Nett v. United States (III), 6 FSM R. 508, 517 (Pon. 1994).

A judgment entered against a party without notice or an opportunity to be heard is void and is subject to direct or collateral attack at any time. Hartman v. Bank of Guam, 10 FSM R. 89, 97 (App. 2001).

A judgment entered against a party without notice or an opportunity to be heard is void and subject to direct or collateral attack. Pastor v. Ngusun, 11 FSM R. 281, 285 (Chk. S. Ct. Tr. 2002).

If the court enters a default judgment different in kind from or exceeds in amount the relief that was prayed for in the demand for judgment, such a default judgment would be void and subject to collateral attack. Serious due process questions would be raised. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 277 (Chk. 2005).

It is doubtful whether a court judgment in an election contest case can be collaterally attacked since election contests are purely statutory, and the courts have no inherent power to determine election contests. The determination of election contests is a judicial function only when and to the extent that the determination is authorized by statute. Thus, the jurisdiction of courts exercising general equity powers does not include election contests. An election contest must follow the path set out for it in the statute and no other. Puchonong v. Chuuk, 14 FSM R. 67, 69 (Chk. 2006).

A judgment (or final order) entered against a person without notice or an opportunity to be heard is void and is subject to direct or collateral attack at any time, and a court that lacks personal jurisdiction over a person cannot enter a valid judgment against that person. Dereas v. Eas, 14 FSM R. 446, 455 (Chk. S. Ct. Tr. 2006).

The failure to join an indispensable party may subject a judgment to collateral attack. A

judgment (or final order) entered against a person without notice or an opportunity to be heard is void and is subject to direct or collateral attack at any time, and a court that lacks personal jurisdiction over a person cannot enter a valid judgment against that person. Ruben v. Hartman, 15 FSM R. 100, 110 (Chk. S. Ct. App. 2007).

When the plaintiff was an interested party and never received notice or an opportunity to be heard, he could have pursued his claim by filing an appeal of the issuance of title because without notice, his time to file an appeal is extended beyond the statutory sixty-day time limit. The Kosrae State Court favors this approach when Land Commission or Land Court actions are at issue because an appeal ensures that the records needed to make a fair determination are before the court and because this approach promotes finality in decisions on land ownership by encouraging full participation of all interested parties at Land Court proceedings instead of allowing later, collateral attacks on their decisions. Siba v. Noah, 15 FSM R. 189, 195 (Kos. S. Ct. Tr. 2007).

As the purpose of probate is not to determine issues of ownership, probate petitioners should resolve issues regarding land ownership, if any, before they proceed with probate. Otherwise, the probate proceeding may be subject to collateral attack from those who may claim an interest in the property and who were not given notice or made a party to this proceeding. In re Land Noota, Neppi, 15 FSM R. 518, 519 (Chk. S. Ct. Tr. 2008).

A judgment or final order entered against a person without notice or an opportunity to be heard is void and is subject to direct or collateral attack at any time. Farek v. Ruben, 16 FSM R. 154, 157 (Chk. S. Ct. App. 2008).

A 1930s ¥400 purchase price for over 600,000 square meters of land on Kosrae does not make the whole transaction very questionable and thus the Trust Territory High Court judgment confirming it suspect when ¥400 would have equaled $200 in the 1930s and $200 was a sizeable sum then. The "sale" amount cannot be used to undermine the Trust Territory High Court judgment. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 302 (App. 2014).

As recognized by general law and as provided for in Compact of Free Association § 176, Trust Territory judgments that are final, although accorded res judicata status, can be subject to collateral attack or to relief from judgment. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 304 (App. 2014).

When a judgment has been entered against a party without notice or an opportunity to be heard, it is void and is subject to direct or collateral attack at any time. A judgment cannot be collaterally attacked merely because it is wrong. It can only be attacked on the grounds of lack of jurisdiction or due process violations that make the judgment void. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 304 (App. 2014).

Parties can, as a defense to the application of res judicata, collaterally attack a Trust Territory High Court judgment and should be permitted the opportunity to try to do so. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 305 (App. 2014).

Trust Territory High Court judgments should be afforded res judicata status but, like any judgment, those judgments may be subject to collateral attack on due process grounds. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 305 (App. 2014).

Kosrae Civil Procedure Rule 60(b) does not limit the power of the court to entertain an independent action. A party collaterally attacking a judgment has the burden to establish its prerequisites. The five essential elements that an independent action in equity to set aside a judgment must satisfy are: 1) a judgment which ought not, in equity and good conscience, to be enforced; 2) a good defense to the alleged cause of action on which the judgment is founded; 3) fraud, accident, or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; 4) the absence of fault or negligence on the part of the defendant; and 5) the absence of any adequate remedy at law. If any one of the elements is missing the court cannot take equitable jurisdiction of the case. Andrew v. Heirs of Seymour, 19 FSM R. 331, 341 (App. 2014).

A judgment entered against a party without notice or an opportunity to be heard is void and subject to direct or collateral attack. Andrew v. Heirs of Seymour, 19 FSM R. 331, 341 (App. 2014).

An argument that the appellants are bound by a Trust Territory High Court judgment but cannot attack that judgment because they were not parties to that case is nonsense and must be rejected. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 364, 367 (App. 2014).

It is well established, that when a judgment has been entered against a party without notice or an opportunity to be heard, it is void and subject to direct or collateral attack at any time. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 121 (App. 2017).

A collateral attack is not an opportunity to appeal or relitigate the matter. Merely leveling a claim of fraud, without connecting up such an allegation in terms of propounding sufficient evidence, does not satisfy the requisite burden of proof for a collateral attack of a Trust Territory judgment and fails to satisfy the five-prong test required to pierce a judgment via a collateral attack. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 122 (App. 2017).

– Finality of

The basic tenets of due process of law are notice and an opportunity to be heard. As applied to judgments, this means that a judgment may not be rendered in violation of these constitutional limitations and guaranties. An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated to apprise interested parties of the pendency of the action, which is itself a corollary to another requisite of due process, the right to be heard. Hartman v. Bank of Guam, 10 FSM R. 89, 96-97 (App. 2001).

One of the basic tenets of our system of jurisprudence is that of finality of judgments. The principle of finality is essential to ensure consistency and certainty in the law. This salutary principle is founded upon the generally recognized public policy that there must be some end to litigation. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 507 (App. 2016).

There is a sharp conflict about whether a judgment from which an appeal is pending has the finality requisite for the application of the res judicata doctrine. Waguk v. Waguk, 21 FSM R. 60, 71 (App. 2016).

– Final Judgment

A final judgment that precisely defines a disputed boundary cannot be entered until the Land Commission completes the survey partitioning the land. Once the boundary is determined, the defendant may then meaningfully assess his situation for purposes of considering any appeal. Therefore a motion to stay the survey's completion pending appeal will be denied. Youngstrom v. Phillip, 9 FSM R. 103, 106 (Kos. S. Ct. Tr. 1999).

When the court approves a stipulation that does not adjudicate all the claims or the rights and liabilities of all the parties, the stipulation does not constitute a final judgment. Bank of the FSM v. Hebel, 10 FSM R. 279, 287 (Pon. 2001).

Final judgments, as a rule, generally bind only the parties to the case and all those in privity with them. If a judgment is final, then the doctrine of res judicata applies, and that doctrine bars any further litigation of the same issues between the same parties or anyone claiming under those parties. Phillip v. Moses, 10 FSM R. 540, 546 (Chk. S. Ct. App. 2002).

An order that does not adjudicate all claims and the rights and liabilities of all parties is not a judgment or an order from which a judgment could be derived. Nor is such an order a partial final judgment when it does not have an express determination that there is no just reason for delay and an express direction for entry of judgment, both of which are required for the entry of a partial final judgment. Stephen v. Chuuk, 11 FSM R. 36, 40 (Chk. S. Ct. Tr. 2002).

An order that did not adjudicate any of the claims against the defendants or adjudicate any of the defendants' defenses and did not dispose of or dismiss either the case or the complaint, but only disposed of and dismissed the plaintiffs' and both sets of intervenors' claims against each other was therefore not a judgment because all it did was to combine both sets of intervenors and the plaintiffs together as joint plaintiffs against the two defendants. Stephen v. Chuuk, 11 FSM R. 36, 40-41 (Chk. S. Ct. Tr. 2002).

The Chuuk State Supreme Court may correct any errors in judgments or orders resulting from oversight or omission prior to final judgment, which under Rule 54 does not occur until the rights and duties of all parties have been finally determined. Konman v. Adobad, 11 FSM R. 34, 35 (Chk. S. Ct. Tr. 2002).

Under Rule 58, every judgment must be set forth in a separate document, and becomes effective only when docketed by the clerk under Rule 79(a). While an order may be final in some circumstances without Rule 58 compliance, the better course, and the one that the court endeavors to follow, is for the trial court to avoid any ambiguity on the finality point by following Rule 58. Richmond Wholesale Meat Co. v. George, 11 FSM R. 86, 87 (Kos. 2002).

When summary judgment is granted for a portion of the plaintiff's claim and when the court finds pursuant to Rule 54(b) that as to this portion of the claim there is no just reason for delay, the court will expressly direct entry of final judgment for that amount. Richmond Wholesale Meat Co. v. George, 11 FSM R. 86, 88 (Kos. 2002).

A cause of action that alleges that the plaintiffs' customary and traditional rights to use an island might be better described as intentional interference with a customary and traditional property right than trespass. That the plaintiffs referred to it as a trespass should not, in itself, be an obstacle to them prevailing on this point if the evidence warrants, because except for judgments rendered by default, every final judgment shall grant the relief to which the party in

whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings. Rosokow v. Bob, 11 FSM R. 210, 217 (Chk. S. Ct. App. 2002).

Judgment can be entered on less than all claims in a case if the court makes an express determination that there is no just cause for delay and expressly directs entry of judgment. Both elements must be present to give a partial adjudication final judgment status. When either element is absent, even if only because of oversight or a failure to appreciate that the case is one that is within Rule 54(b), the partial adjudication does not carry final judgment status. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 628 (App. 2003).

A partial adjudication in a consolidated case generally falls within Rule 54(b). Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 628 (App. 2003).

When the provisions of the trial court's consolidation order and later order assigning one docket number indicated that the cases were consolidated for all purposes including trial, and when the trial court dismissed the claims between certain parties but did not make the required findings under Rule 54(b), that dismissal was not a final judgment and thus the plaintiff in one of the consolidated actions remained a party to the consolidated action for purposes of later appeal. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 629 (App. 2003).

A final judgment will issue when the court expressly determines that there is no just cause for delay and hereby directs that judgment be entered. Dereas v. Eas, 12 FSM R. 629, 633 (Chk. S. Ct. Tr. 2004).

The general rule is that, in the absence of express authorization, interest is to be computed on a simple basis rather than compounded. Lee v. Lee, 13 FSM R. 68, 71 (Chk. 2004).

When a judgment on less than all claims in the pleadings is entered upon an express determination that there is no just reason for delay and upon an express direction for entry of judgment, that judgment is a final adjudication with regard to the claims disposed of by the judgment. A second judgment will issue later at the appropriate time that addresses the remaining claim. FSM Social Sec. Admin. v. Jonas, 13 FSM R. 171, 173 (Kos. 2005).

Civil Rule 54(c)'s clear command is that a default judgment cannot be different in kind from or exceed in amount that prayed for in the demand for judgment. This is in contrast to a case decided on the merits where every final judgment will grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 277-78 (Chk. 2005).

If a complaint shows that the plaintiff is entitled to any relief which the court can grant, regardless of whether the complaint asks for the proper relief, the complaint is sufficient, and since, (except as to a party against whom a judgment is entered by default), every final judgment must grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings, the trial court should consider whether to find liability and award damages on a cause of action not specifically named in the complaint but for which evidence was presented at trial. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 26 (App. 2006).

The court in every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings.

Uehara v. Chuuk, 14 FSM R. 221, 227 (Chk. 2006).

When, although the issue of continued monitoring of the marine environment remains unresolved and the attorney fees and costs award remains to be determined, there is no just cause for delay, and the clerk shall accordingly enter an appropriate judgment forthwith. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 422 (Yap 2006).

A grant of partial summary judgment is not a final judgment when the court did not expressly determine that there was no just reason for delay and did not then expressly direct the entry of a judgment, both of which are required for the entry of a partial final judgment. Dereas v. Eas, 15 FSM R. 135, 138 (Chk. S. Ct. Tr. 2007).

Final judgments, as a rule, generally bind only the parties to the case and all those in privity with them. If a judgment is final, then the doctrine of res judicata applies, and that doctrine bars any further litigation of the same issues between the same parties or anyone claiming under those parties. Nakamura v. Chuuk, 15 FSM R. 146, 149 (Chk. S. Ct. App. 2007).

Since a previously-awarded $770 discovery sanction will be incorporated into the final judgment as a matter of course, summary judgment for this amount is redundant, and will accordingly be denied. Berman v. Rosario, 15 FSM R. 429, 431 (Pon. 2007).

Any final judgment, when it is not entered by default, must grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings. Saimon v. Wainit, 16 FSM R. 143, 148 (Chk. 2008).

A denial of a request for reconsideration does not mean that a partial adjudication order is not subject to revision at any time. Even though the trial court may be very unlikely to revise it, the order remains legally capable of being revised (under the appropriate circumstances) any time before the trial court enters a final judgment. Smith v. Nimea, 16 FSM R. 346, 348 (App. 2009).

A court can enter judgment on less than all of the claims in a case only if the court makes both an express determination that there is no just cause for delay and an express direction for entry of judgment. Both elements must be present to give a partial adjudication final judgment status. When either element is absent, even if only because of oversight or a failure to appreciate that the case is one that is within Rule 54(b), the partial adjudication does not carry final judgment status. Smith v. Nimea, 16 FSM R. 346, 348-49 (App. 2009).

When a trial court dismisses less than all of the claims but does not expressly make the required findings under Rule 54(b), that dismissal is not a final decision. When the trial court did not expressly determine that there was no just cause for delay and did not expressly direct the entry of judgment, the appeal is not from a final decision since the trial court must do both for a partial adjudication to be deemed a final decision capable of being appealed. Smith v. Nimea, 16 FSM R. 346, 349 (App. 2009).

Final judgments may be enforced by contempt proceedings provided that enforcement at such time is required to prevent irreparable injury or multiple damage to the interests of the winning party and is otherwise in the interests of justice. Damarlane v. Pohnpei Transp. Auth., 17 FSM R. 307, 310 (Pon. 2010).

A trial court can enter a final judgment on less than all claims in a case only if the trial court makes an express determination that there is no just cause for delay and if it then also expressly directs entry of judgment. Both elements must be present to give a partial adjudication final judgment status. When either element is absent, even if only because of oversight or a failure to appreciate that the case is one that is within Rule 54(b), the partial adjudication does not carry final judgment status. Iriarte v. Individual Assurance Co., 17 FSM R. 356, 358 (App. 2011).

When, even though the trial court may have expressly directed entry of a judgment, it never made an express determination that there was no just cause for delay, the judgment is not an appealable final judgment since in the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties will not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and all the parties' rights and liabilities. Thus, although a filing designated as a "Judgment" was entered, it was, under Rule 54(b), not a final decision and therefore not appealable. Iriarte v. Individual Assurance Co., 17 FSM R. 356, 358-59 (App. 2011).

A contention that a trial court could not make as a ground for relief a claim that was not in the plaintiff's complaint is incorrect because, except as to a party against whom a judgment is entered by default, every final judgment must grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings. Berman v. Pohnpei, 17 FSM R. 360, 373 n.5 (App. 2011).

While the res judicata doctrine formally addresses situations involving prior and subsequent lawsuits, its reasoning and purpose may apply in a lawsuit that has already been adjudged since under the doctrine of merger, all interlocutory orders merge into the final judgment. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 373 (App. 2012).

When a final judgment is entered, temporary orders cease to be valid, subsisting orders. In general, a trial court's temporary orders issued during the pendency of a proceeding are superseded by the trial court's final order. Temporary orders are always subject to revision or repeal by the final judgment, even if not explicitly mentioned in that judgment. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 373-74 (App. 2012).

Interlocutory orders do not survive, but merge in, the final judgment. They are not accorded res judicata effect or final judgment status since interlocutory orders made in the course of an action or proceeding are not binding on the trial court when fashioning the controversy's final adjudication. This should be clear from the operation of FSM Civil Procedure Rule 54(b). Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 374 (App. 2012).

A motion to enforce a trial court's previous interlocutory order must be denied when it was not included in the final judgment or explicitly made a separate final judgment under Civil Rule 54(b). Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 374 (App. 2012).

An appellate opinion that merely dismissed the appeal for the lack of jurisdiction could not, and did not, convert any interlocutory order into an enforceable final order. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 374 (App. 2012).

When a May 1991 interlocutory order and a March 1991 preliminary injunction were neither included in the 1995 final judgment nor made into a separate final judgment, they were overruled, superseded, or made irrelevant by the 1995 amended judgment dissolving the injunction even though the May 17, 1991 order was not explicitly mentioned in the judgment. They ceased to be valid orders. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 375 (App. 2012).

Final judgments, as a rule, generally bind only the parties to the case and all those in privity with them. If a judgment is final, then the doctrine of res judicata applies, and that doctrine bars any further litigation of the same issues between the same parties or anyone claiming under those parties. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 302 (App. 2014).

A Kosrae State Court order cannot be a partial final judgment when the court failed to include the express determination required by Kosrae Civil Procedure Rule 54(b) "that there is no just reason for delay" and the "express direction for the entry of judgment" which would allow the entry of a partial final judgment. Andrew v. Heirs of Seymour, 19 FSM R. 331, 337-38 (App. 2014).

When the plaintiffs made two claims in their complaint – trespass and due process violation – and sought damages for both, but the trial court did not calculate any damages, neither claim has been fully adjudicated and therefore neither claim could be granted partial final judgment status under Rule 54(b). Andrew v. Heirs of Seymour, 19 FSM R. 331, 338 (App. 2014).

Since a permanent injunction is imposed only as part of a final judgment and since there is no final judgment in the absence of either a final judgment including the ruling on damages or an order containing express language that there is no just cause for delay and directing the clerk to enter a final judgment, the permanent injunction must be vacated, which would leave the earlier preliminary injunction in place. Andrew v. Heirs of Seymour, 19 FSM R. 331, 338 (App. 2014).

A dismissal with prejudice constitutes a judgment on the merits. Saito v. Siro, 19 FSM R. 650, 654 (Chk. S. Ct. Tr. 2015).

When the movants have failed to cite any reasons for the elongated delay in filing their motion for relief from judgment, much less extraordinary circumstances that would warrant having their Rule 60(b)(4) motion supersede the doctrine of *res judicata*, prejudice would invariably inure to the judgment creditor, in light of its justified reliance on the relevant December 28, 2007 default judgment's finality. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 509-10 (App. 2016).

When an appeal is pending, the underlying decision is generally not considered final for the purposes of claim preclusion. Waguk v. Waguk, 21 FSM R. 60, 71 (App. 2016).

When, in a partial summary judgment, the court did not make an express determination that there is no just reason for delay and direct the entry of a judgment, that order is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of the parties and cannot be a final judgment. Hartmann v. Department of Justice, 21 FSM R. 468, 474 (Chk. 2018).

Final judgments, as a rule, generally bind only the parties to the case and all those in privity with them, and, when a judgment is final, res judicata then applies. That doctrine bars any further litigation of the same issues between the same parties or anyone claiming under those parties. Estate of Gallen v. Governor, 21 FSM R. 477, 487 (Pon. 2018).

Although a default judgment is not an adjudication on a claim's merits, it is a final judgment with res judicata and claim preclusion effect. Setik v. Mendiola, 21 FSM R. 537, 554-55 (App. 2018).

A partial adjudication (one on less than all of the claims and parties) is not a final (and appealable) order unless the court, after expressly determining that there is no just reason for delay, expressly directs the entry of a final judgment. When either element is absent, even if only because of oversight or a failure to appreciate that the case is one that is within Rule 54(b), the partial adjudication does not carry final judgment status. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 180-81 (Pon. 2019).

When both Rule 54(b) elements are absent from a partial adjudication because the court did not make any determination that there was no just reason for delay and did not direct the clerk to enter a final judgment on those claims, the order is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties, should circumstances ever arise that would warrant its revision. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 181 (Pon. 2019).

When a party's production of its entire file, including correspondence, should satisfy the opposing six of the parties' ten requests for production, the opposing parties' motion to compel, to the extent Salomons' counsel said it was needed, has thus already been granted and production ordered. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 185 (Pon. 2019).

– Interest on

One whose property is converted is entitled to interest at the legal rate from the time of conversion. Bank of Guam v. Nukuto, 6 FSM R. 615, 616 (Chk. 1994).

Interest on unpaid social security taxes is assessed at 12% from date due until paid even if part of a court judgment and even though court judgments normally bear a 9% interest rate. FSM Social Sec. Admin. v. Kingtex (FSM), Inc. (II), 7 FSM R. 365, 370 (Yap 1996).

All judgments, by statute, accrue nine percent simple interest a year from date of entry of judgment until satisfied. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 670 (App. 1996).

When a second action and judgment is necessary to enforce and satisfy an earlier judgment, the statutory interest on judgments will be computed from the date of entry of the original judgment. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 670 (App. 1996).

As a general rule interest ceases to accrue on a judgment when the money is paid into a court of competent jurisdiction pursuant to the court's order, unless a statute provides otherwise. If a part of the principal is paid, then the statutory interest stops on that part. Partial payments

on a judgment are first to be applied to the accrued interest and then to reduction of the principal. The subsequent statutory interest is computed only on the remaining principal. Payments into court accrue interest for the benefit of the ultimate recipient as earned in the court's depository institution. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 670-71 (App. 1996).

Interest on a judgment is payable under 6 F.S.M.C. 1401 at nine percent a year. 11 F.S.M.C. 701(3), which provides for an award of attorney's fees in a civil rights action, should be construed to permit interest on an unpaid fee award. Davis v. Kutta, 8 FSM R. 338, 341 n.2 (Chk. 1998).

The FSM does not have a statute which prescribes when a plaintiff may obtain prejudgment interest, but prejudgment interest has been awarded in the FSM. Coca-Cola Beverage Co. (Micronesia) v. Edmond, 8 FSM R. 388, 392 (Kos. 1998).

Generally, interest is usually included as an element of damages as a matter of right when a debtor knows precisely what he is to pay and when he is to pay it. The complaining party has been deprived of funds to which he was entitled by virtue of the contract, the defaulting party knew the exact amount and terms of the debt, and the goal of compensation requires that the complainant be compensated for the loss of use of those funds. This compensation is made in the form of interest. In the absence of statute, an award of prejudgment interest is in the discretion of the court. Coca-Cola Beverage Co. (Micronesia) v. Edmond, 8 FSM R. 388, 392-93 (Kos. 1998).

Pre-judgment interest at the statutory, judgment rate of 9% is appropriate when the defendant wrote the insufficient funds checks to plaintiff because the defendant knew precisely the amount to which he was obligating himself, and the effective date of that commitment. Coca-Cola Beverage Co. (Micronesia) v. Edmond, 8 FSM R. 388, 393 (Kos. 1998).

When the amount awarded for prejudgment interest is more than the amount designated as usurious, it is excessive and must be reduced. Malem v. Kosrae, 9 FSM R. 233, 237 (Kos. S. Ct. Tr. 1999).

Attorney fee awards that are part of money judgments are entitled to bear interest at the judgment rate until satisfied. Aggregate Sys., Inc. v. FSM Dev. Bank, 9 FSM R. 569, 570 (Chk. 2000).

Unsatisfied judgments accrue nine percent simple interest from date of entry because the statute does not authorize compounding. Aggregate Sys., Inc. v. FSM Dev. Bank, 9 FSM R. 569, 570 (Chk. 2000).

The generally recognized rule is that interest should not bear interest, but compound interest may be awarded if authorized by statute. When the statute reads "nine percent a year" it is not an express authorization to compound interest annually, but is instead, without more, merely a statement of the rate of simple interest. Aggregate Sys., Inc. v. FSM Dev. Bank, 9 FSM R. 569, 570 (Chk. 2000).

Generally, pre-judgment interest is only included as an element of damages as a matter of right when a debtor knows precisely what he is to pay and when he is to pay it. This occurs when a party has been deprived of funds to which he was entitled by virtue of the contract, and the defaulting party knew the exact amount and terms of the debt. In those types of cases, the

goal of compensation requires that the complaining party be compensated for the loss of use of those funds. This compensation is made in the form of interest. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 196 (Kos. S. Ct. Tr. 2001).

In the absence of a statute, an award of prejudgment interest is in the court's discretion. If pre-judgment interest is awarded, the statutory, post-judgment interest rate of 9% per annum is appropriate. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 196 (Kos. S. Ct. Tr. 2001).

Pre-judgment interest is not appropriate and a claim for it will be denied when there was no agreement involving a promise to pay money, when the plaintiff was not deprived of funds that he was entitled to because there was no contract made between the parties to pay money, and when the plaintiff was awarded damages based upon the equitable doctrine of promissory estoppel for the plaintiff's expenditures made in reliance on a promise. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 197 (Kos. S. Ct. Tr. 2001).

Payments on judgments are credited first to accrued interest, and then to principal. Interest accrues as simple interest. Narruhn v. Chuuk, 11 FSM R. 48, 52 (Chk. S. Ct. Tr. 2002).

If money on deposit with the court is eventually paid out in partial satisfaction of a judgment, the statutory interest, at least on the sum paid into court, stops accruing on the date the money was paid into court and the only interest the judgment creditor would be entitled to on that money would be the amount it earned while on deposit with the court. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM R. 514, 517 (Chk. 2003).

As a general rule, interest on a judgment ceases to accrue when money is paid into a court of competent jurisdiction pursuant to the court's order. If a part of the principal is paid, then the statutory interest stops on that part. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM R. 514, 517 (Chk. 2003).

If money currently deposited with the court ultimately goes toward satisfaction of a judgment, then the statutory interest on whatever part of it that was attributable to the principal when paid into court will have ceased accruing on the date it was paid into court. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM R. 514, 517 (Chk. 2003).

Partial payments on a judgment are first to be applied to the accrued interest and then to reduction of the principal. The subsequent statutory interest is computed only on the remaining principal. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM R. 514, 517 n.1 (Chk. 2003).

As a general rule, interest on a judgment ceases to accrue when money is paid into a court of competent jurisdiction pursuant to the court's order. If a part of the principal is paid, then the statutory interest stops on that part. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM R. 514, 517 (Chk. 2003).

The deposited money's ultimate recipient is entitled to the interest the money earned while deposited with the court. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM R. 514, 517 (Chk. 2003).

In calculating the amounts due on judgments, the 9% statutory interest ceases to accrue at the point the judgment-debtor pays the money credited to the principal into court and after that time the only interest a judgment-creditor is entitled to is that paid by the court's depository institution on the deposited money. In re Engichy, 11 FSM R. 520, 534 (Chk. 2003).

The only interest remitted to a judgment-creditor other than that earned before the money was deposited with the court will be whatever amount the court's depository institution has paid on the deposited money. In re Engichy, 12 FSM R. 58, 71 (Chk. 2003).

A plaintiff is only entitled to a judgment which represents the amount of money he lent to the defendants and the $100,000 in interest he seeks cannot be awarded when it is the product of an unlawful and usurious interest rate. Walter v. Damai, 12 FSM R. 648, 649 (Pon. 2004).

Interest on unpaid social security taxes continues to accrue at 12% until paid, even though a judgment normally bears interest at 9%. FSM Social Sec. Admin. v. Lelu Town, 13 FSM R. 60, 62 (Kos. 2004).

Nine percent a year is the legal or statutory interest rate on judgments. Such interest is only simple interest and is not compounded. Lee v. Lee, 13 FSM R. 68, 71 (Chk. 2004).

A judgment will accrue 9% interest thereon from the date the clerk enters judgment. Uehara v. Chuuk, 14 FSM R. 221, 227-28 (Chk. 2006).

In those few cases in which the court has awarded prejudgment interest when it was not provided for by contract or statute, the court has always awarded the legal interest rate – 9% simple interest. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 420-21 (Yap 2006).

All money judgments bear nine percent interest. As part of the judgment, taxable costs bear that same interest imposed by statute and attorney's fee sanctions are a form of "costs" which will bear interest after judgment has been entered. Adams v. Island Homes Constr., Inc., 14 FSM R. 473, 475 (Pon. 2006).

Since, if costs are allowed without express mention in the judgment, the date of the judgment starts the accrual of interest on the costs due, therefore earlier awarded Rule 37 attorney fee sanctions would bear interest from the date the judgment was entered because failing to allow attorneys' fees awards to bear interest would give parties against whom such awards have been entered an artificial and undesirable incentive to appeal or otherwise delay payment. Adams v. Island Homes Constr., Inc., 14 FSM R. 473, 476 (Pon. 2006).

If the money is paid into court, interest ceases to accrue on a judgment, and if only a part of the principal is paid, then the statutory interest stops on that part. Partial payments on a judgment are first to be applied to the accrued interest and then to reduction of the principal. The subsequent statutory interest is computed only on the remaining principal. Payments into court accrue interest for the benefit of the ultimate recipient as earned in the court's depository institution. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 501, 504 (Yap 2006).

A court has the discretion to award pre-judgment interest, but it is not a matter of right unless the debtor knows precisely what he is to pay and when payment is due. The purpose of awarding interest is to compensate the complaining party for losing use of the funds. George v. Albert, 15 FSM R. 323, 328 (Kos. S. Ct. Tr. 2007).

If a money judgment in a civil case is affirmed, whatever interest is allowed by law will be payable from the date the judgment was entered in the court appealed from, but if a judgment is modified or reversed with a direction that a judgment for money be entered in the court appealed from, the mandate must contain instructions with respect to allowance of interest. AHPW, Inc. v. Pohnpei, 15 FSM R. 520, 523 (Pon. 2008).

A prevailing party should not be deprived of statutory interest accrued on a judgment simply because further court proceedings become necessary to collect that judgment. AHPW, Inc. v. Pohnpei, 15 FSM R. 520, 523 (Pon. 2008).

The FSM Supreme Court is reticent to issue an inequitable decision denying post-judgment interest that would punish the prevailing party and possibly encourage losing parties to instigate post-judgment litigation for the purpose of lessening its eventual financial liability, a particularly relevant concern in a case involving a substantial award with the potential to accrue substantial interest. AHPW, Inc. v. Pohnpei, 15 FSM R. 520, 525 (Pon. 2008).

A judgment should not earn interest if it 1) is not supported by applicable law, 2) needs further factual/evidentiary findings for its support, and/or 3) is ultimately reversed as to the underlying finding of liability. AHPW, Inc. v. Pohnpei, 15 FSM R. 520, 527 (Pon. 2008).

The equitable purpose of post-judgment interest is to compensate the successful plaintiff for being deprived of the compensation for the loss from the time between the ascertainment of the damage and the payment by the defendant. A judgment lacking a sufficient legal or evidentiary basis or requiring further factual development should not accrue interest. A legally sufficient judgment that is basically sound but on remand is modified to include additional clarification or explanation without consideration of new evidence or the making of additional findings should accrue interest. AHPW, Inc. v. Pohnpei, 15 FSM R. 520, 528 (Pon. 2008).

Equitable principles favor calculating the interest in a manner that more fully compensates the prevailing party so that once a final judgment has been entered as to liability and damages, vacation of the damage award on appeal and issuance of an order requiring further proceedings to explain the basis for the recoverable damages will not prevent accrual of post-judgment interest on the amount common to the earlier and later judgments from the date the original judgment was entered. AHPW, Inc. v. Pohnpei, 15 FSM R. 520, 528 (Pon. 2008).

When the appellate division affirmed the underlying liability as well as the base award for the pepper business lost profits and, although the appellate division vacated the trebled portion of the award, it was not vacated for legal or evidentiary insufficiency and it did not request entry of any additional findings, but rather requested further explanation as to why the trial court applied the statute to the damages at issue and explicitly allowed for reinstatement of the trebled damages; and when, on remand, the trial court explained that the statute compelled a mandatory trebling of damages and reinstated the same award for a second time without the consideration of any additional evidence or the making of any additional factual findings with respect to the award of pepper business lost profits damages, the first and second judgments in this matter are identical, and both are supported by the exact same evidentiary and legal basis, and since the trebled award for the pepper business lost profits damages was fully ascertainable on the date the first judgment was entered, interest on the award will accrue from that date. AHPW, Inc. v. Pohnpei, 15 FSM R. 520, 528 (Pon. 2008).

Pre-judgment interest cannot be awarded until the court has determined when payment

would reasonably have been due. Saimon v. Wainit, 16 FSM R. 143, 148 (Chk. 2008).

The legal rate of interest is 9%, and is simple interest, not compounded. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 543, 546 (Yap 2009).

When there is no evidence in the record that the defendant knew of, or had agreed to, a contractual requirement that he pay interest and the ledger sheets admitted into evidence do not show any interest charges and when none of the situations where the courts have previously allowed prejudgment interest is present, prejudgment interest will be denied. George v. Albert, 17 FSM R. 25, 33 (App. 2010).

The statutory interest rate is 9% per year, which the court may impose prejudgment when the defendant knew precisely the amount to which he was potentially obligating himself, and the effect date of that commitment. Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 35 n.6 (Pon. 2011).

Injured parties in maritime tort cases are typically awarded prejudgment interest. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 18 FSM R. 165, 175 (Yap 2012).

While the FSM statute, 6 F.S.M.C. 1401, by its terms, applies solely to judgments from the date of entry, the court has judicially adopted 9% simple interest per annum as the legal interest rate to be applied when prejudgment interest is awarded and the interest rate has not been otherwise designated by statute or contract. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 18 FSM R. 165, 176 (Yap 2012).

When a stipulated judgment waived the statutory interest if the judgment was satisfied within 90 days and the judgment was not satisfied within that time, then the post-judgment interest must accrue from the date of entry of judgment. Kama v. Chuuk, 18 FSM R. 326, 335 (Chk. S. Ct. Tr. 2012).

When a limitation of liability fund has been constituted, any judgment covered by that fund would not include any further prejudgment interest because as a general rule, once the funds are paid into court, the only interest that the prevailing party is entitled to is the interest earned by the money in the court's depository institution. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 94 (Yap 2013).

Money judgments bear interest as provided by law. Under the applicable Kosrae statute, the Kosrae State Court has no discretion. All judgments for the payment of money bear nine percent interest from the date the judgment is entered. George v. Sigrah, 19 FSM R. 210, 216 (App. 2013).

All Kosrae State Court money judgments automatically bear 9% interest regardless of whether the court specifically ordered it, or remembered to put it in the judgment, or whether it is stated in the judgment. George v. Sigrah, 19 FSM R. 210, 217 (App. 2013).

A judgment holder might voluntarily agree to waive his or her statutory right to 9% interest on a money judgment either as an inducement for the defendant to stipulate to a judgment or to pay it off quickly (pay in full by ___ and I'll waive the interest) or for some other reason, but the Kosrae State Court does not have the authority to suspend or vacate liability for the 9% post-judgment interest as that would be an act inconsistent with the law. George v. Sigrah, 19 FSM

R. 210, 217 (App. 2013).

The nine percent on Kosrae State Court judgments is simple interest from date of entry since the statute does not authorize compounding. George v. Sigrah, 19 FSM R. 210, 217 n.4 (App. 2013).

Partial payments on a judgment are to be first applied to the accrued interest and then to reduction of the principal with the subsequent statutory interest being computed only on the remaining principal. George v. Sigrah, 19 FSM R. 210, 219 (App. 2013).

In the absence of a statute an award of prejudgment interest is in the court's discretion. Prejudgment interest is recoverable in cases where the plaintiff is entitled to recover a liquidated sum of money. Johnny v. Occidental Life Ins., 19 FSM R. 350, 363 (Pon. 2014).

When the damages amount was a liquidated sum and the insurance contract involved a promise to pay money if certain events occurred, the plaintiff will be awarded the 9% statutory rate of interest from a reasonable time of 60 days after the diagnosis of her daughter's cancer was submitted to the insurer in a claim form for accident and health policies. Johnny v. Occidental Life Ins., 19 FSM R. 350, 363 (Pon. 2014).

Statutes, 6 F.S.M.C. 1401; 8 TTC 1, that read: "Every judgment for the payment of money shall bear interest at the rate of nine percent a year from the date it is entered" are statutes of general application to money judgments and not statutes that specifically address judgments against sovereign defendants. Eot Municipality v. Elimo, 20 FSM R. 7, 11 (Chk. 2015).

In the absence of an express statutory waiver of immunity against post-judgment interest, the Chuuk government is not liable for such interest even though there is a statute of general application imposing 9% post-judgment interest on money judgments, but Chuuk is liable for the 5% interest it agreed to on a loan. Eot Municipality v. Elimo, 20 FSM R. 7, 11-12 (Chk. 2015).

Since injured parties in admiralty and maritime tort cases are typically awarded prejudgment interest, when the plaintiff pled a claim for prejudgment interest, the 9% statutory interest will start on the damages award on the day the vessel ran aground. The 9% statutory interest will start on the costs award on the day the amended judgment is entered. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 80 (Pon. 2015).

When, under prior precedent and the law of the case doctrine, the state government is immune from an interest award as a part of a judgment against the state unless the state has expressly consented to the imposition of interest and when the state government has not expressly consented, by statute or by contract, to the imposition of interest for claims or for a conversion claim, no interest will be permitted. Eot Municipality v. Elimo, 20 FSM R. 482, 489 (Chk. 2016).

Sovereign immunity does bar the imposition of interest as part of or on a judgment against the State of Chuuk. Eot Municipality v. Elimo, 20 FSM R. 482, 490 (Chk. 2016).

A declaratory judgment is not a money judgment and does not need to mention interest. Kama v. Chuuk, 20 FSM R. 522, 533 (Chk. S. Ct. App. 2016).

When part of the plaintiff's damages claim rests on their legal conclusion that interest can be imposed and included in a money judgment against the state, but this legal conclusion is

incorrect, a default judgment against the State of Chuuk will be entered, but no interest will accrue on the judgment amount. Onanu Municipality v. Elimo, 20 FSM R. 535, 543 (Chk. 2016).

When no payments have been made on the judgment, it has, since it was entered, accrued interest at the rate of 9% per year, simple interest. Smith v. Nimea, 22 FSM R. 131, 136 (Pon. 2019).

If a money judgment is affirmed, the interest allowed by law will be payable from the date the judgment was entered in the court appealed from. Smith v. Nimea, 22 FSM R. 131, 136 (Pon. 2019).

When the judgment on which it accrues is joint and several, the defendants' liability for the post-judgment interest is also joint and several. Smith v. Nimea, 22 FSM R. 131, 136 (Pon. 2019).

Post-judgment interest compensates a successful litigant for being deprived of compensation for the litigant's loss for the time between the court's ascertainment of the damages amount owed and the defendant's payment. Smith v. Nimea, 22 FSM R. 131, 136 (Pon. 2019).

When a legally sufficient judgment is basically sound but is, on remand, modified to include additional clarification or explanation, without considering new evidence or making additional findings, it will accrue interest from the date of the original judgment. Smith v. Nimea, 22 FSM R. 131, 136 (Pon. 2019).

When a final judgment has been entered as to liability and damages, the vacation of the damage award on appeal and issuance of an order requiring further proceedings to explain the basis for the recoverable damages will not prevent accrual of post-judgment interest on the amount common to the earlier and later judgments from the date the original judgment was entered. Smith v. Nimea, 22 FSM R. 131, 136 (Pon. 2019).

When the appellate division did not vacate, but affirmed, the damages award, and when it did not alter the judgment amount, but merely required that the judgment be clarified so as to name the liable defendant(s), both defendants will be liable, jointly and severally, for the accrued interest since the judgment date. Smith v. Nimea, 22 FSM R. 131, 136 (Pon. 2019).

A litigant does not lose his judgment's accrued interest merely because further proceedings are needed to enforce the judgment. Smith v. Nimea, 22 FSM R. 131, 136 (Pon. 2019).

The interest on judgments is simple interest; it is not to be compounded. FSM Dev. Bank v. Carl, 22 FSM R. 365, 376 (Pon. 2019).

– Payment and Satisfaction

Judgment creditors will be paid in their priority order except for those who release their claims in writing. Payment of a released judgment may be returned to the judgment debtor. Mid-Pacific Constr. Co. v. Senda, 7 FSM R. 371, 373-75 (Pon. 1996).

As a general rule interest ceases to accrue on a judgment when the money is paid into a

court of competent jurisdiction pursuant to the court's order, unless a statute provides otherwise. If a part of the principal is paid, then the statutory interest stops on that part. Partial payments on a judgment are first to be applied to the accrued interest and then to reduction of the principal. The subsequent statutory interest is computed only on the remaining principal. Payments into court accrue interest for the benefit of the ultimate recipient as earned in the court's depository institution. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 670-71 (App. 1996).

A court should retain in its trust account any unclaimed judgments paid into court until the twenty years has run. Otherwise, a judgment creditor may appear and be unable to recover funds rightfully his without yet more litigation and collection efforts, and, if the funds have escheated to a government, a legislative act and appropriation. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 672 (App. 1996).

Generally, a judgment debtor who has paid damages for his wrongful act has no right to receive any part of the payment left unclaimed by the parties because the judgment debtor is not the rightful owner of unclaimed portions of the judgment. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 672 (App. 1996).

Payments totaling the principal amount of a judgment have been paid do not fully satisfy the judgment when the judgment expressly provides for 9% interest and for attorney's fees incurred in enforcing the judgment. Even if it did not so state, the judgment creditor would be entitled to statutory interest of 9% under 6 F.S.M.C. 1401. Until such time as all interest and a reasonable attorney's fee is paid, the judgment remains unsatisfied. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM R. 100, 103 (Kos. 2001).

Payments should be applied first to interest, then principal. Davis v. Kutta, 10 FSM R. 224, 226 (Chk. 2001).

Any person or entity authorized by law to pay the state's debts, in the absence of legislation to the contrary, must use money appropriated by the Legislature to pay judgments against the state in the order in which the judgments were entered, paying the oldest judgment in full before any payments are made on the next oldest judgment. Narruhn v. Chuuk, 11 FSM R. 48, 54 (Chk. S. Ct. Tr. 2002).

Assuming that the transfer of title to property by the judgment-debtors to a judgment-creditor was not a sham transaction with the judgment-debtors retaining ownership of it and the judgment-creditor merely selling it for them, but was a bona fide transfer of title, it was within the judgment-creditor's rights to take property instead of cash as payment on its judgment. In re Engichy, 11 FSM R. 520, 533 (Chk. 2003).

When a judgment-creditor decides to take title to property as full payment for the outstanding judgment in lieu of a cash payment for the remainder of the judgment, the judgment is satisfied at that point, not at some later time when the judgment-creditor has managed to sell the property for cash. A judgment-creditor accepting title to property in lieu of cash as full satisfaction of its judgment takes the risk that its later sale of the property could amount to less (or the chance it could be more) than amount due on the judgment or that the sale might fall through. In re Engichy, 11 FSM R. 520, 533 (Chk. 2003).

While the Chuuk Financial Control Commission is precluded from paying any court ordered

judgments unless specifically appropriated by law, it must, in a timely manner, develop in consultation with the Governor and Attorney General subsequent legislation for appropriation or other purposes for consideration by the Chuuk Legislature to address court judgments. That the Commission has disclaimed this responsibility imparted is in material part a basis for the court's ruling that ordering Chuuk to pay the judgment through taking the first step in that direction by proposing a payment plan is not a workable means of obtaining a satisfaction of the judgment, and the parlous state of Chuuk's finances is more reason, not less, why it should have been forthcoming with a plan for payment. Estate of Mori v. Chuuk, 11 FSM R. 535, 540 (Chk. 2003).

A civil rights judgment must not depend on legislative action for satisfaction. Estate of Mori v. Chuuk, 11 FSM R. 535, 541 (Chk. 2003).

In the usual case payment of a money judgment against the state must abide a legislative appropriation, but a judgment for the violation of rights guaranteed by the FSM Constitution is a species apart. If there is no meaningful remedy for such a violation, which means a judgment subject to satisfaction in a reasonably expeditious manner, then that right afforded constitutional protection is an illusion, and, if that right is reduced to an illusion, then our Constitution itself is reduced to a solemn mockery. Estate of Mori v. Chuuk, 11 FSM R. 535, 541 (Chk. 2003).

When a judgment was entered in a plaintiff's favor and against a defendant prior to the defendant's death, dismissal of the matter is not appropriate as the claim has not been extinguished. The unsatisfied portion of the judgment still exists. Bank of the FSM v. Rodriguez, 11 FSM R. 542, 544 (Pon. 2003).

Even if the Chuuk Financial Control Commission were at some future time to assume its responsibility to develop legislation for appropriation to address court judgments when it has thus far declined to do so, payment of the judgment would still have to await legislative appropriation, a state of affairs that the principle of supremacy of the FSM Constitution does not countenance where a judgment based on a civil rights violation is concerned. Davis v. Kutta, 11 FSM R. 545, 549 (Chk. 2003).

The remedy for violation of a constitutional right, to be meaningful, must be one that can be realized upon in a reasonably expeditious manner. When more than six and a half years have elapsed since the judgment was entered, 6 F.S.M.C. 707, which prohibits the garnishment of funds owed by the FSM to a state, is unconstitutional as it applies to the case's judgment for a violation of civil rights guaranteed by the FSM Constitution. In practical terms, that statute takes from the plaintiff the only means of securing a reasonably expeditious satisfaction of the judgment. Davis v. Kutta, 11 FSM R. 545, 549 (Chk. 2003).

Process to enforce a judgment for the payment of money will be a writ of execution, unless the court directs otherwise. The procedure on execution will be in accordance with the practice and procedure of the state in which the court is held, existing at the time the remedy is sought, except that any FSM statute governs to the extent that it is applicable. Barrett v. Chuuk, 12 FSM R. 558, 560 (Chk. 2004).

Failure to pay a judgment in accordance with a court order may in the appropriate case constitute conduct that is sanctionable by an order of contempt under 4 F.S.M.C. 119. For such an order to issue, it must be shown that the putative contemnor had knowledge of the order and the ability to obey, and that he did not do so. Barrett v. Chuuk, 12 FSM R. 558, 561 (Chk. 2004).

Repeated, intentional instances of failure of a state to pay a judgment does not constitute a separate, constitutional claim for deprivation of property without due process where the original underlying claim is not constitutional in character, but is based on common law contract and when there is no constitutional claim that supports the judgment itself, nor a national statute applicable that implicates a "clear and substantial" national interest. Barrett v. Chuuk, 12 FSM R. 558, 561-62 (Chk. 2004).

In the usual case, payment of a money judgment against a state must abide a legislative appropriation. A state will have the ability to pay a judgment as contemplated by 6 F.S.M.C. 1409 when its legislature appropriates money for that purpose. Barrett v. Chuuk, 12 FSM R. 558, 562 (Chk. 2004).

The parties are free to stipulate how any payment on a judgment should be applied – what part of the judgment it should be applied to – but that in the absence of such an agreement, the court would usually presume any payment to be a general payment on the judgment as a whole. Stephen v. Chuuk, 18 FSM R. 22, 27 (Chk. 2011).

While a statute of limitations bars a claim after the passage of a specified time, the common-law rebuttable presumption of payment is, on the other hand, used as evidence, based on the lapse of time, to create a rebuttable inference that the debt has been paid or otherwise satisfied. The presumption is based on the assumption that a person, before the passage of twenty years, would have recovered what belonged to that person unless prevented by some impediment. The persuasiveness of the presumption may be strengthened or diminished by evidence supporting or contradicting the significance of the lapse of time. Kama v. Chuuk, 18 FSM R. 326, 335 (Chk. S. Ct. Tr. 2012).

The presumption of payment of a judgment cannot be raised until after the lapse of 20 years from when the debt is either due or demandable. Kama v. Chuuk, 18 FSM R. 326, 335 (Chk. S. Ct. Tr. 2012).

The presumption of payment of a judgment is prima facie only and may be rebutted. An acknowledgment of the debt within twenty years preceding the action, if made by the debtor, rebuts such presumption. Such acknowledgment need not recognize the debt as a valid and subsisting obligation, and need not expressly nor impliedly contain a promise to pay. It is sufficient if it shows that the debt in question has never been paid. An admission of non-payment coupled with a refusal to pay is sufficient to rebut the presumption of payment. Finally, part payment by a debtor within twenty years before action is begun rebuts such presumption. Kama v. Chuuk, 18 FSM R. 326, 335-36 (Chk. S. Ct. Tr. 2012).

The 6 F.S.M.C. 801 provision that: "[a] judgment of any court shall be presumed to be paid and satisfied at the expiration of twenty years after it is rendered" reflects the common-law rebuttable presumption of payment after a lapse of twenty years. It can therefore be implied that the 20-year statute of limitations for enforcing a judgment is a rule that creates a rebuttable presumption of payment. Kama v. Chuuk, 18 FSM R. 326, 336 (Chk. S. Ct. Tr. 2012).

The doctrine of prescription or presumption of payment of a judgment does not apply when 20 years has not yet elapsed. Kama v. Chuuk, 18 FSM R. 326, 336 (Chk. S. Ct. Tr. 2012).

Partial payments on a judgment are to be first applied to the accrued interest and then to reduction of the principal with the subsequent statutory interest being computed only on the remaining principal. George v. Sigrah, 19 FSM R. 210, 219 (App. 2013).

A $300 payment on a 1998 judgment could not have reduced the principal by $300, and considering the age of the judgment and how little has been paid, it likely did not reduce the principal at all. Therefore the part of the trial court order in aid of judgment reducing the judgment principal by $300 is reversed. George v. Sigrah, 19 FSM R. 210, 219-20 (App. 2013).

When the current matter is in the post-judgment phase and a separate civil action raises claims that the debt has been discharged, the court will defer those issues to be determined in that other civil action and deny the defendant's motion for court order declaring satisfaction of account. FSM Dev. Bank v. Carl, 20 FSM R. 592, 594 (Pon. 2016).

– Relief from Judgment

Rule 60(b)(6) of the FSM Rules of Civil Procedure permits the court to relieve a party from judgment for any reason justifying the relief. Bank of the FSM v. Bartolome, 4 FSM R. 182, 184 (Pon. 1990).

Trial courts have jurisdiction to set aside judgments either by a Rule 60 relief from judgment motion or by an independent action in equity. Election Comm'r v. Petewon, 6 FSM R. 491, 499 (Chk. S. Ct. App. 1994).

The purpose of Civil Rule 60(b) is to provide the trial court with a tool for navigating between the conflicting principles that litigation must be brought to an end and that justice should be done. Mid-Pacific Constr. Co. v. Senda, 7 FSM R. 129, 133 (Pon. 1995).

A Rule 60 motion for relief from judgment cannot be granted when the order from which relief is sought is not a final judgment. In re Estate of Hartman, 7 FSM R. 409, 410 (Chk. 1996).

After a judgment has been appealed, a trial court, without appellate court permission, has the power to both consider, and deny Rule 60(b) relief from judgment motions. A trial court, however, cannot grant a Rule 60(b) motion while an appeal is pending. If the trial court is inclined to grant the motion, it should issue a brief memorandum so indicating. Armed with this, movant may then request the appellate court to remand the action so that the trial court can vacate judgment and proceed with the action accordingly. Walter v. Meippen, 7 FSM R. 515, 517-18 (Chk. 1996).

Because relief from judgment may be granted upon such terms as are just, a court may order as relief that the trial be resumed at some point other than the beginning. Walter v. Meippen, 7 FSM R. 515, 518 (Chk. 1996).

Relief from judgment is addressed to the discretion of the court, which must balance the policy in favor of hearing a litigant's claims on the merits against the policy in favor of finality. Walter v. Meippen, 7 FSM R. 515, 518 (Chk. 1996).

A stay of judgment may be granted while a motion for relief from judgment is pending. Walter v. Meippen, 7 FSM R. 515, 519 (Chk. 1996).

When a judgment is on appeal, a trial court, without appellate court permission, has the power to both consider and deny Rule 60(b) relief from judgment motions, but cannot grant such a motion while an appeal is pending. If inclined to grant the motion, the trial court issues a brief memorandum so indicating. Armed with this, the movant can then request the appellate court to remand the action so that judgment could be vacated. If the Rule 60(b) motion is denied, the movant may appeal from the order of denial. A trial court's jurisdiction to consider and deny a Rule 59(e) motion (motion to alter or amend judgment) after an appeal has been filed is similar to its power with respect to a Rule 60(b) motion. Stinnett v. Weno, 8 FSM R. 142, 145 & n.1 (Chk. 1997).

In the Kosrae State Court, motions for relief from judgment or to alter or amend a judgment are non-hearing motions. Langu v. Kosrae, 8 FSM R. 455, 457 (Kos. S. Ct. Tr. 1998).

A Rule 60(b) motion is for relief from the judgment of a trial court, not the reconsideration of an appellate order. A motion to reconsider before the Pohnpei Supreme Court appellate division is not analogous to a relief from judgment motion. It is instead analogous to the types of motions to reconsider specifically mentioned in FSM Appellate Rule 4(a)(4). Damarlane v. Pohnpei, 9 FSM R. 114, 118-19 (App. 1999).

A motion to vacate an order of dismissal under Rule 60(b) that is not brought under any of the six enumerated bases set out in Rule 60(b), and reurges the same points made in the response to the original motion to dismiss is plainly not a Rule 60(b) motion, but is considered as a motion for reconsideration. Kosrae v. Worswick, 9 FSM R. 536, 538 (Kos. 2000).

A motion that a judgment be amended to include a statement of the statutory interest and that its title be corrected to read "judgment" instead of "proposed order," is not one to amend, but rather more properly one to correct a judgment. As such Rule 60 applies, not Rule 59. Walter v. Chuuk, 10 FSM R. 312, 315 (Chk. 2001).

With the exception of void judgments under Rule 60(b)(4), the grant or denial of Rule 60 relief rests with the trial court's sound discretion. The discretion is not an arbitrary one to be capriciously exercised, but a sound legal discretion guided by accepted legal principles. Amayo v. MJ Co., 10 FSM R. 371, 377 (Pon. 2001).

Rule 59 provides a means for relief in cases in which a party has been unfairly made the victim of surprise, but relief will be denied if the party failed to seek a continuance. Surprise, along with excusable neglect, is also addressed by Rule 60(b)(1). Thus, if a party is surprised at trial he is amply protected by Rules 59(a) and 60(b). Amayo v. MJ Co., 10 FSM R. 371, 383 (Pon. 2001).

A successor trial court judge has the same power to grant relief from judgment under Rule 60(b) that the original trial court judge had. A successor judge may vacate a judgment when the original judge would have had an adequate legal basis to do so. Kama v. Chuuk, 10 FSM R. 593, 597 (Chk. S. Ct. App. 2002).

Appellate review of a grant or denial of a motion for relief from judgment is limited to determining whether the trial court abused its discretion. Kama v. Chuuk, 10 FSM R. 593, 598 (Chk. S. Ct. App. 2002).

The right to seek relief from judgment under Rule 60(b) is restricted to a party or a party's legal representative. Rule 60(b) explicitly requires a motion from the affected party, not from the trial court acting *sua sponte*. Kama v. Chuuk, 10 FSM R. 593, 598 (Chk. S. Ct. App. 2002).

The Rule 60(b) requirement that a party seek relief is unlike a Rule 60(a) correction of a clerical error in a judgment, which may be corrected by the court of its own initiative or on any party's motion. Kama v. Chuuk, 10 FSM R. 593, 598 (Chk. S. Ct. App. 2002).

It was an erroneous conclusion of law for a trial court to hold it had the authority to move *sua sponte* to relieve a party from judgment. Kama v. Chuuk, 10 FSM R. 593, 598 (Chk. S. Ct. App. 2002).

When the trial court *sua sponte* set aside a judgment without notice and an opportunity to be heard, it set aside the judgment without due process of law. Kama v. Chuuk, 10 FSM R. 593, 598 (Chk. S. Ct. App. 2002).

Relief from judgment must be sought by motion with notice to opposing party and an opportunity for him to be heard. The motion must state the grounds for the relief, including the facts and the law on which the grounds are based, and why the movant believes that the motion is brought within a reasonable time, that is, the movant must show good reason for its failure to take appropriate action sooner. If the motion is brought pursuant to Rule 60(b)(6), the movant must also state the nature of the extraordinary circumstances that are the ground for relief. Kama v. Chuuk, 10 FSM R. 593, 600 (Chk. S. Ct. App. 2002).

The movant for relief from judgment must keep in mind that generally the standard for reopening a consent final judgment is a strict one. Kama v. Chuuk, 10 FSM R. 593, 600 (Chk. S. Ct. App. 2002).

When an offer of judgment and an acceptance of offer of judgment were made solely between the plaintiff and one defendant and neither party had the power to bind the other defendants to any judgment by such offer and acceptance, the judgment will be modified under Civil Rule 60(a) to clearly reflect that the judgment is only against the one defendant. Konman v. Adobad, 11 FSM R. 34, 35-36 (Chk. S. Ct. Tr. 2002).

When there is no judgment in the case but only an interlocutory order confirming a settlement agreement between fewer than all the parties to the action, a motion for relief from judgment will properly be characterized, not as one for relief from judgment under Rule 60(b), but as one to reconsider an interlocutory order. A party cannot seek relief from a judgment that does not exist. Stephen v. Chuuk, 11 FSM R. 36, 43 (Chk. S. Ct. Tr. 2002).

The standard test for whether a judgment is final for Rule 60(b) purposes is usually stated to be whether the judgment is sufficiently final to be appealed. Richmond Wholesale Meat Co. v. George, 11 FSM R. 86, 87 (Kos. 2002).

In the absence of the Rule 60(b) finality requirement, the court will deem a putative Rule 60(b) motion as one for reconsideration of the court's order. Richmond Wholesale Meat Co. v. George, 11 FSM R. 86, 88 (Kos. 2002).

Defendants' failure to move for relief from judgment until after a writ of execution has been issued and their property seized was not an unreasonable delay when the plaintiff was so

prompt in obtaining a default judgment, a writ of execution, and then levying on the writ. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 118, 122 (Chk. 2002).

Bad checks that, in part, gave rise to the lawsuit are not culpable conduct after the lawsuit's inception that would bar relief from judgment, and neither are the defendants' other instances of alleged culpable conduct (such as moving or closing other businesses) that do not appear to be related to the lawsuit. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 118, 123 (Chk. 2002).

Relief from judgment may be granted only on motion and upon such terms as are just. The requirement of a bond is a just term upon which to grant relief from judgment, especially in a close case that tips in the defendants' favor because of the court's policy favoring resolutions on the merits over defaults. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 118, 123 (Chk. 2002).

Rule 60(b) may not allow a party in whose favor a judgment is entered to seek relief from that judgment because stipulated judgments, while they are judicial acts, also have many attributes of voluntarily-undertaken contracts, and when the parties have made a freely calculated, deliberate choice to submit to an agreed upon judgment rather than seek a more favorable litigated outcome (or risk a less favorable litigated outcome), the burden under Rule 60(b) is probably more formidable than had they litigated and lost. Farata v. Punzalan, 11 FSM R. 175, 178 (Chk. 2002).

Although the trial court, absent a remand, lacks jurisdiction to vacate or alter its judgment pending appeal, the trial court retains the power throughout the pendency of the appeal to simply preserve the status quo by granting a stay of the judgment. Konman v. Esa, 11 FSM R. 291, 296 (Chk. S. Ct. Tr. 2002).

When a motion to relieve a party from a final order on the basis of surprise is filed after the order has been appealed, the court may deny the motion and leave the order appealed from intact, or, if the court is inclined to grant the motion it may only state on the record what it would do in the event that the case were remanded to it since the filing of the notice of appeal transferred jurisdiction to the appellate division. Estate of Mori v. Chuuk, 12 FSM R. 3, 9 (Chk. 2003).

A trial court may stay the execution of any proceedings to enforce a judgment pending the disposition of a motion for relief from a judgment or order made pursuant to Rule 60. Estate of Mori v. Chuuk, 12 FSM R. 3, 12 (Chk. 2003).

Chuuk state trial courts have jurisdiction to set aside judgments either by a Rule 60 relief from judgment motion or by an independent action in equity. The FSM Supreme Court trial division therefore also has the power in a proper case to entertain an independent action for relief from a state court judgment. Enlet v. Bruton, 12 FSM R. 187, 189-90 (Chk. 2003).

The grant or denial of relief under Civil Procedure Rule 60 rests with the sound discretion of the trial court. Panuelo v. Amayo, 12 FSM R. 365, 372 (App. 2004).

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).

Relief from judgment is addressed to the discretion of the court, which must balance the policy in favor of hearing a litigant's claims on the merits against the policy in favor of finality.

Western Sales Trading Co. v. Billy, 13 FSM R. 273, 279 (Chk. 2005).

When a case has been dismissed for the plaintiff's failure to prosecute, the plaintiff's possible remedies are either to appeal the dismissal or a Rule 60(b) motion for relief from judgment (the more viable, quicker, and usual remedy) if he wishes to have the dismissal set aside. (Filing a new case when there has been a dismissal on the merits is not a possible remedy.) Success by either method would reinstate the case at the point it was dismissed. If neither of these routes is taken successfully, the plaintiff, depending on his ability to prove that he would have succeeded at trial, may have a cause of action against his counsel. Kishida v. Aizawa, 13 FSM R. 281, 284 (Chk. 2005).

A trial court's request for clarification of the attorneys' fee request documentation was not a grant of relief from judgment or analogous to relief from judgment, and a trial court's permitting the submission of the attorney fee request one day late was within its discretion. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 22 (App. 2006).

It is an error of law for the trial justice to even consider setting aside a judgment sua sponte or on his own motion since only an affected party may seek relief from judgment. Rule 60(b) explicitly requires a motion from the affected party, not from the trial court acting *sua sponte*. Ruben v. Hartman, 15 FSM R. 100, 108-09 (Chk. S. Ct. App. 2007).

Since a party cannot seek relief from a judgment that does not exist, a motion for relief from a partial summary judgment is therefore properly characterized, not as one for relief from judgment under Rule 60(b), but as one to reconsider an interlocutory order. Dereas v. Eas, 15 FSM R. 135, 138 (Chk. S. Ct. Tr. 2007).

A motion to reconsider that was filed 22 days after the judgment had been entered, cannot be a Rule 54(b) motion to reconsider since those motions must be made before entry of judgment, or a Rule 59(e) motion to alter or amend judgment since a Rule 59(e) motion must "be served not later than 10 days after entry of the judgment." It can only be a Rule 60(b) motion for relief from judgment. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 588 (App. 2008).

Even after a judgment has been properly appealed, a trial court, without appellate court permission, has the jurisdiction to both consider, and to deny a Rule 60(b) relief from judgment motion, but cannot grant a Rule 60(b) motion while an appeal is pending. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 589 (App. 2008).

When the trial judge has a Rule 60(b) motion before him, which is within his jurisdiction to consider and deny even though the case is on appeal, and also a motion to recuse, and when, upon receipt of a recusal motion, a justice must rule on it before proceeding any further in the matter, the trial judge is required to rule on the recusal motion before proceeding on to the Rule 60(b) motion. The trial judge therefore had the jurisdiction to, and a duty to, rule on the recusal motion. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 589 (App. 2008).

If a judgment has been appealed and a Rule 60(b) motion for relief from that judgment is afterwards denied, a separate notice of appeal from that denial must be filed for an appellate court to have jurisdiction to review the Rule 60(b) denial. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 589 (App. 2008).

If the defendants succeed in vacating the judgment, then the next step would be to order a new trial because if the judgment were left in place and only its enforcement barred, the result would the anomalous situation of a valid money judgment which could not be enforced even though the judgment-debtors are solvent and within the jurisdiction. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 630 (Pon. 2008).

Relief from a judgment may be sought either by a Rule 60(b) motion or by an independent action – through filing a separate case. It cannot be sought by both. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 636 (Pon. 2008).

When the defendants have not filed their Rule 60(b) motion seeking relief in a separate action in equity collaterally attacking the judgment, but have instead filed it as a post-judgment motion in the original case, the motion may only be treated as a Rule 60(b) motion for relief from judgment, and not as an independent action, despite the defendants styling their motion as one "in the nature of an independent action." FSM Dev. Bank v. Arthur, 15 FSM R. 625, 636 (Pon. 2008).

A motion to reconsider made more than ten days after entry of judgment can only be considered a Rule 60(b) motion for relief from judgment. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 120 n.1 (App. 2008).

A motion to reconsider or vacate a judgment filed within ten days of the judgment is a Rule 59 motion to alter or amend judgment and a motion filed after ten days is a Rule 60(b) motion for relief from judgment. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 138 n.3 (Pon. 2008).

Rule 60(b) permits only motions for relief from judgment under that rule or independent actions. There is no such motion as one in the nature of an independent equitable action for relief filed in the original case. If a party wishes to seek relief through an independent action, it must file a separate independent action. If a party files a motion in the case in which the judgment was issued, it is a Rule 60(b) motion for relief from judgment. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 139 (Pon. 2008).

A motion to vacate a judgment filed in the original case cannot be anything other than a Rule 60(b) motion for relief from judgment. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 139 (Pon. 2008).

Generally, relief from a judgment may be sought either by a Rule 60(b) motion for relief from judgment filed in the original case or by a separate, independent action (a new case), but it cannot be sought by both. Arthur v. Pohnpei, 16 FSM R. 581, 596 (Pon. 2009).

A litigant may not sit idly by during the course of litigation and then seek to present additional defenses in the event of an adverse outcome. Arthur v. Pohnpei, 16 FSM R. 581, 599 (Pon. 2009).

When the dismissal for failure to exhaust administrative remedies was without prejudice to any later court action after administrative relief had been sought, granting relief from the dismissal would not be in the interest of justice, and any future litigation would be conducted on a new and accurate pleadings. Aake v. Mori, 16 FSM R. 607, 609 (Chk. 2009).

Relief from a judgment under Rule 60 is addressed to the court's discretion, which is not an arbitrary one to be capriciously exercised but a sound legal discretion guided by accepted legal principles. An appellate court therefore reviews a trial court's denial of a Rule 60(b) motion under an abuse of discretion standard. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 657 (App. 2009).

It is not important whether the trial judge considered the attack upon the judgment under 60(b) or as an independent equitable action, if based on all the evidence the trial judge in the exercise of his judicial and equitable discretion, denied relief. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 658 (App. 2009).

In an independent action, it is fundamental that equity will not grant relief if the complaining party has, or by exercising proper diligence would have had an adequate remedy at law, or by proceedings in the original action to open, vacate, modify or otherwise obtain relief against, the judgment. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 658-59 (App. 2009).

When, in essence this is an appeal of an earlier final appellate court determination of the appellants' liability based on a defense they could have raised but waived in the trial court, it is yet another attempt to have a second bite of the appellate apple. When the appellants assert that the trial court erred in failing to vacate the judgment and raise claims either already argued and decided in their first appeal or not raised at the trial level, this is not an opportunity or an appropriate occasion for them to have a second bite of the appellate apple or to address issues that were not raised at the trial level. The trial court thus did not abuse its discretion by not vacating the judgment. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 661 (App. 2009).

A plaintiff seeking to maintain an action for unjust enrichment as the result of having paid money on a judgment must first have that judgment vacated or reversed before that plaintiff can pursue an unjust enrichment or restitution claim. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 7 (Pon. 2011).

To maintain an action for unjust enrichment or for money had and received or for restitution, the recipient of the money had and received must be shown to be unjustly enriched. Unless and until a judgment on which the plaintiffs have paid the money is vacated or reversed that is something the plaintiffs are manifestly unable to do. They thus fail to state a claim for unjust enrichment or restitution when the judgment has not been set aside and remains valid and enforceable. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 7 (Pon. 2011).

Although the plaintiffs' argument for restitution which asserts that an earlier judgment should not be enforced does not explicitly say so, the court must consider the case to be an independent action for relief from judgment joined with, and thus presuming success on the independent action for relief, an action for unjust enrichment and restitution with the necessary element of the prior judgment having been set aside to be accomplished in the same action. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 8 (Pon. 2011).

There are only three methods by which judgment-debtors may have a judgment against them set aside. One is to appeal the judgment and convince the appellate court to reverse it. The second is a motion for relief from judgment as provided for in Civil Procedure Rule 60(b). The third is an independent action in equity (as acknowledged in Rule 60(b)) to set aside a judgment. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 11 & n.5 (Pon. 2011).

When there is no final judgment in a case but only an interlocutory order, a motion for relief from the interlocutory order will properly be characterized, not as one for relief from judgment under Rule 60(b), but as one to reconsider an interlocutory order under Rule 54(b). People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 312 (Yap 2012).

The Compact of Free Association requires that, subject to the constitutional power of FSM courts to grant relief from judgments in appropriate cases, res judicata status be given to Trust Territory judgments. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 302 (App. 2014).

As recognized by general law and as provided for in Compact of Free Association § 176, Trust Territory judgments that are final, although accorded res judicata status, can be subject to collateral attack or to relief from judgment. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 304 (App. 2014).

Under the Compact of Free Association, final judgments in civil cases rendered by any Trust Territory court continue in full force and effect, subject to the constitutional power of the courts of the Federated States of Micronesia to grant relief from judgments in appropriate cases. Andrew v. Heirs of Seymour, 19 FSM R. 331, 341 (App. 2014).

A trial division justice does not have jurisdiction to issue an order granting relief from the summary judgment when the matter has been timely appealed and the jurisdiction lay in the appellate division when he issued the relief order. Kuss v. Joseph, 19 FSM R. 380, 381 (Chk. S. Ct. App. 2014).

After a judgment has been appealed, a trial court, without appellate court permission, has the power to both consider, and deny Rule 60(b) relief from judgment motions, but the trial court cannot grant a Rule 60(b) motion while an appeal is pending. If the trial court is inclined to grant the motion for relief from judgment, it should issue a brief memorandum so indicating, and, armed with this, the movant may then request the appellate court to remand the action so that the trial court can vacate judgment and proceed with the action accordingly. Kuss v. Joseph, 19 FSM R. 380, 381 (Chk. S. Ct. App. 2014).

An appellate court may consider a trial justice's order setting aside the summary judgment to be his "brief memorandum" indicating that he is inclined to grant the motion to set aside the summary judgment as void and remand the case to the trial division so that the trial justice can, if he is so inclined, re-enter his order vacating the summary judgment. Kuss v. Joseph, 19 FSM R. 380, 381-82 (Chk. S. Ct. App. 2014).

A motion to alter, or amend, under FSM Civil Rule 59(e), or reconsideration of a mistake through inadvertence under FSM Civil Rule 60(b) are post-judgment motions that are appropriately filed in the trial division, not the appellate division, and, under the final judgment rule, these post-judgment motions prohibit filing an appeal until they have been either granted or denied. Mori v. Hasiguchi, 19 FSM R. 416, 418 (App. 2014).

Although Rule 60(b) does not limit the court's power to entertain an independent action to relieve a party from a judgment, the procedure for obtaining any relief from a judgment is either by a Rule 60(b) motion or by an independent action; not by both. FSM Dev. Bank v. Carl, 20 FSM R. 70, 72 (Pon. 2015).

The court, in its discretion and on such condition for the adverse party's security as is

proper, may, pending the disposition of a Rule 60 motion for relief from judgment, stay the execution of or any proceedings to enforce a judgment. The criteria to be utilized when determining the propriety of a such a stay are: 1) whether the applicant has made a strong showing that the applicant is likely to prevail on the merits of the appeal; 2) whether the applicant has shown that without the stay, the applicant will be irreparably harmed; 3) whether issuance of the stay would substantially harm other parties interested in the proceedings and 4) whether the public interest would be served by granting the stay. FSM Dev. Bank v. Setik, 20 FSM R. 85, 89 (Pon. 2015).

A Rule 59 motion for a new trial must be served not later than ten days after entry of the judgment, but a motion that purports to be a Rule 59(b) motion for a new trial will not be denied merely because it is untimely since a Rule 59 motion served after the ten days has expired will be, and can only be, considered a Rule 60(b) motion for relief from judgment. George v. Palsis, 20 FSM R. 174, 176 (Kos. 2015).

When almost a month has elapsed from the July 17th entry of an order and the August 14th filing of a motion to set it aside, coupled with the redress sought therein, the court will characterize it as a motion under FSM Civil Rule 60(b) seeking relief from an order. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 225, 227 (Chk. 2015).

A movant, as a precondition to rule 60(b) relief, must give the court reason to believe that vacating the judgment will not be a futile gesture or an empty exercise; in other words, there must exist a meritorious defense. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 225, 228 (Chk. 2015).

When a final order has been properly appealed, a trial court has the jurisdiction, without appellate court permission, to both consider and to deny a Rule 60(b) relief from judgment motion, but it cannot grant a Rule 60(b) motion while an appeal is pending, but if the trial court is inclined to grant the motion, it may only state on the record that it would do so if the case were remanded. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 289 (Pon. 2016).

Rule 60(b)'s purpose is to provide the trial court with a tool for navigating between the conflicting principles that litigation must be brought to an end and that justice should be done. To meet this intended purpose, Rule 60(b), which combines aspects of both law and equity, reposes a high degree of discretion in the trial court. In re Contempt of Jack, 20 FSM R. 452, 460 (Pon. 2016).

The decision to grant or deny a motion for relief from a final judgment is committed to the trial court's sound discretion. Accordingly, the lower court's decision about relief from judgment should be reviewed only upon a showing that the trial judge's ruling manifested an abuse of discretion. Such abuses must be unusual and exceptional; an appellate court will not merely substitute its judgment for that of the trial court. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 506 (App. 2016).

It is just as important that there should be a place to end litigation, as there should be a place to begin. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 506 (App. 2016).

The provisions of Rule 60(b) must be carefully interpreted to preserve the delicate balance between the sanctity of final judgments and the incessant command of the court's conscience, that justice be done in light of all the facts. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 507 (App.

2016).

A party seeking relief from a final judgment must do so pursuant to Rule 60(b). Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 508 (App. 2016).

The decision to grant or deny a motion for relief from a final judgment is committed to the trial court's sound discretion. Accordingly, the lower court's decision should be scrutinized, with an eye toward determining whether the trial judge's ruling manifested an abuse of discretion. Such abuses must be unusual and exceptional; an appellate court will not merely substitute its judgment for that of the trial court. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 98 (App. 2016).

An appellate court's review of a trial court's grant or denial of a Rule 60(b)(1) motion focuses on whether there was an abuse of discretion. 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, and such an abuse must be unusual and exceptional. Gallen v. Moylan's Ins. Underwriters (FSM) Inc., 21 FSM R. 380, 383-84 (App. 2017).

A party's failure to proffer adequate evidence to identify where the judgment amount was inaccurate, fails to persuade that the party was entitled to relief from that judgment. Gallen v. Moylan's Ins. Underwriters (FSM) Inc., 21 FSM R. 380, 385 (App. 2017).

Rule 60(b)'s purpose is to provide the trial court with a tool for navigating between the conflicting principles that litigation must be brought to an end and that justice be done. Gallen v. Moylan's Ins. Underwriters (FSM) Inc., 21 FSM R. 380, 385 (App. 2017).

When there is no final judgment but only an interlocutory order, a motion for relief from the interlocutory order will properly be characterized, not as one for relief from judgment under Rule 60(b), but as one to reconsider an interlocutory order under Rule 54(b). Hartmann v. Department of Justice, 21 FSM R. 468, 474 (Chk. 2018).

When there is no final judgment in the matter but only an interlocutory order, a party's motion for relief from the interlocutory order is properly characterized, not as one for relief from judgment under Rule 60(b), but as one to reconsider, under Rule 54(b), the interlocutory order granting partial summary judgment. Hartmann v. Department of Justice, 21 FSM R. 468, 474 (Chk. 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. Setik v. FSM Dev. Bank, 21 FSM R. 505, 514 (App. 2018).

A litigant, as a precondition to Rule 60(b) relief, must give the trial court reason to believe that vacating the judgment will not be a futile gesture or an empty exercise, that is, that the litigant has a meritorious defense. Setik v. FSM Dev. Bank, 21 FSM R. 505, 514 (App. 2018).

Relief from a judgment may be sought either by a Rule 60(b) motion or by an independent action – through filing a separate case. It cannot be sought by both. Setik v. Mendiola, 21 FSM

R. 537, 552 (App. 2018).

It is proper to require a party to advance in the first Rule 60(b) motion all matters that were reasonably available at that time. Setik v. Mendiola, 21 FSM R. 537, 552 (App. 2018).

Successive Rule 60(b) motions for relief from judgment are impermissible unless the later motion is brought on a different ground. Setik v. Mendiola, 21 FSM R. 537, 552 (App. 2018).

The older a judgment grows, the greater finality it should be accorded and the greater the burden on the party seeking to set it aside. Setik v. Mendiola, 21 FSM R. 537, 554 (App. 2018).

The denial of a Rule 60(b) motion for relief from judgment may have res judicata effect on a subsequent independent action to set aside a judgment, if the subsequent action is brought on the same ground as the earlier motion. Setik v. Mendiola, 21 FSM R. 537, 555 (App. 2018).

A motion to reconsider a final order made over ten days after entry of that order is a Rule 60(b) motion for relief from judgment. Alik v. Heirs of Alik, 21 FSM R. 606, 617 (App. 2018).

The debtor, as an interested party, has sufficient stake in the matter for standing to try to reopen his own bankruptcy case. Panuelo v. Sigrah, 22 FSM R. 341, 356 (Pon. 2019).

Although under Bankruptcy Rule 5010, a case may be reopened on motion of the debtor or other interested party pursuant to 31 F.S.M.C. 311(2), a lawsuit is not a motion and 31 F.S.M.C. 311(2) applies only to a corporate debtor that is unable to implement a part of its reorganization plan or comply with a provision of the court's confirmation order. Bankruptcy Rule 5010 does not apply to an individual debtor or to a liquidation case. Panuelo v. Sigrah, 22 FSM R. 341, 356-57 (Pon. 2019).

Bankruptcy Rule 9024 permits reopening a bankruptcy case by providing that FSM Civil Procedure Rule 60 applies in cases under Title 31. Panuelo v. Sigrah, 22 FSM R. 341, 357 (Pon. 2019).

The administratrix of an estate of a former debtor would have standing to seek relief under Bankruptcy Rule 9024 for alleged overpayments to creditors and to the bankruptcy receiver because she seeks reconsideration of, or relief from, the bankruptcy case orders allowing those claims by the creditors and the receiver. Panuelo v. Sigrah, 22 FSM R. 341, 357 (Pon. 2019).

A new lawsuit obviously cannot be a motion to reopen a case under Bankruptcy Rule 9024 (or for relief from judgment under Civil Procedure Rule 60), since such a motion would necessarily be filed in the original bankruptcy case, but Civil Procedure Rule 60 (and thus Bankruptcy Rule 9024) authorizes one other procedure for relief – an independent action for relief. Rule 60(b) does not limit a court's power to entertain an independent action to relieve a party from a judgment. Panuelo v. Sigrah, 22 FSM R. 341, 357 (Pon. 2019).

Regardless of whether the issued writ of habeas corpus is a final order, the court may entertain FSM Civil Rule 59 and 60 motions while the matter is subject to an appeal and, if it determines such motion(s) shall prevail, it must so indicate in the record for the appellate court's consideration. Timsina v. FSM, 22 FSM R. 383, 386 (Pon. 2019).

Civil Procedure Rule 60 governs all motions to set aside a judgment or for relief from judgment including default judgments. FSM Dev. Bank v. Talley, 22 FSM R. 587, 592 (Kos. 2020).

– Relief from Judgment – Default Judgments

Under circumstances where the defendant has failed to set forth a meritorious defense and has exhibited culpable conduct, defendant will not succeed on a motion to set aside a judgment of default. Truk Transp. Co. v. Trans Pacific Import Ltd., 3 FSM R. 512, 514 (Truk 1988).

A motion to set aside a default judgment is addressed to the discretion of the court. In the exercise of discretion the court is guided by the principle that cases should normally be decided after trials on the merits. Truk Transp. Co. v. Trans Pacific Import Ltd., 3 FSM R. 512, 515 (Truk 1988).

The criteria to be met in order to justify the setting aside of a default judgment are whether the default was willful, caused by culpable conduct of the defendant, whether there is meritorious defense, and whether setting aside the default would prejudice the plaintiff. Truk Transp. Co. v. Trans Pacific Import Ltd., 3 FSM R. 512, 515 (Truk 1988).

Under Civil Procedure Rule 55(c), relief from an entry of default may be granted for good cause shown. A default entry may thus be set aside for reasons that would not be enough to open a default judgment. A Rule 55(c) motion is addressed to the trial court's discretion. Good cause is a mutable standard, varying from situation to situation, and it is likewise a liberal one, but not so elastic as to be devoid of substance. FSM Dev. Bank v. Gouland, 9 FSM R. 375, 377 (Chk. 2000).

The standard for setting aside an entry of default under Rule 55(c) is the liberal and less rigorous "good cause" standard rather than the more restrictive standard of excusable neglect for setting aside a default judgment under Rule 60(b). FSM Dev. Bank v. Gouland, 9 FSM R. 375, 377-78 (Chk. 2000).

The "good cause" threshold for Rule 55(c) relief is lower, ergo more easily overcome, than that which obtains under Rule 60(b) and the trial court should not read "good cause" too grudgingly. This more flexible approach reflects a policy decision that a default judgment should enjoy a greater degree of finality and, therefore, should be more difficult to disturb than a mere default. FSM Dev. Bank v. Gouland, 9 FSM R. 375, 378 (Chk. 2000).

A default judgment will be set aside when one defendant was served the complaint and summons not by a policeman or some other specially appointed person in compliance with Civil Procedure Rule 4(c) but by plaintiff's counsel and the other defendant was not served at all. Simina v. Rayphand, 9 FSM R. 500, 501 (Chk. S. Ct. Tr. 1999).

An entry of default may be set aside for good cause shown. Rule 55 distinguishes between relief from default, which is an interlocutory matter, and relief from a judgment by default, which involves final judicial action. Thus, a more liberal standard is applied to reviewing entry of default, as opposed to default judgments. Adams v. Island Homes Constr., Inc., 10 FSM R. 159, 162 (Pon. 2001).

A common statement of the criteria to set aside a default judgment is whether the default was willful, that is, caused by culpable conduct of the defendant, whether there is a meritorious defense, and whether setting aside the default judgment would prejudice the plaintiff. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 180 (Pon. 2001).

Any of the reasons sufficient to justify the vacation of a default judgment normally will justify relief from a default entry and in various situations a default entry may be set aside for reasons that would not be enough to open a default judgment. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 180 (Pon. 2001).

Courts generally disfavor default judgments and readily set them aside rather than deprive a party of the opportunity to contest a claim on the merits. O'Sullivan v. Panuelo, 10 FSM R. 257, 260 (Pon. 2001).

Even when service on the defendants was proper, they may still obtain relief from a default judgment if they qualify under Rule 60. Courts generally disfavor default judgments and will, in proper Rule 60(b) cases, readily set them aside rather than deprive a party of the opportunity to contest, and the court to resolve, a claim on its merits, instead of on procedural grounds. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 118, 122 (Chk. 2002).

The criteria to be met in order to justify setting aside a default judgment are whether the default was willful, caused by the defendant's culpable conduct, whether the defendant has a meritorious defense, and whether setting aside the default would prejudice the plaintiff. Relief from judgment is addressed to the discretion of the court, which must balance the policy in favor of hearing a litigant's claims on the merits against the policy in favor of finality. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 118, 122 (Chk. 2002).

In order to obtain relief from a default judgment, the defendant must have a meritorious defense. A defense that would constitute a complete defense to the action if proven at trial would be a meritorious defense justifying relief from judgment when some evidence to support the defense has been produced, although more evidence may be needed to prevail at trial. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 118, 123 (Chk. 2002).

Relief from judgment may be granted only on motion and upon such terms as are just. The requirement of a bond is a just term upon which to grant relief from judgment, especially in a close case that tips in the defendants' favor because of the court's policy favoring resolutions on the merits over defaults. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 118, 123 (Chk. 2002).

When a default judgment that affects persons, who claim ownership of the land and who were never made parties to the suit, but against whom the judgment is sought to be enforced those persons are clearly entitled to relief from the default judgment under Chuuk Civil Rule 60(b)(6), and no time limits are imposed on the granting of such relief because the court may, in its discretion, treat a complaint as a Rule 60(b)(6) motion for relief from judgment. Pastor v. Ngusun, 11 FSM R. 281, 285 (Chk. S. Ct. Tr. 2002).

After a default judgment has been entered, a motion to dismiss cannot be granted unless the motion to set aside the default is successful. Konman v. Esa, 11 FSM R. 291, 294 n.2 (Chk. S. Ct. Tr. 2002).

When a party moves for relief from judgment under Civil Procedure Rule 60(b)(4) on the

ground that the judgment was void, there is no requirement, as is usual when a default judgment is attacked under Rule 60(b), that the movant show that he has a meritorious defense. Lee v. Lee, 13 FSM R. 252, 256 (Chk. 2005).

Courts generally disfavor default judgments and will set them aside rather than deprive a party of the opportunity to contest a claim on the merits so as to permit the claim to be resolved on its merits instead of on procedural grounds. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 279 (Chk. 2005).

The standard for analyzing whether relief from a default judgment is warranted is whether the default was willful, that is, caused by the defendant's culpable conduct, whether there is a meritorious defense, and whether setting aside the default judgment would prejudice the plaintiff, so when a plaintiff does not want the opportunity to contest a claim or assert a meritorious defense to a claim but wants to add a claim, the inapplicability of this standard to the case highlights the novelty of what the plaintiff is trying to do. No cases support the claim that Rule 60(b) relief is available for a prevailing plaintiff to be granted relief from a default judgment in its favor when the defendant had not appeared in the case prior to the default judgment. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 279 (Chk. 2005).

A plaintiff should seek to amend its complaint to ask for prejudgment interest before asking for a default judgment if it wants an unpled interest claim included in the judgment. When it does not do so, the court cannot grant it leave to amend its complaint after the default judgment has been entered because that would make meaningless Rule 54(c)'s clear command limiting default judgments to the kind and the amount prayed for in the demand for judgment. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 279 (Chk. 2005).

Rule 55(c) governs the setting aside of a default, but when a default judgment was already entered, FSM Civil Rule 60 applies. Bank of Hawaii v. Susaia, 19 FSM R. 66, 69 n.1 (Pon. 2013).

The criteria to be met in order to justify setting aside a default judgment are whether the default was willful, caused by the defendant's culpable conduct, whether the defendant has a meritorious defense, and whether setting aside the default would prejudice the plaintiff. Relief from judgment is addressed to the court's discretion, which must balance the policy in favor of hearing a litigant's claims on the merits against the policy in favor of finality. Bank of Hawaii v. Susaia, 19 FSM R. 66, 69 (Pon. 2013).

Relief from judgment will be granted when the culpability and meritorious defense requirements are met because the defendant has a meritorious statute of limitation defense as to part of the default judgment and because if the defendant had had legal representation during the case's early stages, the statute of limitation defense would have been raised, which would affect a part of the amount granted in the plaintiff's default judgment and when not setting aside the default judgment would prejudice the defendant, instead of the plaintiff, because as it stands, the defendant would be liable for an amount greater than what he is supposed to pay by law. Bank of Hawaii v. Susaia, 19 FSM R. 66, 69-70 (Pon. 2013).

The standard for setting aside an entry of default under Rule 55(c) is the liberal and less rigorous "good cause" standard rather than the more restrictive standard of excusable neglect for setting aside a default judgment under Rule 60(b). The "good cause" threshold for Rule 55(c) relief is lower, ergo more easily overcome, than that which obtains under Rule 60(b) and the trial court should not read "good cause" too grudgingly. This more flexible approach reflects

a policy decision that a default judgment should enjoy a greater degree of finality and, therefore, should be more difficult to disturb than a mere default. Pohnpei Transfer & Storage, Inc. v. Shoniber, 19 FSM R. 614, 616 (Pon. 2014).

The court may refuse to set aside a default judgment when the default is due to willfulness or bad faith or when the defendant offers no excuse at all for the default. FSM Dev. Bank v. Setik, 20 FSM R. 85, 89 (Pon. 2015).

In order to obtain relief from a default judgment, the defendant must have a meritorious defense that would constitute a complete defense to the action if proven at trial. FSM Dev. Bank v. Setik, 20 FSM R. 85, 89 (Pon. 2015).

A default judgment will not be set aside when the defendants' averments were made more than one year after the judgment was entered and as such, fail to come within the time frame prescribed in Rule 60(b) and when the default was a direct result of the defendants' willful conduct and there has been no meritorious defense or extraordinary circumstance(s) depicted to justify the coveted relief. FSM Dev. Bank v. Setik, 20 FSM R. 85, 89 (Pon. 2015).

The court may refuse to set aside a default judgment when the default is due to the defendant's willfulness or bad faith. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 104 (Chk. 2015).

When a meritorious defense has not been portrayed, the defendants' requests to set aside or vacate the default judgment, order(s) in aid of judgment, and writ of garnishment will be denied. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 104 (Chk. 2015).

Rule 55(c) governs only the setting aside of an entry of default. It is Rule 60(b) that governs the setting aside of a default judgment (and all other judgments). If a court determines that, under Rule 60(b)'s requirements, a default judgment should be set aside, then the entry of default will also be set aside. That is because, if the Rule 60(b)'s higher requirements for relief from judgment have been met, then Rule 55(c)'s lower requirement of good cause is also met. Setik v. FSM Dev. Bank, 21 FSM R. 505, 514 (App. 2018).

When relief is sought only from the entry of default the standard is "good cause," and when relief is also sought from the entry of a default judgment the "reasons" set forth in Rule 60(b) may supply the good cause. Setik v. FSM Dev. Bank, 21 FSM R. 505, 514 (App. 2018).

If a default judgment has been entered when the court lacked personal jurisdiction over the defendant, then that default judgment is void and relief can be sought under Rule 60(b)(4), for which there is no time limit to seek relief. Setik v. FSM Dev. Bank, 21 FSM R. 505, 516 (App. 2018).

Civil Procedure Rule 60 governs all motions to set aside a judgment or for relief from judgment including default judgments. FSM Dev. Bank v. Talley, 22 FSM R. 587, 592 (Kos. 2020).

The criteria to be satisfied in order to justify setting aside a default judgment are: 1) whether the default was willful, caused by the defendant's culpable conduct; 2) whether the defendant has a meritorious defense; and 3) whether setting aside the default would prejudice the plaintiff. FSM Dev. Bank v. Talley, 22 FSM R. 587, 593 (Kos. 2020).

To obtain relief from a default judgment, the defendant must have a meritorious defense – a defense that would constitute a complete defense to the action if proven at trial. But when the defendant has failed to set forth a meritorious defense and has exhibited culpable conduct, the defendant will not succeed on a motion to set aside a default judgment. FSM Dev. Bank v. Talley, 22 FSM R. 587, 593 (Kos. 2020).

Section 128, Title 30 grants the FSM Development Bank tax exemption and prohibits it from paying dividends because the bank exists and operates "solely for the benefit of the public." It does not create a private cause of action against the FSM Development Bank, and thus a borrower cannot raise it as an affirmative defense. FSM Dev. Bank v. Talley, 22 FSM R. 587, 594 (Kos. 2020).

To invoke the equitable estoppel doctrine, the proponent must allege that 1) another party made representations or statements; 2) the party reasonably relied upon the representations; and 3) the party will be harmed if estoppel is not allowed. But when the movant does not allege any specific facts that would satisfy these elements, he does not allege a meritorious defense. FSM Dev. Bank v. Talley, 22 FSM R. 587, 594 (Kos. 2020).

The 38 U.S.C. § 5301 ban on assigning U.S. military retirement benefits does not constitute a meritorious defense because 38 U.S.C. § 5301 is a United States statute that is applicable wherever the United States is sovereign, but which has no effect in the separate and distinct sovereignty of the Federated States of Micronesia. Since there is no similar FSM statute in effect, the defendant's assignment is not an illegal contract. FSM Dev. Bank v. Talley, 22 FSM R. 587, 595 (Kos. 2020).

When the court must deny a defendant's motion for relief from, or to set aside, the default judgment, the court must also deny his motion to enlarge time to file an answer. FSM Dev. Bank v. Talley, 22 FSM R. 587, 595 (Kos. 2020).

The "good cause" threshold for Rule 55(c) relief is a lower, and more easily overcome, than that which obtains under Rule 60(b) and this approach reflects a policy decision that a default judgment must enjoy a greater degree of finality and, therefore, should be more difficult to disturb than a mere entry of default. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 600, 604 (Pon. 2020).

Rule 55(c) governs the setting aside of a default, but when a default judgment has already been entered, FSM Civil Rule 60(b) applies and must be used to set aside the default judgment. But, if a court determines that, under Rule 60(b)'s requirements, a default judgment should be set aside, then the entry of default will also be set aside, as a matter of course, because, if the Rule 60(b)'s higher requirements for relief from judgment are met, then Rule 55(c)'s lower requirement of good cause is also met. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 600, 604 (Pon. 2020).

A prompt motion for relief from judgment once a default judgment is entered and served on the movant is a sign of good faith. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 600, 604 (Pon. 2020).

In addition to meeting the Rule 60(b)(1) excusable neglect standard, there are three other criteria that must be satisfied in order to justify setting aside a default judgment: 1) whether the

default was willful, caused by the defendant's culpable conduct; 2) whether the defendant has a meritorious defense; and 3) whether setting aside the default judgment would prejudice the plaintiff. Most importantly, the defendant must have a meritorious defense in order to obtain relief from a default judgment. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 600, 604 (Pon. 2020).

A meritorious defense is required for relief from a default judgment. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 600, 604 (Pon. 2020).

An affirmative defense cannot be pled with only a conclusory statement, but must, in each instance, be tied to specific factual allegations so as to give the plaintiff notice of the defense. A defendant cannot claim to have meritorious defenses by just listing the possible affirmative defenses to the plaintiff's causes of action without supporting factual allegations. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 600, 605 (Pon. 2020).

When a borrower made a $410 payment after the date the bank ended the accounting of her loan, she has a meritorious payment defense, at least as far as the $410 payment is concerned. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 600, 605 (Pon. 2020).

When a defendant has a meritorious payment defense to part of the default judgment against her, the court will grant partial relief from the default judgment because any other approach would be unfairly detrimental or prejudicial to the debtor. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 600, 607 (Pon. 2020).

– Relief from Judgment – Grounds

While Civil Rule 60(a) may be used to correct clerical errors in a judgment such as those of transcription, copying, or calculation it cannot be used to obtain relief for acts deliberately done. Therefore where the court deliberately intended to enter in a judgment the amount prayed for in a party's motion and that amount is based on a special master's report not before the court, the party cannot obtain relief under Rule 60(a) for errors in the special master's report. Senda v. Mid-Pacific Constr. Co., 6 FSM R. 440, 444-45 (App. 1994).

Relief from judgment cannot be granted when judgment was granted on two separate grounds and relief is only sought from one of the grounds. However, if meritorious, the record may be corrected to show that one ground ought to be stricken. Setik v. FSM, 6 FSM R. 446, 448 (Chk. 1994).

Failure of counsel to exercise due diligence in searching for "newly discovered" evidence is sufficient and independent grounds for denial of a motion for relief from judgment under FSM Civil Rule 60(b)(2). Nena v. Kosrae (III), 6 FSM R. 564, 567 (App. 1994).

Civil Rule 60(b) does not afford relief to a party where the errors complained of were calculated by that party, submitted to the court by that party, and judicially noticed upon that party's request, because it is apparent that that party seeks relief from the insufficient preparation, the carelessness, and the neglect of its own counsel. Mid-Pacific Constr. Co. v. Senda, 7 FSM R. 129, 135 (Pon. 1995).

A party may be estopped from seeking Rule 60(b)(1) relief from acts voluntarily undertaken

by that party. Mid-Pacific Constr. Co. v. Senda, 7 FSM R. 129, 135 (Pon. 1995).

Relief from judgment will be denied when the relief sought is for someone not a party. Damarlane v. United States, 7 FSM R. 350, 352-53 (Pon. 1995).

Relief from judgment may be granted to a party who failed to appear at trial when he was unaware that trial had been scheduled. Walter v. Meippen, 7 FSM R. 515, 519 (Chk. 1996).

Courts considering a Rule 60(b) motion also require that the moving party show a good claim or defense before relief from judgment may be granted. Walter v. Meippen, 7 FSM R. 515, 519 (Chk. 1996).

When there was no showing that the movant tried to obtain the evidence before judgment and where the evidence would not change the result, it cannot be considered newly discovered evidence that could not have been discovered previously by the exercise of due diligence entitling the movant to relief from judgment. Stinnett v. Weno, 8 FSM R. 142, 146 (Chk. 1997).

Failure to calendar the date for response and having only one attorney, busy handling a large volume of work, and a number of trial counselors in the office during the month the response was due is not "excusable neglect" entitling a party to relief from judgment. Even if the trial counselors were not prepared to handle the response to the submission, they were certainly capable of and experienced in drafting a motion for enlargement of time. Langu v. Kosrae, 8 FSM R. 455, 459 (Kos. S. Ct. Tr. 1998).

A motion for relief from judgment must allege facts sufficient to establish a meritorious defense. Such defendants must make a showing of a meritorious defense that if established at trial, would constitute a complete defense to the action. Irons v. Ruben, 9 FSM R. 218, 219 (Chk. S. Ct. Tr. 1999).

The Chuuk State Supreme Court may set aside any judgment for fraud upon the court, or if the judgment is void as in a case where the judgment is against public policy, or if it is no longer equitable that the judgment should have prospective application, or for any other reason justifying relief from the operation of the judgment. Kama v. Chuuk, 9 FSM R. 496, 499-500 (Chk. S. Ct. Tr. 1999).

Relief from judgment under Rule 60 is addressed to the court's discretion. The discretion is not an arbitrary one to be capriciously exercised, but a sound legal discretion guided by accepted legal principles. Generally, the court's discretion does not reach neglect of counsel, which, without more, is not a basis for Rule 60(b) relief, except when the neglect itself is excusable. Elymore v. Walter, 10 FSM R. 267, 268-69 (Pon. 2001).

Because clients are responsible for their counsel's conduct, the proper focus is upon whether the neglect of the clients and their counsel was excusable. Clients must be held accountable for their attorney's acts or omissions. Elymore v. Walter, 10 FSM R. 267, 269 (Pon. 2001).

The conduct of both client and counsel is relevant to a determination of excusable neglect under Rule 60(b)(1). Elymore v. Walter, 10 FSM R. 267, 269 (Pon. 2001).

When even if former counsel's neglect were excusable, plaintiffs' failure to secure new

counsel in a more timely manner is conduct sufficient in itself to preclude relief under Rule 60(b)(1), the motion for relief from judgment must be denied based on the plaintiffs' own conduct. Elymore v. Walter, 10 FSM R. 267, 269-70 (Pon. 2001).

Serving the defendant himself and failure to serve defendant's counsel with documents was not improper conduct entitling the defendant to Rule 60(b)(3) relief from judgment when that defendant had no counsel of record and was appearing pro se. Amayo v. MJ Co., 10 FSM R. 371, 380 (Pon. 2001).

Service of a motion upon an opposing party is expressly required under Civil Procedure Rule 6(d). Such is not the case with a trial subpoena. Therefore, in the absence of any pre-trial order requiring it, failure to serve trial subpoenas on an opposing party does not constitute improper conduct justifying relief from judgment under Rule 60(b)(3). Amayo v. MJ Co., 10 FSM R. 371, 381 (Pon. 2001).

Attorney negligence, even gross negligence, if demonstrated, is not a separate basis for Rule 60(b)(6) relief from judgment. Under established FSM law, attorney neglect as a basis for Rule 60(b) relief falls within subsection Rule 60(b)(1), "mistake, inadvertence, surprise, or excusable neglect." Amayo v. MJ Co., 10 FSM R. 371, 381 (Pon. 2001).

Generally, attorney negligence is not a basis for Rule 60(b)(1) relief from judgment. Parties who freely choose their attorneys should not be allowed to avoid the ramification of the acts or omissions of their chosen counsel. A party in a civil case whose attorney's conduct has fallen below a reasonable standard has other remedies. To grant Rule 60(b)(1) relief in such circumstances would penalize the nonmoving party for the negligent conduct of the moving party's counsel. Amayo v. MJ Co., 10 FSM R. 371, 381 (Pon. 2001).

The exception to the rule that attorney neglect does not state a basis for relief under Rule 60(b)(1) is where the neglect itself is excusable. Clients must be held accountable for their attorneys' acts or omissions. Amayo v. MJ Co., 10 FSM R. 371, 381-82 (Pon. 2001).

Allegations of an attorney's gross negligence do not entitle his client to relief from judgment under the excusable neglect provision of Rule 60(b)(1). Amayo v. MJ Co., 10 FSM R. 371, 382 (Pon. 2001).

An analysis of excusable neglect under Rule 60(b)(1) by its terms brings into play the conduct of the client, as well counsel because the proper focus is upon whether the neglect of the clients and their counsel was excusable. Amayo v. MJ Co., 10 FSM R. 371, 382 (Pon. 2001).

A pro se party's lack of full involvement in the pretrial process for whatever reasons when he had the opportunity to participate – and indeed was required to do so but did not when it came to responding to plaintiffs' discovery – does not constitute excusable neglect under Civil Procedure Rule 60(b) when he has not demonstrated that his own neglect of the litigation, either in his role of client or attorney, was excusable. Amayo v. MJ Co., 10 FSM R. 371, 382 (Pon. 2001).

Because procedural law cannot cast a sympathetic eye on the unprepared or it will soon fragment into a kaleidoscope of shifting rules, relief under Rule 60 is not appropriate when a party has demonstrated a pattern of delay and neglect. Amayo v. MJ Co., 10 FSM R. 371, 382

n.5 (Pon. 2001).

For the limited purpose of Rule 60(b)(1) relief from judgment the court will not allow a party, having elected at relevant times to be his own counsel of record, to ascribe his own on-the-record conduct of the litigation after the fact to off-the-record counsel. Amayo v. MJ Co., 10 FSM R. 371, 383 (Pon. 2001).

Subsection (6) is the grand reservoir of equitable power to do justice in a particular case, subject to the requirement that the provision is applicable only when the basis for relief is different from those enumerated in subsections (1) through (5) of Rule 60(b), and to the requirement that extraordinary circumstances exist for justifying relief. Extraordinary circumstances usually means that the movant himself was not at fault for his predicament. Conversely, the usual implication of fault on the movant's part is that there are no extraordinary circumstances. Amayo v. MJ Co., 10 FSM R. 371, 383 (Pon. 2001).

Relief from judgment under Rule 60(b)(6) will be denied when there was sufficient action, and failure to act, on the movant's part to preclude the argument that there was no fault on his part and when there is also no distinct claim for relief that falls outside those specifically enumerated in subsections (b)(1) through (b)(5) of Rule 60. Amayo v. MJ Co., 10 FSM R. 371, 383 (Pon. 2001).

The determination of what sorts of neglect that can be considered excusable in order to justify relief from judgment is an equitable one. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 118, 122 (Chk. 2002).

Relief under Rule 60(b)(6) is reserved for extraordinary circumstances. Farata v. Punzalan, 11 FSM R. 175, 178 (Chk. 2002).

Relief from judgment will be denied when the movant has not shown the extraordinary circumstances required by Rule 60(b)(6) for her to be granted relief from a judgment, which was in her favor and which she had agreed to, and has not shown unforeseeable changed circumstances. Farata v. Punzalan, 11 FSM R. 175, 178 (Chk. 2002).

A judgment may be vacated for nonjoinder of a necessary or indispensable party or where it affects persons who were never made parties to the suit. Pastor v. Ngusun, 11 FSM R. 281, 285 (Chk. S. Ct. Tr. 2002).

Rule 60(b) draws a distinction between relief from judgment for "fraud," which is subject to a one-year limitation, and for "fraud upon the court," which is not subject to such a limitation. These are two distinct types of fraud, since any other conclusion would render nugatory the one-year limitations period that is placed on "ordinary" fraud under Rule 60(b)(3). Ramp v. Ramp, 11 FSM R. 630, 635 (Pon. 2003).

The adversary process is designed to ferret out perjured testimony and the like, and if a party does not litigate vigorously and effectively to accomplish this, then he must live with the result. Thus, the advantage of focusing the inquiry on what the party seeking relief should have accomplished at the earlier trial serves all the purposes of the "intrinsic" versus "extrinsic" fraud distinction. It protects the sanctity of final judgments from those who did not adequately litigate the issues the first time around. The preservation of the sanctity of judgments and the certainty that this is meant to provide in the lives of litigants, irrespective of whether they win or lose, is

the rationale for the heightened showing necessary for relief from judgment after one year has elapsed from the time of the entry of judgment. Ramp v. Ramp, 11 FSM R. 630, 636 (Pon. 2003).

A finding of fraud on the court is justified only by the most egregious misconduct directed to the court itself, such as bribery of a judge or jury or fabrication of evidence by counsel, and must be supported by clear, unequivocal and convincing evidence. Ramp v. Ramp, 11 FSM R. 630, 636 (Pon. 2003).

Nondisclosure is not a basis for seeking relief from an order or judgment based on allegations of fraud on the court. Ramp v. Ramp, 11 FSM R. 630, 638 (Pon. 2003).

When a party has received a copy of an instrument evidencing the property transfer that she now claims was concealed from her, notwithstanding this omission, and regardless of the fact that the opponent answered the interrogatory "no," when the only correct answer was "yes," it remains that the discovery responses that were served on her attorney of record and are a part of the court file contain a copy of the document conveying the half interest. Thus, she cannot now say this transaction was not disclosed to her. At most, the inconsistency between the request for production and the interrogatory created an issue for resolution by further discovery. In light of the property transfer document, even the patently incorrect interrogatory answer does not entitle her to any relief under the fraud on the court provision. Ramp v. Ramp, 11 FSM R. 630, 638-39 (Pon. 2003).

Miscategorization of the property cannot be a basis for a fraud on the court claim when the statement of the parties' assets and liabilities was, and is a part of the record, when the alleged miscategorization was evidently not an issue at the time the parties executed the separation agreement since the listing is attached to that agreement, and when it was not an issue when the parties stipulated to the entry of the divorce decree that incorporated the separation agreement with the attached asset listing. Ramp v. Ramp, 11 FSM R. 630, 639 (Pon. 2003).

Rule 60(b)(1) provides that a court may relieve an affected party from judgment on the basis of mistake, inadvertence, surprise, or excusable neglect. Panuelo v. Amayo, 12 FSM R. 365, 372 (App. 2004).

A trial court commits an abuse of discretion when it commits legal error by denying a motion for relief from judgment when a defendant was surprised by the date and time of trial since he was never served with a notice of trial because the trial court erred when, through its clerks' office, it failed to serve notice of the trial date and time on the *pro se* litigant. This error seriously affected the judicial proceedings' fairness, integrity, and public reputation, regardless of opposing counsel's service of a trial subpoena on the litigant. Panuelo v. Amayo, 12 FSM R. 365, 372 (App. 2004).

When the fundamental tenets of due process are violated by the trial court's failure to provide notice of the trial to a *pro se* litigant, the trial court's later denial of his motion for relief from judgment under Rule 60 is an abuse of discretion. Panuelo v. Amayo, 12 FSM R. 365, 374 (App. 2004).

Unlike other grounds under Rule 60(b), the court does not have any discretion when relief from judgment is sought on the ground that the judgment was void because either a judgment is void or it is valid. A judgment is not void merely because it is erroneous. It is void only if the

court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process of law. Lee v. Lee, 13 FSM R. 252, 256 (Chk. 2005).

When the only ground offered to justify relief from judgment is that the movant was not properly served the amended complaint and when the court has concluded that he was properly served the amended complaint by mail since he had already appeared in the case to plead or otherwise defend, the motion for relief from judgment must be denied. Lee v. Lee, 13 FSM R. 252, 258 (Chk. 2005).

When an amended complaint asserted additional factual claims, the defendant had to be served a summons with the amended complaint and the service had to be effected as would the service of any complaint and summons, and since he was served by ordinary mail, he was not properly served the amended complaint. The judgment based on the amended complaint is thus void as to him and a motion for relief from judgment will therefore granted as to him. Lee v. Lee, 13 FSM R. 252, 258 (Chk. 2005).

On motion and upon such terms as are just, the court may relieve a party from a final judgment when the judgment is void. The court can order the plaintiff to serve the amended complaint and a summons issued by the court clerk on defendant being relieved from judgment by any means permissible under FSM Civil Procedure Rule 4 or 4 F.S.M.C. 204(2) or 4 F.S.M.C. 204(3) within a certain time. Lee v. Lee, 13 FSM R. 252, 259 (Chk. 2005).

Relief from judgment cannot be for a mistake the bank made in preparing the loan agreement and promissory note when the court corrected that "mistake" by reforming the loan agreement and the promissory note to accurately reflect the agreement of the parties to it because the judgment from which relief is sought is not based on, or the result of, this "mistake," but is instead the result of the court's correction of the "mistake." FSM Dev. Bank v. Arthur, 15 FSM R. 625, 632 (Pon. 2008).

Legal rulings affirmed on appeal and therefore not error are not "mistakes" subject to relief from judgment under Rule 60(b)(1). FSM Dev. Bank v. Arthur, 15 FSM R. 625, 632 (Pon. 2008).

Failure to sue the borrower as well as, or instead of, the guarantors cannot be considered a "mistake" subject to relief from judgment under Rule 60(b)(1) because, as a general legal principle, a lender holding a guaranty of payment can sue a guarantor directly, without naming the borrower and because the terms of the guaranty, under which the guarantors were found liable, permitted the bank, in the case of a loan default, to sue the guarantors without suing the borrower. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 632 (Pon. 2008).

When the defendants do not assert that the judgment is void and do not allege that the court lacked subject matter jurisdiction over the case or personal jurisdiction over the defendants or that the court acted inconsistent with due process, the defendants are not entitled to relief from judgment under Rule 60(b)(4). FSM Dev. Bank v. Arthur, 15 FSM R. 625, 633 (Pon. 2008).

Rule 60(b)(5) which permits relief from a judgment on the ground that "it is no longer equitable that the judgment have prospective application," properly applies only to judgments with prospective effect, and so does not cover the case of a judgment for money damages. While a money judgment may be "prospective" to the extent that the defendant has failed to pay

it in a timely manner, it is nevertheless a final order and is not "prospective" for purposes of Rule 60(b)(5). FSM Dev. Bank v. Arthur, 15 FSM R. 625, 634 (Pon. 2008).

Subsection 60(b)(6), which permits relief for "any other reason justifying relief," and the other subsections of Rule 60(b) are mutually exclusive. Thus, if the reasons offered for relief from judgment could have been considered under any of the subsections 60(b)(1) through (5), they cannot be considered under Rule 60(b)(6). FSM Dev. Bank v. Arthur, 15 FSM R. 625, 634 (Pon. 2008).

Relief under Rule 60(b)(6) is reserved for extraordinary circumstances. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 634 (Pon. 2008).

When the defendants do not allege that the FSM Development Bank, or IDF, or FDA committed any wrongdoing causing the borrower's non-performance on the loan repayments, they cannot rely on the principle that a promisor is discharged from liability when the promisor's non-performance is caused by the other contracting party since the other contracting party, the bank (and its principal, IDF) did not cause the non-performance and they cannot rely on the principle that a person is not permitted to profit by his own wrong at another's expense since neither the bank nor IDF are alleged to have committed a wrong, and it is IDF that will profit if the loan is repaid. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 635 (Pon. 2008).

When the terms of the guaranty under which the guarantors have been held liable waived any right to the borrower's defenses, the guarantors would need to overcome this express waiver in order to be entitled to relief from the judgment against them based on the ground that another's wrongdoing is a defense against the borrower being required to repay its loan. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 635 n.7 (Pon. 2008).

A litigant, as a precondition to Rule 60(b) relief, must give the trial court reason to believe that vacating the judgment will not be a futile gesture or an empty exercise, that is, that the litigant has a meritorious defense. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 635 (Pon. 2008).

When, taking the guarantors' factual allegations as true – that the bank misrepresented to plaintiffs that the documents were in accord with the loan, caused plaintiffs to rely upon said representations and knew plaintiffs would so rely – it is difficult to see how the guarantors were harmed thereby because, if the bank had prepared all the documents correctly, the documents would have shown that a corporation was the borrower and that the guarantors were guarantors with the result that the guarantors would be liable on their guaranty, and since this result is no different than that in the judgment rendered in the former litigation, any alleged reliance on the bank's representation could not have been to the guarantors' detriment since they were in no worse position than if the loan documents were accurately prepared. Arthur v. Pohnpei, 16 FSM R. 581, 597-98 (Pon. 2009).

Since the court cannot ignore the facts that the guarantors agreed were true and stipulated to in the former litigation – that a corporation was the borrower, that the promissory note was incorrectly completed, and that they signed a guaranty – and instead pretend, for the sake of this independent action, that those facts are not true, and that the guarantors were the borrowers, the guarantors' current allegation that they were the borrowers cannot be taken as true because it is a conclusion of law masquerading as a factual conclusion that the court cannot accept or, alternatively, it is a conclusory factual allegation that is contradicted by facts

which the court may judicially notice – the court filings, record, and reported decision in the former action and the appellate affirmance of that decision. Either way, the court cannot accept this allegation as true because it is not. Arthur v. Pohnpei, 16 FSM R. 581, 598 (Pon. 2009).

When the guarantors steadfastly maintained, from the start and throughout the former litigation and subsequent appeal, their position that a corporation was the borrower and that they were only the guarantors, the guarantors cannot now pretend that, because the former judgment and appeal were unfavorable to them, they were instead the borrowers on the loan, something they had consistently denied throughout. If the guarantors were permitted to now assert that they were the borrowers, they would be relitigating the entire case from the beginning, and that they cannot do in an independent action, and, since the corporation was the borrower, the guarantors' allegations that can be taken as true fail to state a claim for fraud. Because the guarantors' allegation cannot make out a fraud claim, summary judgment could be granted in the bank's favor on this ground alone since, without the existence of the requisite fraud, res judicata prevails. Arthur v. Pohnpei, 16 FSM R. 581, 598 (Pon. 2009).

When the issue of the bank's faulty preparation of some of the loan documents that showed the guarantors as borrowers and the effects of those scrivener's errors on the guarantors' liability was fully litigated in the former civil action and, on appeal, the guarantors' contentions were again fully considered and the trial court's decision was affirmed; when the defense of mistake in the document preparation was fully litigated in the trial court and also considered by the appellate court; and when the guarantors did not raise a fraud defense at that time but they could have if they had chosen to since all the facts known to them now were also known to them then, there is no genuine issue of material fact about whether the guarantors were misled by the bank's errors on the loan documents to believe that they were the actual borrowers and not guarantors since they all believed that the corporation was the borrower, not they, and that they had signed a guaranty, and, in the former action, had stipulated to these facts as true and that these facts were undisputed. Arthur v. Pohnpei, 16 FSM R. 581, 598-99 (Pon. 2009).

Relief under Rule 60(b)(6) is reserved for "extraordinary circumstances," which usually means that the movant himself was not at fault for his predicament. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 659 (App. 2009).

An issue that should have been known to the appellants when the original suit was filed should have been raised as a defense in the original suit or an excuse offered for not raising it then. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 659 (App. 2009).

When there is no reason, other than the appellants' own carelessness or inadvertence, not to have raised a defense at the trial level or to have impleaded the State of Pohnpei for indemnification, but they did neither, the appellants fail to demonstrate that they were not at fault or negligent. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 659 (App. 2009).

When the appellants' first claim is that the contract reformation was a mistake on the court's part and that issue was already disposed of in their first appeal; when they have been before the trial court as well as the appeals court, and have had an opportunity to fully litigate their claims; when their claim that because the contract was reformed, they were unable to present their defense is unsupported and unpersuasive; when they were not denied any due process rights or remedies in law or equity as they were afforded an opportunity to fully litigate their claims and to present in the original action any meritorious defense against all claims; when they stipulated

to the facts; and when many of their arguments are factual claims made in a prior appeal, in which that court already concluded were speculative arguments, the appellants have not demonstrated that their circumstances are in any way unusual and exceptional. Nor have they established that their own fault or negligence was not a factor in the resulting judgment. Therefore the trial court did not abuse its discretion in denying the appellants' request for relief from the judgment. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 659-60 (App. 2009).

When the appellants have had ample opportunity to present evidence on every ground or defense that they asserted, or could have asserted, but failed to do so; when the trial court comprehensively and correctly analyzed and denied their Rule 60(b) motion for relief from the trial court's judgment; and when they now urge on this appeal that the trial court's decision be vacated because it failed to treat their Rule 60(b) motion as an independent action under Rule 60(b)(6), this contention is spurious. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 660 (App. 2009).

Evidence does not qualify as newly discovered evidence that would be a ground for relief under Civil Rule 60(b)(2) when that evidence should have been in the plaintiff's possession all along (since he was a signatory to the agreement) or was evidence he would have, with due diligence, located before he filed suit, especially since this is his second suit for the breach of the same easement agreement and he should have had it for the earlier suit. Welle v. Chuuk Public Utility Corp., 18 FSM R. 203, 206 (Chk. 2012).

When all the defenses the defendant now seeks to raise were previously raised on his behalf and then considered and rejected by the court, he has not shown any grounds to revisit these issues or for relief from judgment under Civil Procedure Rule 60(b), which governs the defendant's motion to dismiss prior court judgments, which also was not timely. Saimon v. Wainit, 18 FSM R. 211, 214 (Chk. 2012).

Civil Procedure Rule 60(b)(4) provides for the relief from judgment when the judgment is void. Unlike other grounds for relief from judgment under Rule 60(b), the court does not have any discretion when the relief is sought because the judgment is void since a judgment is either void or it is valid and if it is void the court must vacate it. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 613 (Pon. 2013).

Although the court has no discretion and must grant the relief when relief is sought from a void judgment, a judgment is void only if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 613 (Pon. 2013).

Since a corporation's directors have a duty to act in the corporation's best interest and when, regardless of whether the judgment existed, the corporation had debts that greatly exceeded its assets and it was unable to pay those debts as they became due, bankruptcy was probably in the corporation's best interest, and the court cannot give any weight to the argument that this meant that the directors had accepted the judgment when they directed the corporation to seek bankruptcy protection. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 613 (Pon. 2013).

The court cannot give any weight to the argument that the passage of time is enough to bar vacating a void judgment. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 614 (Pon. 2013).

A judgment entered against a party without notice or an opportunity to be heard is void and

subject to direct or collateral attack. Andrew v. Heirs of Seymour, 19 FSM R. 331, 341 (App. 2014).

There are civil procedure mechanisms to address situations where the Kosrae State Court would be in the position of being asked to enforce contradictory judgments. Under Kosrae Civil Procedure Rule 60(b)(5), on motion and on such terms as are just, the Kosrae State Court may relieve a party or a party's legal representative from a final judgment, order, or proceeding when a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application. Thus, a party could be relieved from an inconsistent permanent injunction as a final order that it is no longer equitable that it should have prospective application. Andrew v. Heirs of Seymour, 19 FSM R. 331, 341 & n.7 (App. 2014).

A court may relieve an affected party from judgment on the basis of mistake, inadvertence, surprise, or excusable neglect. The grant or denial of relief under Rule 60 rests with the trial court's sound discretion. The court must balance the policy in favor of hearing a litigant's claims on the merits against the policy in favor of finality. Moylan's Ins. Underwriters (FSM), Inc. v. Gallen, 20 FSM R. 3, 6 (Pon. 2015).

Relief from judgment will be denied when the basis for relief is that there was mistake, inadvertence, and excusable neglect in the stipulated judgment because besides the fraudulent insurance policies that are the subject of the complaint, there were legitimate policies sold and the defendant mistakenly believed that the properly earned commission and proper rate of commission had already been taken into account when the parties stipulated to judgment, but, during a deposition, in discussing the stipulation, the defendant admitted that the judgment amount was correct and that she had the opportunity to review the stipulation for one to two days before signing it and when no further evidence was produced to support the claim that the judgment amount was inaccurate. Moylan's Ins. Underwriters (FSM), Inc. v. Gallen, 20 FSM R. 3, 6 (Pon. 2015).

Relief from judgment will not be granted when the defendants' arguments brought pursuant to subsections 60(b)(1), (2), and (3) are well outside the one-year time constraint and are thus untimely and when the defendants' remaining affirmations fail to demonstrate any other reason justifying relief. FSM Dev. Bank v. Setik, 20 FSM R. 85, 88 (Pon. 2015).

The movants do not qualify for a suspension of the proceedings when they do not deny the debt and therefore fail to denote that they are likely to prevail on the merits of the accompanying Rule 60(b) motion; when there has been an inadequate showing that irreparable harm will befall the movants without the stay; when they have made no attempt to meet their obligation under the mortgage even though the executed mortgage pledged the subject parcels as security; when the coveted issuance of a stay would further delay the plaintiff's ability to recoup money due and owing, as reflected in the judgment(s) that have languished for an inordinate length of time, coupled with the fact that the deterioration of the mortgaged buildings is inevitable with the passage of time, thereby adversely impacting the value of the mortgaged property; and when the stay could set a troubling public policy precedent by allowing other debtors to stave off satisfaction of final judgments when an underlying justification for suspension of proceedings has not been adequately depicted. FSM Dev. Bank v. Setik, 20 FSM R. 85, 89 (Pon. 2015).

A motion sounding in an attorney's purported negligence does not constitute a basis for Rule 60(b) relief from judgment, as clients are held accountable for their attorney's acts or

omissions. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 103 (Chk. 2015).

In its discretion and on such condition for the adverse party's security as is proper, the court may, pending the disposition of a Rule 60 motion for relief from judgment, stay the execution of any proceeding to enforce a judgment. The criteria to be utilized when determining the propriety of a stay are: 1) whether the applicant has made a strong showing that the applicant is likely to prevail on the merits; 2) whether the applicant has shown that without a stay, the applicant will be irreparably harmed; 3) whether the stay's issuance would substantially harm other parties interested in the proceedings and 4) whether the public interest would be served by granting the stay. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 104 (Chk. 2015).

A motion to stay will be denied when the defendants' arguments have failed to denote a likelihood of prevailing on the merits of their Rule 60(b) motions; when there has been an inadequate showing that irreparable harm will befall them without a stay, as they do not dispute the debt but have made no attempt to meet their obligation with respect to the outstanding judgment; when the stay's issuance would further delay the plaintiff's ability to recoup monies due and owing, as reflected in the judgment that has been languishing for an inordinate length of time; and when a stay could conceivably set a troubling public policy precedent, in terms of allowing other debtors to stave off satisfaction of final judgments although an underlying justification for a suspension has not been adequately shown. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 104-05 (Chk. 2015).

A motion for a new trial or for relief from judgment will be denied when none of the purported "newly discovered evidence" that it relies upon qualifies as newly discovered evidence which by due diligence could not have been discovered earlier. George v. Palsis, 20 FSM R. 174, 176-77 (Kos. 2015).

Evidence, that by its very nature, was in the plaintiff's possession the whole time cannot be considered "newly discovered" evidence especially when the motion for a new trial or relief from judgment does not address the plaintiff's complete failure to produce the evidence at trial. George v. Palsis, 20 FSM R. 174, 177 (Kos. 2015).

A judgment is void only if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 289 (Pon. 2016).

Whether a default judgment granted relief not prayed for in the complaint's demand for judgment; whether the guaranties that were signed were not attached to the promissory notes; whether the judgment was joint and several; and whether one of the guaranties was not signed by the person it should have been signed by but was fraudulently signed by another person, are not determinants of subject-matter jurisdiction. While they may be raised as defenses, none of these grounds is jurisdictional. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 290 (Pon. 2016).

When none of the movants' asserted grounds would alter the case's nature or the type of relief sought because the court had jurisdiction over the case's nature – enforcement and collection of defaulted FSM Development Bank loans – and had, under 4 F.S.M.C. 117, the power to grant the relief sought (including mortgage foreclosure) and when none of the movants' grounds would change that or would have limited the court's ability to rule on parties' conduct or the status of debt and grant relief or judgment in any party's (including any defendant's) favor, the court had full jurisdiction over the case's subject matter even if the

defenses had been raised before judgment. A motion for relief from judgment on the ground the court lacked subject-matter jurisdiction will be denied on this ground alone. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 290 (Pon. 2016).

Rule 60(b)(6) is a grand reservoir of equitable power to do justice in a particular case, subject to the requirement that the provision is applicable only when there is a basis for relief different from those enumerated in subsections (1) through (5) of Rule 60(b), and when extraordinary circumstances exist for justifying relief. In re Contempt of Jack, 20 FSM R. 452, 459 (Pon. 2016).

The "extraordinary circumstances" required for Rule 60(b)(6) relief usually means that the movant himself or herself was not at fault for his or her predicament, and conversely, the usual implication of fault on the movant's part is that there are no "extraordinary circumstances." Relief under Rule 60 is simply not appropriate where a party has demonstrated a pattern of delay and neglect. In re Contempt of Jack, 20 FSM R. 452, 459 (Pon. 2016).

Rule 60(b) is not meant to relieve a party from its own carelessness and neglect, or from its counsel's carelessness and neglect. Rule 60(b) relief is precluded when the complained of injuries result solely from the carelessness or neglect of the moving party, or of the moving party's counsel, except when the neglect itself is excusable under FSM Civil Rule 60(b)(1). In re Contempt of Jack, 20 FSM R. 452, 459 (Pon. 2016).

With the exception of void judgments under Rule 60(b)(4), the grant or denial of relief under Rule 60 rests with the trial court's sound discretion, but that discretion is not an arbitrary one to be capriciously exercised, but a sound legal discretion guided by accepted legal principles, and the factors that should inform the court's consideration are: 1) that final judgments should not lightly be disturbed; 2) that the Rule 60(b) motion is not to be used as a substitute for appeal; 3) that the rule should be liberally construed in order to achieve substantial justice; 4) whether the motion was made within a reasonable time; 5) whether (if the judgment was a default or a dismissal in which the merits were not considered) the interest in deciding cases on the merits outweighs, in the particular case, the interest in the finality of judgments, and there is merit in the movant's claim or defense; 6) whether if the judgment was rendered after a trial on the merits the movant had a fair opportunity to present his claim or defense; 7) whether there are intervening equities that would make it inequitable to grant relief; and 8) any other factors relevant to the justice of the judgment under attack. In re Contempt of Jack, 20 FSM R. 452, 460 & n.3 (Pon. 2016).

Rule 60(b) is not intended as a substitute for a direct appeal from an erroneous judgment. The fact that a judgment is erroneous does not constitute a ground for relief under the Rule. Nor is Rule 60(b) designed to circumvent the policy evidenced by the rule limiting the time for appeal. In re Contempt of Jack, 20 FSM R. 452, 460 (Pon. 2016).

Although the term "void" describes a result, rather than the conditions that render a judgment unenforceable, a void judgment is one so affected by a fundamental infirmity that the infirmity may be raised after the judgment becomes final. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 507 (App. 2016).

A judgment is void and therefore subject to relief under Rule 60(b)(4), only if the court that rendered judgment lacked jurisdiction or in circumstances in which the court's action amounted to a plain usurpation of power constituting a violation of due process. The total want of

jurisdiction must be distinguished from an error in the exercise of jurisdiction and only rare instances of a clear usurpation of power will render a judgment void. In other words, a court has the power to determine its own jurisdiction and an error in that determination will not render the judgment void. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 508 (App. 2016).

Generally, attorney negligence is not a basis for Rule 60(b)(1) relief. Since, parties may freely choose their attorneys and should not be allowed to avoid the ramification of their chosen counsel's acts or omissions, to grant relief under Rule 60(b)(1) for attorney negligence would penalize the nonmoving party for the negligent conduct of the moving party's counsel. Johnson v. Rosario, 21 FSM R. 7, 11 (Pon. 2016).

Keeping a suit alive merely because the plaintiff should not be penalized for the omissions of his own attorney would be visiting the sins of the plaintiff's lawyer upon the defendant. Johnson v. Rosario, 21 FSM R. 7, 12 (Pon. 2016).

Relief under Rule 60(b)(6) is reserved for "extraordinary circumstances." Subsection (6) is a grand reservoir of equitable power to do justice in a particular case, subject to the requirement that it is applicable only when there is a basis for relief different from those enumerated in subsections (1) through (5) of Rule 60(b), and to the requirement that "extraordinary circumstances" exist for justifying relief. Johnson v. Rosario, 21 FSM R. 7, 12 (Pon. 2016).

"Extraordinary circumstances" justifying relief under Rule 60(b)(6) means that the movant himself was not at fault for his predicament, and conversely, the usual implication of fault on the movant's part is that there are no "extraordinary circumstances." Johnson v. Rosario, 21 FSM R. 7, 12 (Pon. 2016).

The dilatory approach exhibited by not filing a substitution motion, even though the named plaintiff passed away almost three and a half years earlier, coupled with a representation that "a probate needs to be filed" in the future, is clearly not the type of "extraordinary circumstances" contemplated by Civil Rule 60(b)(6) for relief from judgment. Johnson v. Rosario, 21 FSM R. 7, 13 (Pon. 2016).

A self-proclaimed obliviousness, in failing to make a motion to substitute once the plaintiff's death was suggested on the record, is not a "mistake" justifying relief under Civil Rule 60(b)(1). Neither was it "extraordinary circumstances" justifying relief under Civil Rule 60(b)(6), since the failure to file the relevant motion for substitution was attributable solely to the movant. The defendants should not be expected to endure the prejudicial repercussions attendant to the plaintiff's disproportionate tardiness. Johnson v. Rosario, 21 FSM R. 7, 13-14 (Pon. 2016).

It is well established, that when a judgment has been entered against a party without notice or an opportunity to be heard, it is void and subject to direct or collateral attack at any time. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 121 (App. 2017).

Under Civil Rule 60(b)(1), the trial court may relieve a party from a final judgment based on mistake, inadvertence, surprise, or neglect. Gallen v. Moylan's Ins. Underwriters (FSM) Inc., 21 FSM R. 380, 385 (App. 2017).

Stipulated judgments, while they are judicial acts, also have many attributes of voluntarily-undertaken contracts, and when the parties have made a freely calculated, deliberate choice to submit to an agreed upon judgment rather than seek a more favorable litigated outcome (or risk

a less favorable litigated outcome), the burden under Rule 60(b) is probably more formidable than had they litigated and lost. Gallen v. Moylan's Ins. Underwriters (FSM) Inc., 21 FSM R. 380, 386 (App. 2017).

When the movant's evidence that the judgment amount was a mistake was inadequate, the trial court's denial of her Rule 60(b)(1) motion was not an abuse of discretion, since one of the basic tenets of our system of jurisprudence is that of finality of judgments. Gallen v. Moylan's Ins. Underwriters (FSM) Inc., 21 FSM R. 380, 386 (App. 2017).

Even when the unjust enrichment remedy is otherwise available to a judgment-debtor claiming an inaccurate judgment amount, she would still need to first prevail on her Rule 60(b)(1) motion (based on mistake), before the unjust enrichment doctrine could become a viable remedy. Gallen v. Moylan's Ins. Underwriters (FSM) Inc., 21 FSM R. 380, 386 (App. 2017).

The denial of a Rule 60(b) motion does not bring up the underlying judgment for review. The appellate court's review is limited to whether the trial court abused its discretion in denying the Rule 60(b) motion because Rule 60(b) is not a substitute for a direct appeal from an erroneous judgment. That a judgment is erroneous does not constitute a ground for relief under the Rule. Setik v. FSM Dev. Bank, 21 FSM R. 505, 514 (App. 2018).

That rental payments may have been diverted is not a ground for relief from judgments that were entered years before that diversion. At most, the judgment-debtors would have an argument about the amount outstanding on the judgments. Setik v. FSM Dev. Bank, 21 FSM R. 505, 516 (App. 2018).

A motion may seek timely Rule 60(b)(1) relief when it seeks relief from a recent order in aid of judgment, and not from the judgment itself. Setik v. FSM Dev. Bank, 21 FSM R. 505, 516 (App. 2018).

A claim that the FSM Development Bank should not be trying to make a profit is neither a ground for relief from judgment nor a meritorious defense. Setik v. FSM Dev. Bank, 21 FSM R. 505, 519 (App. 2018).

When the appellants' reasons were not sufficient to justify vacating the default judgments under the Rules generally available to them, Rule 60(b)(4) and 60(b)(6), and when they failed to show a meritorious defense, the trial court did not abuse its discretion when it denied their motion for relief from judgment. Setik v. FSM Dev. Bank, 21 FSM R. 505, 519 (App. 2018).

An order that Pohnpei seek an earthmoving permit to remove a dredging berm was a final decision because it ended the litigation and did not contemplate further court action other than the enforcement of that order. Berman v. Pohnpei, 22 FSM R. 300, 302 (Pon. 2019).

Under Civil Procedure Rule 60(b)(5), a party may obtain relief from a judgment or a final order when 1) the judgment has been satisfied, released, or discharged, or 2) a prior judgment upon which it is based has been reversed or otherwise vacated, or 3) it is no longer equitable that the judgment should have prospective application. Berman v. Pohnpei, 22 FSM R. 300, 303 (Pon. 2019).

The Rule 60(b)(5) provision that permits relief from a final order or judgment on the ground

that it is no longer equitable that the judgment have prospective application, properly applies only to final decisions with prospective effect. Berman v. Pohnpei, 22 FSM R. 300, 303 (Pon. 2019).

Rule 60(b)(5) may not be used to challenge the legal conclusions on which a prior judgment or order rests, but the Rule provides a means by which a party can ask a court to modify or vacate a judgment or order if a significant change either in factual conditions or in law renders continued enforcement detrimental to the public interest. The party seeking relief bears the burden of establishing that changed circumstances warrant relief, but once that party carries this burden, a court abuses its discretion when it refuses to modify an order in light of such changes. Berman v. Pohnpei, 22 FSM R. 300, 303 (Pon. 2019).

The movants have established that significantly changed circumstances warrant relief under Rule 60(b)(5) when the significant changes in the factual conditions of the dredging berm make it no longer equitable that the 1991 administrative agency decision and the dredging permit conditions have prospective application and when the changed circumstances have rendered the enforcement of the final order that the defendants seek a permit to remove the dredging berm detrimental to the public interest. Berman v. Pohnpei, 22 FSM R. 300, 304 (Pon. 2019).

Relief under Rule 60(b)(6) is reserved only for extraordinary circumstances. It is the grand reservoir of equitable power to do justice in a particular case, subject to the requirement that the provision is applicable only when the basis for relief is different from those enumerated in Rule 60(b) subsections (1) through (5), and to the requirement that extraordinary circumstances exist for justifying relief. FSM Dev. Bank v. Talley, 22 FSM R. 587, 592 (Kos. 2020).

Extraordinary circumstances usually means that the movant himself was not at fault for his predicament, but if there was fault on the movant's part, the usual implication is that there are no extraordinary circumstances. Even then, a motion for relief from judgment under Rule 60(b)(6) must still be filed within a reasonable time. FSM Dev. Bank v. Talley, 22 FSM R. 587, 592 (Kos. 2020).

An allegation of neglect, which, if it were shown to be excusable, would be a ground for relief under Rule 60(b)(1), but when the one-year time limit for Rule 60(b)(1) relief expired long before the defendant filed his motion for relief, the defendant cannot use Rule 60(b)(6) to circumvent the Rule 60(b)(1) time limit. FSM Dev. Bank v. Talley, 22 FSM R. 587, 592 (Kos. 2020).

A client is responsible for his attorney's actions, inactions, or omissions. Rule 60(b) is not meant to relieve a party from its own carelessness and neglect, or from his counsel's carelessness and neglect. FSM Dev. Bank v. Talley, 22 FSM R. 587, 593 (Kos. 2020).

Rule 60(b) relief is precluded when the injuries complained of result solely from the movant's carelessness or neglect, or from his counsel's carelessness or neglect, except when the neglect itself is excusable under FSM Civil Rule 60(b)(1). FSM Dev. Bank v. Talley, 22 FSM R. 587, 593 (Kos. 2020).

Equitable estoppel (and unclean hands) is based on the other party's alleged misrepresentation or misconduct, this ground for relief can only be sought through Rule 60(b)(3), and that rule, as noted above, has a one-year absolute time limit, and that time limit expired four and a half months before the defendant filed his motion. FSM Dev. Bank v. Talley,

22 FSM R. 587, 594-95 (Kos. 2020).

Primarily salient to an analysis of an excusable neglect assertion are: 1) an explanation of the movant's diligent and good faith efforts and 2) the lack of prejudice to the opposing party, but good-faith efforts and lack of prejudice are not enough to justify a finding of excusable neglect. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 600, 604 (Pon. 2020).

In a close case, it is probably best for the court to err on the side of caution and call the neglect excusable. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 600, 604 (Pon. 2020).

– Relief from Judgment – Independent Actions

Where there are one or more legal remedies still available to a litigant the trial court has no jurisdiction to grant relief from a judgment through an independent action in equity. Election Comm'r v. Petewon, 6 FSM R. 491, 499 (Chk. S. Ct. App. 1994).

Trial courts have jurisdiction to set aside judgments either by a Rule 60 relief from judgment motion or by an independent action in equity. Election Comm'r v. Petewon, 6 FSM R. 491, 499 (Chk. S. Ct. App. 1994).

There are five essential elements to an independent action in equity to set aside a judgment. They are 1) a judgment which ought not, in equity and good conscience, to be enforced; 2) a good defense to the alleged cause of action on which the judgment is founded; 3) fraud, accident or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; 4) the absence of fault or negligence on the part of the defendant; and 5) the absence of any adequate remedy at law. If any one of these elements is missing the court cannot take equitable jurisdiction of the case. Election Comm'r v. Petewon, 6 FSM R. 491, 499 (Chk. S. Ct. App. 1994).

In appropriate circumstances, a court will invoke its equitable jurisdiction and will permit an independent action to set aside a prior judgment. Union Indus. Co. v. Santos, 7 FSM R. 242, 245 (Pon. 1995).

Where an identical action was dismissed with prejudice, the parties were represented by competent counsel, and defendant relied upon the dismissal of the prior action as a final and unequivocal resolution of both parties' claims, it would be inequitable to allow the plaintiff to relitigate the issue. Union Indus. Co. v. Santos, 7 FSM R. 242, 245 (Pon. 1995).

Chuuk state trial courts have jurisdiction to set aside judgments either by a Rule 60 relief from judgment motion or by an independent action in equity. The FSM Supreme Court trial division therefore also has the power in a proper case to entertain an independent action for relief from a state court judgment. Enlet v. Bruton, 12 FSM R. 187, 189-90 (Chk. 2003).

There are five essential elements to an independent action in equity to set aside a judgment: 1) a judgment which ought not, in equity and good conscience, to be enforced; 2) a good defense to the alleged cause of action on which the judgment is founded; 3) fraud, accident or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; 4) the absence of fault or negligence on the defendant's part; and 5) the absence of any adequate remedy at law. Enlet v. Bruton, 12 FSM R. 187, 190 (Chk. 2003).

Relief from a judgment may be sought either by a Rule 60(b) motion or by an independent action – through filing a separate case. It cannot be sought by both. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 636 (Pon. 2008).

It is not the function of an independent action to relitigate issues finally determined in another action between the parties. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 636 n.8 (Pon. 2008).

When the defendants have not filed their Rule 60(b) motion seeking relief in a separate action in equity collaterally attacking the judgment, but have instead filed it as a post-judgment motion in the original case, the motion may only be treated as a Rule 60(b) motion for relief from judgment, and not as an independent action, despite the defendants styling their motion as one "in the nature of an independent action." FSM Dev. Bank v. Arthur, 15 FSM R. 625, 636 (Pon. 2008).

Resort to an independent action may be had only rarely, and then only under unusual and exceptional circumstances. The defendants must satisfy all five of an independent action's elements, which are: 1) a judgment which ought not, in equity and good conscience, to be enforced; 2) a good defense to the alleged cause of action on which the judgment is founded; 3) fraud, accident or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; 4) the absence of fault or negligence on the defendant's part; and 5) the absence of any adequate remedy at law. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 636 (Pon. 2008).

Rule 60(b) permits only motions for relief from judgment under that rule or independent actions. There is no such motion as one in the nature of an independent equitable action for relief filed in the original case. If a party wishes to seek relief through an independent action, it must file a separate independent action. If a party files a motion in the case in which the judgment was issued, it is a Rule 60(b) motion for relief from judgment. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 139 (Pon. 2008).

When an independent action's only purpose is to obtain relief from the judgment in another case; when certain named defendants were not parties in that other case, are not judgment-creditors in that other case, and have neither the power nor the authority to enforce that judgment since none of them has a judgment against the judgment-debtors and none of them is a successor-in-interest to that judgment's judgment-creditor; and when that judgment has not been assigned to any of them and thus, none of them can enforce the judgment, the independent action's complaint, as a matter of law, fails to state a claim against those certain named defendants upon which relief may be granted. Arthur v. Pohnpei, 16 FSM R. 581, 594-95 (Pon. 2009).

Whether certain named defendants can be ordered to order a judgment-creditor to cease collection efforts is pointless and meaningless since the court can, if the right to such relief were shown, vacate the challenged judgment and directly order the judgment-creditor, the only entity with the authority to collect the judgment, to cease collection efforts. If a judgment in an independent action vacates a judgment-creditor's judgment it would grant all of the relief sought, the other named defendants are thus neither necessary nor indispensable parties without whom complete relief cannot be granted. Arthur v. Pohnpei, 16 FSM R. 581, 595 (Pon. 2009).

Generally, claimants seeking equitable relief through an independent action must meet three requirements. They must 1) show that they have no other available or adequate remedy; 2) demonstrate that their own fault, neglect, or carelessness did not create the situation for which they seek equitable relief; and 3) establish a recognized ground–such as fraud, accident, or mistake–for equitable relief. Arthur v. Pohnpei, 16 FSM R. 581, 596 (Pon. 2009).

Generally, relief from a judgment may be sought either by a Rule 60(b) motion for relief from judgment filed in the original case or by a separate, independent action (a new case), but it cannot be sought by both. Arthur v. Pohnpei, 16 FSM R. 581, 596 (Pon. 2009).

There is some authority that if a Rule 60(b) motion for relief from judgment is denied solely as untimely, that denial does not act as res judicata precluding an independent action since the denial was not on the merits. Otherwise the two Rule 60(b) remedies (motion or independent action) are alternative, not cumulative, remedies, and res judicata applies to successive Rule 60(b) motions and independent Rule 60(b) actions. Arthur v. Pohnpei, 16 FSM R. 581, 596 (Pon. 2009).

When the denial of a Rule 60(b) motion for relief from judgment was not only on the ground that the motion was untimely, but also analyzed the merits of the grounds for relief and denied it on the merits of those grounds as well, summary judgment could be granted solely on the ground that the later independent action is precluded by the court's earlier denial on the merits of the motion. Arthur v. Pohnpei, 16 FSM R. 581, 596-97 (Pon. 2009).

The plaintiffs in an independent action have the burden to allege such fraud as to support an independent action for relief from judgment. Without the existence of the requisite fraud, an independent action in equity may not be brought. Instead, res judicata prevails. Arthur v. Pohnpei, 16 FSM R. 581, 597 (Pon. 2009).

An independent action cannot be used to withdraw a party's stipulation to the facts (or to have the court ignore their prior stipulation to the facts) and to then relitigate those issues since an independent action is not a vehicle for the relitigation of issues. Arthur v. Pohnpei, 16 FSM R. 581, 599 (Pon. 2009).

An independent action cannot be made a vehicle for relitigation of issues. A party is precluded by res judicata from relitigation in the independent equitable action issues that were open to litigation in the former action where he had a fair opportunity to make his claim or defense in that action. Arthur v. Pohnpei, 16 FSM R. 581, 599-600 (Pon. 2009).

When it is clear that an "independent action" is only an attempt to relitigate issues already litigated and decided by a trial court and affirmed by the appellate court and when the "fraud" allegation is merely an attempt to cast the same facts and claims in a different light in order to try to sneak under the bar of res judicata, there are no material facts genuinely in dispute and, as a matter of law, the independent action is barred by res judicata. Arthur v. Pohnpei, 16 FSM R. 581, 600 (Pon. 2009).

Rule 60(b) permits an independent action for relief from a judgment based upon fraud upon the court. Fraud upon the court is defined as the most egregious misconduct directed to the court itself, such as bribery of a judge or fabrication of evidence by counsel, which must be supported by clear, unequivocal and convincing evidence. Arthur v. Pohnpei, 16 FSM R. 581,

600 n.14 (Pon. 2009).

It is not important whether the trial judge considered the attack upon the judgment under 60(b) or as an independent equitable action, if based on all the evidence the trial judge in the exercise of his judicial and equitable discretion, denied relief. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 658 (App. 2009).

An independent action in equity to set aside a judgment must satisfy five essential elements: 1) a judgment which ought not, in equity and good conscience, to be enforced; 2) a good defense to the alleged cause of action on which the judgment is founded; 3) fraud, accident, or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; 4) the absence of fault or negligence on the part of the defendant; and 5) the absence of any adequate remedy at law. If any one of these elements is missing the court cannot take equitable jurisdiction of the case. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 659 (App. 2009).

There are only three methods by which judgment-debtors may have a judgment against them set aside. One is to appeal the judgment and convince the appellate court to reverse it. The second is a motion for relief from judgment as provided for in Civil Procedure Rule 60(b). The third is an independent action in equity (as acknowledged in Rule 60(b)) to set aside a judgment. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 11 & n.5 (Pon. 2011).

In an appropriate case, the Kosrae State Court has the power to grant a party relief from a Trust Territory High Court judgment through an independent action in equity. This has even been acknowledged by treaty with the United States. Andrew v. Heirs of Seymour, 19 FSM R. 331, 341 (App. 2014).

Kosrae Civil Procedure Rule 60(b) does not limit the power of the court to entertain an independent action. A party collaterally attacking a judgment has the burden to establish its prerequisites. The five essential elements that an independent action in equity to set aside a judgment must satisfy are: 1) a judgment which ought not, in equity and good conscience, to be enforced; 2) a good defense to the alleged cause of action on which the judgment is founded; 3) fraud, accident, or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; 4) the absence of fault or negligence on the part of the defendant; and 5) the absence of any adequate remedy at law. If any one of the elements is missing the court cannot take equitable jurisdiction of the case. Andrew v. Heirs of Seymour, 19 FSM R. 331, 341 (App. 2014).

Although Rule 60(b) does not limit the court's power to entertain an independent action to relieve a party from a judgment, the procedure for obtaining any relief from a judgment is either by a Rule 60(b) motion or by an independent action; not by both. FSM Dev. Bank v. Carl, 20 FSM R. 70, 72 (Pon. 2015).

The mere filing of an independent action for relief is not in itself a ground for relief of any kind. Just as a Rule 60(b) motion does not affect the finality of a judgment or suspend its operation, an independent action's filing does not affect the judgment's finality or suspend its operation. An independent action is just that – independent of the case in which the judgment was entered unless and until a final judgment in the independent action grants relief from the judgment. The independent action proceeds on its own. FSM Dev. Bank v. Carl, 20 FSM R.

70, 72 (Pon. 2015).

The filing of an independent action is not a ground for a stay of judgment. It cannot be the basis for a stay since its filing does not affect or suspend the judgment's operation. FSM Dev. Bank v. Carl, 20 FSM R. 70, 72 (Pon. 2015).

When the plaintiffs have already opted to seek the same relief via a Rule 60(b) motion, the present complaint is therefore an independent cause of action, and since a party seeking relief from a judgment is constrained to choosing, either a Rule 60(b) motion or an independent cause of action, the plaintiffs are thereby precluded from bringing the ostensibly redundant cause of action at hand. Setik v. Mendiola, 20 FSM R. 236, 241 (Pon. 2015).

An independent action seeking equitable relief, must satisfy five (5) essential elements: 1) a judgment which ought not, in equity and good conscience, be enforced; 2) a good defense to the alleged cause of action on which the judgment is founded; 3) fraud, accident, or mistake, which prevented the defendant in the judgment from obtaining the benefit of his defense; 4) the absence of fault or negligence on the defendant's part and 5) the absence of any adequate remedy at law. Since the components are prescribed in the conjunctive, if any one of these factors are absent, the court cannot take equitable jurisdiction of the case. Setik v. Mendiola, 20 FSM R. 236, 241 (Pon. 2015).

An independent action cannot be made a vehicle for relitigation of issues. A party is precluded by res judicata from relitigation in the independent equitable action that were open to litigation in the former action, where he had a far opportunity to make his claim or defense in that action. Setik v. Mendiola, 20 FSM R. 236, 241-42 (Pon. 2015).

Allegations in an independent action, which could have been previously broached consequently run counter to the doctrine of res judicata. Setik v. Mendiola, 20 FSM R. 236, 243 (Pon. 2015).

Having already utilized a Rule 60(b) motion for relief from judgment, the plaintiffs are not entitled to pursue a later independent cause of action to obtain relief because a party is limited to employing only one of these strategies. Setik v. Mendiola, 20 FSM R. 236, 244 (Pon. 2015).

The mere filing of an independent action for relief, is not in itself a ground for relief of any kind. Such a filing does not affect the judgment's finality or suspend its operation. Nor is the filing of an independent action a ground for stay. FSM Dev. Bank v. Setik, 20 FSM R. 315, 319 (Pon. 2016).

Parties are precluded from seeking relief from a judgment via an independent cause of action, after having previously chosen to utilize a Civil Rule 60(b) motion toward that end. Setik v. Mendiola, 20 FSM R. 320, 323 (Pon. 2016).

An independent action which seeks to belatedly stave off the transfer of land ownership, concerning the same property at issue in the previous actions, constitutes a redundant attempt that is prohibited under earlier case law, and as such, that proscription presents another hurdle, which this action cannot overcome. Setik v. Perman, 21 FSM R. 31, 40 (Pon. 2016).

An independent action in equity to set aside a judgment must satisfy five essential elements: 1) a judgment which ought not, in equity and good conscience, to be enforced; 2) a

good defense to the alleged cause of action on which the judgment is founded; 3) fraud, accident, or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; 4) the absence of fault or negligence on the part of the defendant; and 5) the absence of any adequate remedy at law. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 121 (App. 2017).

A collateral attack is not an opportunity to appeal or relitigate the matter. Merely leveling a claim of fraud, without connecting up such an allegation in terms of propounding sufficient evidence, does not satisfy the requisite burden of proof for a collateral attack of a Trust Territory judgment and fails to satisfy the five-prong test required to pierce a judgment via a collateral attack. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 122 (App. 2017).

An independent action in equity to set aside a judgment must satisfy five elements: 1) a judgment which ought not, in equity and good conscience, be enforced; 2) a good defense to the alleged cause of action on which the judgment is founded; 3) fraud, accident or mistake, which prevented the defendant in the judgment from obtaining the benefit of his defense; 4) the absence of fault or negligence on the defendant's part; and 5) the absence of an adequate remedy at law. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 310, 312-13 (App. 2017).

When an independent action for relief from judgment fails, then res judicata applies. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 310, 314 (App. 2017).

An appellate court reviews, under an abuse of discretion standard, a trial court's grant or denial of relief in an independent action to set aside a judgment. Setik v. Mendiola, 21 FSM R. 537, 552 (App. 2018).

An independent action is a rare and unusual case. Resort to an independent action may be had only rarely, and then only under unusual and exceptional circumstances. Setik v. Mendiola, 21 FSM R. 537, 552 (App. 2018).

An independent action in equity to set aside a judgment must satisfy five essential elements: 1) a judgment which ought not, in equity and good conscience, to be enforced; 2) a good defense to the alleged cause of action on which the judgment is founded; 3) fraud, accident, or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; 4) the absence of fault or negligence on the part of the defendant; and 5) the absence of any adequate remedy at law. Setik v. Mendiola, 21 FSM R. 537, 552 (App. 2018).

Relief from a judgment may be sought either by a Rule 60(b) motion or by an independent action – through filing a separate case. It cannot be sought by both. Setik v. Mendiola, 21 FSM R. 537, 552 (App. 2018).

An independent action to set aside a judgment made after a Rule 60(b) motion is denied, should be permitted only if it is made on a ground different from the ground in the denied Rule 60(b) motion. Setik v. Mendiola, 21 FSM R. 537, 553 (App. 2018).

If a Rule 60(b) motion for relief from judgment is denied solely as untimely, that denial does not act as res judicata precluding an independent action since the denial was not on the merits. A Rule 60(b)(1) motion's denial solely on the ground that the absolute time limit of one year precluded consideration of the merits of the grounds presented does not preclude a prompt

independent action for relief in the same court. Setik v. Mendiola, 21 FSM R. 537, 553 (App. 2018).

For an independent action in equity to set aside a judgment there are no time limits; the general statutes of limitation do not apply. Rule 60(b) permits an independent action and prescribes no time limitations for such action. In the absence of a controlling statute, the only time limitation is the equitable doctrine of laches. Setik v. Mendiola, 21 FSM R. 537, 554 (App. 2018).

There is no time limit on when an independent action may be brought, but the doctrine of laches is applicable and undue delay may bar relief. Setik v. Mendiola, 21 FSM R. 537, 554 (App. 2018).

An underlying judgment's res judicata effect is not a proper defense to, or an appropriate ground on which to grant a dismissal of, an independent action because an independent action seeks to set aside a judgment in another case that is presumed to be final and res judicata unless the independent action succeeds. Setik v. Mendiola, 21 FSM R. 537, 555 (App. 2018).

The denial of a Rule 60(b) motion for relief from judgment may have res judicata effect on a subsequent independent action to set aside a judgment, if the subsequent action is brought on the same ground as the earlier motion. Setik v. Mendiola, 21 FSM R. 537, 555 (App. 2018).

When a decedent's estate does not own the property and has no interest in it (since it has been "probated"), a cause of action for interference with its ownership rights fails to state a claim on which the court could grant relief and does not constitute a good defense to set aside the judgments. Setik v. Mendiola, 21 FSM R. 537, 555 (App. 2018).

Rule 9(b) requires that, in allegations of fraud, the circumstances constituting the fraud must be pled with particularity. When fraud is alleged, particularity is a pleading requirement that applies with equal force to independent actions brought under Rule 60(b). Setik v. Mendiola, 21 FSM R. 537, 556 (App. 2018).

Gross negligence and tortious interference with business relations and lost business opportunities and profits claims based on a decedent's estate owning the property and being under a probate court's supervision so that the bank's foreclosure wrongfully interferes with their business, fail to state claims on which the court could grant relief and do not constitute a good defense to set aside the bank's judgments when the decedent's estate does not own the property. Setik v. Mendiola, 21 FSM R. 537, 557-58 (App. 2018).

The absence of any one essential element of an independent action precludes relief. In particular, the failure to show the essential element of a good defense, precludes relief. Setik v. Mendiola, 21 FSM R. 537, 558 (App. 2018).

The element requiring the absence of fault or negligence on the part of the party seeking to set aside a judgment is more stringent in an independent action in equity than in a Rule 60(b) motion for relief. Setik v. Mendiola, 21 FSM R. 537, 558 (App. 2018).

When, if the plaintiffs' "causes of action" were not good defenses but rather separate claims, they would have been compulsory counterclaims that would have had to have been raised as counterclaims in the answer. They cannot sit idly by while the bank's promissory note

claim goes to a default judgment and then later raise the compulsory counterclaims as defenses warranting relief in an independent action. Setik v. Mendiola, 21 FSM R. 537, 558 (App. 2018).

Neither the presence of other defendants, who were in privity with the defendant and who were nominal parties, nor the plaintiffs' request for an injunction to prevent the enforcement of the earlier judgment, change the nature of the action from one seeking independent relief from that earlier judgment. Setik v. Mendiola, 21 FSM R. 624, 626 (App. 2018).

A new lawsuit obviously cannot be a motion to reopen a case under Bankruptcy Rule 9024 (or for relief from judgment under Civil Procedure Rule 60), since such a motion would necessarily be filed in the original bankruptcy case, but Civil Procedure Rule 60 (and thus Bankruptcy Rule 9024) authorizes one other procedure for relief – an independent action for relief. Rule 60(b) does not limit a court's power to entertain an independent action to relieve a party from a judgment. Panuelo v. Sigrah, 22 FSM R. 341, 357 (Pon. 2019).

When the debtor's administratrix named only the bankruptcy receiver as the sole defendant, she would have standing in the action, to recover alleged overpayments to the receiver, but to recover alleged overpayments to the creditors, she would have to proceed against those creditors. Panuelo v. Sigrah, 22 FSM R. 341, 357 (Pon. 2019).

For an independent action for relief, no statute of limitations would apply because there is no time limit on when an independent action may be brought, but the doctrine of laches is applicable and undue delay can bar relief. Panuelo v. Sigrah, 22 FSM R. 341, 358 (Pon. 2019).

Res judicata would bar any suit by an administratrix of a decedent's estate, over a closed bankruptcy proceeding unless the suit is an independent action for relief because an independent action seeks to set aside a judgment in another case that is presumed to be final and res judicata unless the independent action succeeds. Panuelo v. Sigrah, 22 FSM R. 341, 359 (Pon. 2019).

A suit that seeks to vacate or alter the bankruptcy court's orders in the bankruptcy case, but is not a motion to reopen that case under either Bankruptcy Rule 5010 or 9024, could be an independent action for relief as allowed by Bankruptcy Rule 9024 adopting Civil Procedure Rule 60(b) by reference. Panuelo v. Sigrah, 22 FSM R. 341, 359 (Pon. 2019).

Under FSM case law, an independent action to set aside a judgment or final order must satisfy five essential elements: 1) a judgment which ought not, in equity and good conscience, to be enforced; 2) a good defense to the alleged cause of action on which the judgment is founded; 3) fraud, accident, or mistake which prevented the defendant in the judgment (who would be the plaintiff in an independent action) from obtaining the benefit of his defense; 4) the absence of fault or negligence on the part of the defendant; and 5) the absence of any adequate remedy at law. If any element is missing, the court cannot take equitable jurisdiction of the case. Panuelo v. Sigrah, 22 FSM R. 341, 359 (Pon. 2019).

If Rule 60(b) is to be interpreted as a coherent whole, independent actions must be reserved for those cases of injustices which, in certain instances, are deemed sufficiently gross to demand departure from rigid adherence to the doctrine of res judicata. Due to the universal interest in the finality of judgments, resort to an independent action is only permitted under unusual and exceptional circumstances. Panuelo v. Sigrah, 22 FSM R. 341, 359 (Pon. 2019).

A court will not grant relief if the complaining party has or by exercising proper diligence would have had, an adequate remedy at law, or by proceedings in the original action to open, vacate, or otherwise obtain relief against, the judgment. Panuelo v. Sigrah, 22 FSM R. 341, 359-60 (Pon. 2019).

When the proponent's own fault, negligence, or carelessness, however innocent, contributed to the entry of the original judgment, an independent action for relief is improper unless the evidence to establish injustice is practically conclusive. Panuelo v. Sigrah, 22 FSM R. 341, 360 (Pon. 2019).

If a fraud allegation, that failed to adequately plead a regular fraud cause of action, was meant to be an allegation of fraud on the court, which is a further ground to set aside a judgment that Bankruptcy Rule 9024 (by adopting Civil Procedure Rule 60) permits to be brought in an independent action, that allegation will also be wanting because the doctrine of fraud upon the court is narrow and limited in scope and not every allegation of fraud rises to the level of fraud upon the court. Panuelo v. Sigrah, 22 FSM R. 341, 361 (Pon. 2019).

A finding of fraud on the court is justified only by the most egregious misconduct directed to the court itself, such as bribery of a judge or fabrication of evidence by counsel, and must be supported by clear, unequivocal and convincing evidence. Panuelo v. Sigrah, 22 FSM R. 341, 361 (Pon. 2019).

A grant of relief for fraud on the court ordinarily requires that: 1) the fraud is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury; 2) the fraud involves the most egregious conduct, such as bribery of a judge or the fabrication of evidence in which an attorney is implicated; and 3) the party perpetrating the fraud acted with an intent to deceive or defraud the court. Further, the fraud must have actually deceived the court. These requirements are strictly applied because a finding of fraud on the court is exempt from time limits and because it permits the severe consequence of allowing a party to overturn the finality of a judgment. Panuelo v. Sigrah, 22 FSM R. 341, 361 (Pon. 2019).

– Relief from Judgment – Time Limits

A motion for relief of a partial summary judgment under Civil Rule 59(e) is subject to a strict time limit of 10 days which cannot be enlarged by the court. Such a motion filed 10 months later is untimely. This very strict deadline cannot be avoided by an unsupported assertion that a copy of the judgment was not served. Kihara Real Estate, Inc. v. Estate of Nanpei (II), 6 FSM R. 354, 355-56 (Pon. 1994).

When a motion for relief from judgment is made pursuant to Civil Rule 60(b)(1), (2), or (3) the court must consider whether it was made within a reasonable time even when it is made within the one year time limit. Senda v. Mid-Pacific Constr. Co., 6 FSM R. 440, 445-46 (App. 1994).

Even where a request for Rule 60(b) relief is filed within the stated one-year time limit, a court still must examine whether the filing was made within a "reasonable time." In determining this issue, the court reviews all of the facts and circumstances surrounding the case and may

require the party seeking Rule 60 relief to offer a sufficient explanation for not having taken appropriate action in a more timely manner. Mid-Pacific Constr. Co. v. Senda, 7 FSM R. 129, 136 (Pon. 1995).

When a motion for relief from judgment is made pursuant to Civil Rule 60(b)(1), a court must first consider whether it was made within a reasonable time even when it is made within the one year time limit. To determine if the time was reasonable it considers whether the nonmoving party was prejudiced and whether the moving party had some good reason for his failure to take appropriate action sooner. Walter v. Meippen, 7 FSM R. 515, 518 (Chk. 1996).

The time for making a motion for relief from judgment continues to run even while the case is on appeal. Walter v. Meippen, 7 FSM R. 515, 518 (Chk. 1996).

A motion for relief from judgment cannot be brought under Rule 60(b) subsections (1), (2), or (3) when it is more than one year after the judgment. Kama v. Chuuk, 10 FSM R. 593, 600 (Chk. S. Ct. App. 2002).

A motion for relief from judgment under Rule 60(b) allows the court to consider a motion for relief from a final judgment for several listed reasons, but such a motion must be made within a reasonable time not more than one year after judgment was entered or taken. When the decision was entered nearly three years ago, the one year deadline in which to file a Rule 60(b) motion has long since expired and the motion is thus untimely and must also be rejected on that basis. Edwin v. Heirs of Mongkeya, 12 FSM R. 220, 222 (Kos. S. Ct. Tr. 2003).

There is no time limit on relief from a void judgment. The reason for this is obvious. If a judgment is void when issued, it is always void. When relief is sought from a void judgment, a court has no discretion but must grant relief from judgment. Ruben v. Petewon, 13 FSM R. 383, 389 (Chk. 2005).

There is no time limit to seek relief from a void judgment because if a judgment is void when issued, it is always void, and when relief is sought from a void judgment, a court has no discretion but must grant relief from judgment. Ruben v. Hartman, 15 FSM R. 100, 112 (Chk. S. Ct. App. 2007).

A Rule 60(b) motion must be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. The one-year time limit is not suspended by the pendency of an appeal because a Rule 60(b) motion can be made even though an appeal has been taken and is pending. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 632-32 (Pon. 2008).

The court is powerless to enlarge the one-year time limit to obtain relief from judgment under Rule 60(b) (1), (2), or (3) even if relief had been possible, and the concept of reasonable time cannot be used to extend the one-year limit. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 632 (Pon. 2008).

Courts that have held that a court's legal error can be considered a "mistake" subject to relief from judgment under Rule 60(b)(1), have ruled that "reasonable time" to seek relief in those cases cannot exceed the time in which an appeal might have been timely filed. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 632 n.4 (Pon. 2008).

There is no time limit to seek relief from a void judgment under Rule 60(b)(4). FSM Dev.

Bank v. Arthur, 15 FSM R. 625, 633 (Pon. 2008).

Motions for relief from judgment for Rule 60(b) reasons (5) and (6) must be made within a reasonable time. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 633 (Pon. 2008).

A factor to be considered in determining whether Rule 60(b) relief has been sought within a reasonable time is whether good reason has been presented for failure to act sooner. Courts have been unyielding in requiring that a party show good reason for the failure to take appropriate action sooner. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 633 (Pon. 2008).

When the defendants have not shown good reason for waiting until March 2008 to seek relief from a 2004 judgment that was affirmed in 2006, the defendants have not moved for relief from judgment "within a reasonable time" as required and their motion to vacate the judgment can be denied on this ground alone. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 633 (Pon. 2008).

Rule 60(b)(6) cannot be used to circumvent the one-year time limit for motions for relief from judgment under Rule 60(b) reasons (1), (2), and (3). FSM Dev. Bank v. Arthur, 15 FSM R. 625, 634 (Pon. 2008).

By moving to vacate a judgment, the movants automatically raise the issue of whether they had filed their motion within a reasonable time because a motion to vacate judgment made more than ten days after judgment is entered is a Rule 60(b) motion for relief from judgment and Rule 60(b) requires that all motions for relief from judgment be made in a reasonable time. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 138-39 (Pon. 2008).

The court has no need to address the question posed by the movants in a motion to vacate judgment when the movants had to first surmount the hurdle of whether the motion to vacate judgment was filed within a reasonable time, and they could not. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 139 (Pon. 2008).

Rule 60(b) requires that the movant explain why the seven-month lapse between the dismissal of his case and the motion for relief constitutes a reasonable time within which to make the motion for relief from judgment. Aake v. Mori, 16 FSM R. 607, 608 (Chk. 2009).

By moving to vacate a judgment, a movant automatically raises the issue of whether the motion is filed within a reasonable time because Rule 60(b) requires that all motions for relief from judgment be made in a reasonable time. A movant must explain why the lapse between the judgment in, or the dismissal of, the case and his motion for relief from judgment constitutes a reasonable time within which to move for relief from judgment. Welle v. Chuuk Public Utility Corp., 18 FSM R. 203, 205 (Chk. 2012).

A factor the court must consider when determining whether Rule 60(b) relief has been sought within a reasonable time is whether good reason has been presented for failure to act sooner. Welle v. Chuuk Public Utility Corp., 18 FSM R. 203, 205 (Chk. 2012).

Courts have been unyielding in requiring that a party show good reason for the failure to take appropriate action sooner. When a movant has not shown good reason for waiting to seek relief, the movant has not moved for relief from judgment "within a reasonable time" as required and the motion to vacate the judgment can be denied on this ground alone. Welle v. Chuuk

Public Utility Corp., 18 FSM R. 203, 205 (Chk. 2012).

A court need not address a movant's claims in a motion to vacate judgment when the movant had to first surmount the hurdle of whether the motion for relief from judgment was filed within a reasonable time, and the movant could not. Welle v. Chuuk Public Utility Corp., 18 FSM R. 203, 205 (Chk. 2012).

When a movant has not shown why the six-month lapse between the summary judgment and his motion for relief from judgment is a reasonable time and has not given any reason for the delay, he has not shown that his motion was filed within a reasonable time and his motion for relief must therefore be denied. Welle v. Chuuk Public Utility Corp., 18 FSM R. 203, 205-06 (Chk. 2012).

When a motion for relief from judgment is made pursuant to Rule 60(b)(1), a court must first consider whether it was made within a reasonable time even when it is made within the one year time limit. To determine if the time was reasonable, it considers whether the nonmoving party was prejudiced and whether the moving party had some good reason for his failure to take appropriate action sooner. Bank of Hawaii v. Susaia, 19 FSM R. 66, 69 (Pon. 2013).

When a motion for relief from judgment is made pursuant to Civil Rule 60(b)(1), (2), or (3), a court must first consider whether it was made within a reasonable time even when it is made within the one year time limit. To determine if the time was reasonable, the court considers whether the nonmoving party was prejudiced and whether the moving party had some good reason for his failure to take appropriate action sooner. Moylan's Ins. Underwriters (FSM), Inc. v. Gallen, 20 FSM R. 3, 5 (Pon. 2015).

Four months may be a reasonable time for a defendant to seek relief from judgment when the defendant was pro se and the plaintiff was not prejudiced by the delay. Moylan's Ins. Underwriters (FSM), Inc. v. Gallen, 20 FSM R. 3, 6 (Pon. 2015).

A motion for relief from judgment must be made within a reasonable time and for most reasons, that time cannot exceed one year. Even if the reason given were one for which reasonable time greater than one year was allowed, a motion sixteen years after judgment, is not made within a reasonable time. FSM Dev. Bank v. Carl, 20 FSM R. 70, 72 (Pon. 2015).

Rule 60(b)(6) motions are reserved for extraordinary circumstances. Since Rule 60(b)(6), which delineates "any other reason justifying relief" and the other Rule 60(b) subsections are mutually exclusive, Rule 60(b)(6) cannot be utilized to circumvent the one-year time limit for motions seeking relief from judgment under Rule 60(b)(1), (2), and (3). FSM Dev. Bank v. Setik, 20 FSM R. 85, 88 (Pon. 2015).

Relief from judgment will not be granted when the defendants' arguments brought pursuant to subsections 60(b)(1), (2), and (3) are well outside the one-year time constraint and are thus untimely and when the defendants' remaining affirmations fail to demonstrate any other reason justifying relief. FSM Dev. Bank v. Setik, 20 FSM R. 85, 88 (Pon. 2015).

An April 4, 2014 motion for relief from a September 23, 2009 default judgment is well outside the time constraint for arguments based on Rule 60(b) subsections (1), (2), and (3), and as such, is untimely. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 102 (Chk. 2015).

A factor to be considered in determining whether Rule 60(b) relief has been sought within a reasonable time, is whether a good reason has been presented for failure to act sooner. Courts have been unyielding in requiring that a party show good reason for the failure to take appropriate action sooner. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 102 (Chk. 2015).

Since Rule 60(b)(6) relief is reserved for extraordinary circumstances and the language delineated therein: "any other reason justifying relief," cannot be utilized to circumvent the one-year time limit for motions brought pursuant to Rule 60(b) subsections (1), (2), and (3). FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 102 (Chk. 2015).

The defendants have not proffered any rationalization for the inordinate delay in seeking relief from judgment when they have not opposed or otherwise responded to the entry of the default judgment, the order(s) in aid of judgment, or the writ of garnishment that they now move to set aside and when, although they allege that they were not privy to the respective hearing dates, the record denotes that their previous counsel was in receipt of the motions and had notice of the relevant proceedings. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 103 (Chk. 2015).

As grounds for post-judgment relief, motions raised under either Rule 60(b)(3) (for a fraud claim) or Rule 60(b)(1) (for mistake, inadvertence, surprise, or excusable neglect) must be made within a reasonable time, not more than one year after the judgment, and will be denied as untimely when the one-year time limit has long since passed. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 290 n.4 (Pon. 2016).

Relief from judgment for an adverse party's fraud, such as fraud in the inducement, or misrepresentation is a motion that can only be made under Rule 60(b)(3) and that has a one-year deadline. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 291 (Pon. 2016).

The only type of fraud not subject to the one-year limitation for relief from judgment is fraud on the court. This is because Rule 60(b) does not limit the time in which the court may set aside a judgment for fraud on the court. Fraud on the court is a lawyer's or party's misconduct so serious that it undermines or is intended to undermine the integrity of the judicial proceeding. A finding of fraud on the court is justified only by the most egregious misconduct directed to the court itself, such as bribery of a judge or counsel's fabrication of evidence, and must be supported by clear, unequivocal, and convincing evidence. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 291 (Pon. 2016).

A Rule 60(b) motion must be made within a reasonable time. A factor to consider in determining whether Rule 60(b) relief has been sought within a reasonable time is whether good reason has been presented for failure to act sooner. In re Contempt of Jack, 20 FSM R. 452, 460 (Pon. 2016).

If a court's legal error were considered a "mistake" under Rule 60(b)(1), or if relief is sought under Rule 60(b)(6) for error involved a fundamental misconception of law, the "reasonable time" for a motion of this kind may not exceed the time in which appeal might have been taken a reasonable time for a motion to relief cannot exceed the 42-day time limit provided by FSM Appellate Rule 4(a)(1). Rule 60(b)(6)'s broad power is not for the purpose of relieving a party from free, calculated, and deliberate choices he or she has made. It is ordinarily not permissible to use a Rule 60(b) motion to remedy a failure to take an appeal. In re Contempt of Jack, 20 FSM R. 452, 460-61 (Pon. 2016).

The reason for there being no time limit on relief from a void judgment is obvious. If a judgment is void when issued, it is always void. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 507 (App. 2016).

Under Rule 60(b)(1), (2), or (3), a movant must file the motion within one year from the entry of final judgment. Otherwise, no specific time period is set forth, except that under Rule 60(b)(4), (5), or (6), the motion must be made within a "reasonable time." What constitutes a reasonable time, depends on the facts of each case. The relevant considerations include, whether the parties have been prejudiced by the delay and good reason presented for failing to take action sooner. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 508 (App. 2016).

Even when the motion for relief from judgment was not filed within the prescribed reasonable time, the court's analysis will not conclude, because if the judgment was void, relief may nevertheless be granted under Rule 60(b)(4). Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 509 (App. 2016).

Unlike its counterparts, Rule 60(b)(4), which provides relief from void judgments, is not subject to any time limitation. If a judgment is void, it is a nullity from the outset and any Rule 60(b)(4) motion for relief is therefore filed within a reasonable time. However, the concept of void judgments is narrowly construed. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 509 (App. 2016).

When the movants have failed to cite any reasons for the elongated delay in filing their motion for relief from judgment, much less extraordinary circumstances that would warrant having their Rule 60(b)(4) motion supersede the doctrine of *res judicata*, prejudice would invariably inure to the judgment creditor, in light of its justified reliance on the relevant December 28, 2007 default judgment's finality. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 509-10 (App. 2016).

Since Rule 60(b) specifically provides that Rule 60(b) motions must be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment was entered, a Rule 60(b) motion on those grounds that was not made within one year of any of the judgments, but was made years later, is too late. Setik v. FSM Dev. Bank, 21 FSM R. 505, 515 (App. 2018).

Relief cannot be sought under subsection 60(b)(6) if the time has passed to seek relief under 60(b)(1), since Rule 60(b)(6) is reserved for extraordinary circumstances not covered in any of the other Rule 60(b) subsections and cannot be used to circumvent the one-year time limit for motions brought under subsections (1), (2), and (3). Setik v. FSM Dev. Bank, 21 FSM R. 505, 515 (App. 2018).

Mere clerical errors in judgments, such as those of calculation, may be corrected under Rule 60(a) at any time. Setik v. FSM Dev. Bank, 21 FSM R. 505, 516 (App. 2018).

If a default judgment has been entered when the court lacked personal jurisdiction over the defendant, then that default judgment is void and relief can be sought under Rule 60(b)(4), for which there is no time limit to seek relief. Setik v. FSM Dev. Bank, 21 FSM R. 505, 516 (App. 2018).

If a Rule 60(b) motion for relief from judgment is denied solely as untimely, that denial does not act as res judicata precluding an independent action since the denial was not on the merits. A Rule 60(b)(1) motion's denial solely on the ground that the absolute time limit of one year precluded consideration of the merits of the grounds presented does not preclude a prompt independent action for relief in the same court. Setik v. Mendiola, 21 FSM R. 537, 553 (App. 2018).

For an independent action in equity to set aside a judgment there are no time limits; the general statutes of limitation do not apply. Rule 60(b) permits an independent action and prescribes no time limitations for such action. In the absence of a controlling statute, the only time limitation is the equitable doctrine of laches. Setik v. Mendiola, 21 FSM R. 537, 554 (App. 2018).

There is no time limit on when an independent action may be brought, but the doctrine of laches is applicable and undue delay may bar relief. Setik v. Mendiola, 21 FSM R. 537, 554 (App. 2018).

For an independent action for relief, no statute of limitations would apply because there is no time limit on when an independent action may be brought, but the doctrine of laches is applicable and undue delay can bar relief. Panuelo v. Sigrah, 22 FSM R. 341, 358 (Pon. 2019).

A grant of relief for fraud on the court ordinarily requires that: 1) the fraud is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury; 2) the fraud involves the most egregious conduct, such as bribery of a judge or the fabrication of evidence in which an attorney is implicated; and 3) the party perpetrating the fraud acted with an intent to deceive or defraud the court. Further, the fraud must have actually deceived the court. These requirements are strictly applied because a finding of fraud on the court is exempt from time limits and because it permits the severe consequence of allowing a party to overturn the finality of a judgment. Panuelo v. Sigrah, 22 FSM R. 341, 361 (Pon. 2019).

The time for making a motion for relief from judgment continues to run even while the case is on appeal. Timsina v. FSM, 22 FSM R. 383, 386 (Pon. 2019).

Under Rule 60(b)(1), (2), or (3), a movant must file the motion for relief from judgment within a reasonable time not to exceed one year from the entry of judgment. Thus, when the movant filed his motion for relief well over a year after the final judgment was entered against him, he is precluded from any relief from judgment on the grounds of mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, fraud, misrepresentation, or other misconduct of an adverse party. FSM Dev. Bank v. Talley, 22 FSM R. 587, 592 (Kos. 2020).

Extraordinary circumstances usually means that the movant himself was not at fault for his predicament, but if there was fault on the movant's part, the usual implication is that there are no extraordinary circumstances. Even then, a motion for relief from judgment under Rule 60(b)(6) must still be filed within a reasonable time. FSM Dev. Bank v. Talley, 22 FSM R. 587, 592 (Kos. 2020).

An allegation of neglect, which, if it were shown to be excusable, would be a ground for relief under Rule 60(b)(1), but when the one-year time limit for Rule 60(b)(1) relief expired long before the defendant filed his motion for relief, the defendant cannot use Rule 60(b)(6) to

circumvent the Rule 60(b)(1) time limit. FSM Dev. Bank v. Talley, 22 FSM R. 587, 592 (Kos. 2020).

When counsel appeared for the defendant four and a half months after the court entered the default judgment and no good reason was shown why a motion for relief from judgment could not have been filed promptly thereafter instead of after eleven more months, the defendant has not shown that a motion for relief from judgment filed fifteen and a half months after judgment was entered (and eleven months after his counsel entered her appearance), was filed within a reasonable time, and, since a Rule 60(b)(6) motion for relief from judgment must be made within a "reasonable time," even if the defendant had shown extraordinary circumstances, Rule 60(b)(6) relief would still be time-barred because the motion was filed too late. FSM Dev. Bank v. Talley, 22 FSM R. 587, 593 (Kos. 2020).

– Stipulated

Judgment entered pursuant to compromise and settlement is treated as a judgment on the merits barring any other action for the same cause. Truk v. Robi, 3 FSM R. 556, 564 (Truk S. Ct. App. 1988).

Default judgments and stipulated or agreed judgments against the State of Chuuk are to be subjected to close scrutiny by the court. Kama v. Chuuk, 9 FSM R. 496, 499 (Chk. S. Ct. Tr. 1999).

The movant for relief from judgment must keep in mind that generally the standard for reopening a consent final judgment is a strict one. Kama v. Chuuk, 10 FSM R. 593, 600 (Chk. S. Ct. App. 2002).

Rule 60(b) may not allow a party in whose favor a judgment is entered to seek relief from that judgment because stipulated judgments, while they are judicial acts, also have many attributes of voluntarily-undertaken contracts, and when the parties have made a freely calculated, deliberate choice to submit to an agreed upon judgment rather than seek a more favorable litigated outcome (or risk a less favorable litigated outcome), the burden under Rule 60(b) is probably more formidable than had they litigated and lost. Farata v. Punzalan, 11 FSM R. 175, 178 (Chk. 2002).

In any case brought under 11 F.S.M.C. 701 *et seq.*, a plaintiff must prove each element of his case by the preponderance of the evidence. In the case of a stipulated judgment under a settlement agreement, an equally basic jurisprudential principle dictates that a stipulated judgment will be entered only if it is well grounded both in law and in fact. Estate of Mori v. Chuuk, 12 FSM R. 24, 26 (Chk. 2003).

Although parties are free to stipulate to factual matters, they may not stipulate to conclusions of law to be reached by the court. FSM Social Sec. Admin. v. Jonas, 13 FSM R. 171, 173 (Kos. 2005).

A stipulated judgment is not a judicial determination or holding. Stipulated judgments, while they are judicial acts, also have the attributes of voluntarily-undertaken contracts. A stipulated judgment (also called a consent decree) although enforceable like any other judicial decree, is not a judicial determination of any litigated right. It may be defined as a contract of the parties acknowledged in open court and ordered to be recorded by a court of competent jurisdiction.

Mailo v. Chuuk, 13 FSM R. 462, 467-68 (Chk. 2005).

A stipulated judgment is not a judicial determination, but is a contract between the parties entering into the stipulation. A consent decree or stipulated judgment does not constitute a resolution of parties' rights but is a mere recordation of their private agreement. Once a consent decree has been entered it is generally considered to be binding on the parties and it cannot be amended or varied without each party's consent. Mailo v. Chuuk, 13 FSM R. 462, 468 (Chk. 2005).

When it is necessary to construe a stipulated judgment or consent decree, courts resort to ordinary principles of contract interpretation. Mailo v. Chuuk, 13 FSM R. 462, 468 (Chk. 2005).

Even if the judgment was based on the parties' agreement, when there is no suggestion of fraud, lack of jurisdiction, or other serious injustice; only that the appellants themselves failed to timely pursue their case in the past and they claim that this should not be held against them but they recognize that they had two previous opportunities to pursue their case and that their own inaction led to the prior appeal's dismissal, under these circumstances, the policy supporting finality of judgments should apply and the earlier stipulated judgment should be treated as a final judgment precluding relitigation of ownership. Heirs of Tulenkun v. Heirs of Seymour, 15 FSM R. 342, 347 (Kos. S. Ct. Tr. 2007).

When the parties stipulate to a judgment, the judgment is not a decision by the court. FSM Dev. Bank v. Kaminanga, 16 FSM R. 45, 46 (Chk. 2008).

Rule 58 does not, by its terms, apply to stipulated or consent judgments because such judgments are not decisions by the court. FSM Dev. Bank v. Kaminanga, 16 FSM R. 45, 46 (Chk. 2008).

A stipulated judgment is not a judicial determination, but is a contract between the parties making the stipulation. FSM Dev. Bank v. Kaminanga, 16 FSM R. 45, 47 (Chk. 2008).

A stipulated judgment (also called a consent decree) although enforceable like any other judicial decree, is not a judicial determination of any litigated right but may be defined as a contract of the parties acknowledged in open court and ordered to be recorded by a court of competent jurisdiction. It does not constitute a resolution of parties' rights but is a mere recordation of their private agreement and once a consent decree has been entered it is generally considered to be binding on the parties and it cannot be amended or varied without each party's consent. FSM Dev. Bank v. Kaminanga, 16 FSM R. 45, 47 (Chk. 2008).

Strict compliance with Rule 58 is unnecessary in the case of a stipulated judgment, but the better practice may be for the clerk to enter a judgment that reflects the parties' stipulation as approved by the court. FSM Dev. Bank v. Kaminanga, 16 FSM R. 45, 47 (Chk. 2008).

A stipulated judgment may be defined as a contract of the parties acknowledged in open court and ordered to be recorded by a court of competent jurisdiction. Welle v. Chuuk Public Utility Corp., 17 FSM R. 609, 611 (Chk. 2011).

A stipulated judgment is a contract between the parties entering into the stipulation that has been approved by the court. Welle v. Chuuk Public Utility Corp., 17 FSM R. 609, 611 (Chk. 2011).

The parties' stipulated judgment in a state court action for breach of an easement agreement constituted a new contract – a new easement agreement – between the parties because it was a contract or agreement that was inconsistent with the original contract or agreement, especially when the amount stipulated to, $50,000, greatly exceeded the value of the undelivered 40 cubic yards of sand and 40 cubic yards of aggregates that constituted the breach. Welle v. Chuuk Public Utility Corp., 17 FSM R. 609, 611-12 (Chk. 2011).

While a stipulated judgment may not give rise to the doctrine of res judicata, a later court contemplating a civil action based on the same underlying facts may adopt the findings of fact in the stipulated judgment and any conclusions of law in the order granting the stipulated judgment, and in so doing finally adjudicate the matter. Sorech v. FSM Dev. Bank, 18 FSM R. 151, 156 (Pon. 2012).

While a stipulated judgment does represent a private agreement and not a judicial determination, it is a judicial act, binding on the parties. Thus, contract defenses are not available to a judgment debtor in a proceeding to enforce a money judgment. FSM Dev. Bank v. Carl, 20 FSM R. 70, 73 (Pon. 2015).

Preclusive effect is given to many decisions that have not actually been litigated on the merits – for example if it is the subject of a stipulation between the parties, or a judgment entered by confession, or consent, or default, where none of the issues is actually litigated. Waguk v. Waguk, 21 FSM R. 60, 72 (App. 2016).

Stipulated judgments, while they are judicial acts, also have many attributes of voluntarily-undertaken contracts, and when the parties have made a freely calculated, deliberate choice to submit to an agreed upon judgment rather than seek a more favorable litigated outcome (or risk a less favorable litigated outcome), the burden under Rule 60(b) is probably more formidable than had they litigated and lost. Gallen v. Moylan's Ins. Underwriters (FSM) Inc., 21 FSM R. 380, 386 (App. 2017).

Although parties may stipulate to factual matters, they may not stipulate to interpretations of law. Thus, even though parties may stipulate to a judgment, they cannot stipulate to a court's subject-matter jurisdiction to enter that judgment. Suzuki v. Chuuk, 22 FSM R. 491, 493 (Chk. 2020).

When the parties' stipulation to enter a judgment would result in a void judgment, the court must reject the stipulation for judgment and dismiss the case for the lack of subject-matter jurisdiction because whenever it appears that the court lacks jurisdiction of the subject matter, the court must dismiss the action. Suzuki v. Chuuk, 22 FSM R. 491, 494 (Chk. 2020).

– Void

Any judicial act, that has been done pursuant to a statute that does not confer the power to do that act, is void on its face. A judgment that is void on its face may be set aside by the court on its own motion. In re Jae Joong Hwang, 6 FSM R. 331, 331-32 (Chk. S. Ct. Tr. 1994).

A judgment may not be rendered in favor of or against a person who was not made party to the action. A party to an action is a person whose name is designated on the record as a plaintiff or defendant. A person may not be made a party to a proceeding simply by including

his name in the judgment. Hartman v. Bank of Guam, 10 FSM R. 89, 97 (App. 2001).

When someone is accorded none of these due process guarantees with respect to a "judgment" against it, the judgment and ensuing order in aid of judgment and writ of execution are void as a matter of law, and these procedural infirmities inherent in the judgment are subject to attack at any time, and thus are outside the adjudicative framework established by the rules of procedure. Hartman v. Bank of Guam, 10 FSM R. 89, 97 (App. 2001).

Since any judgment *in personam* against an unknown defendant would be void, the court will dismiss John Doe defendants. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 412-13 n.1 (Pon. 2001).

A judgment entered against a party without notice or an opportunity to be heard is void and is subject to direct or collateral attack at any time. Hartman v. Bank of Guam, 10 FSM R. 89, 97 (App. 2001).

With the exception of void judgments under Rule 60(b)(4), the grant or denial of Rule 60 relief rests with the trial court's sound discretion. The discretion is not an arbitrary one to be capriciously exercised, but a sound legal discretion guided by accepted legal principles. Amayo v. MJ Co., 10 FSM R. 371, 377 (Pon. 2001).

A judgment entered against a party without notice or an opportunity to be heard is void and subject to direct or collateral attack. Pastor v. Ngusun, 11 FSM R. 281, 285 (Chk. S. Ct. Tr. 2002).

When a party moves for relief from judgment under Civil Procedure Rule 60(b)(4) on the ground that the judgment was void, there is no requirement, as is usual when a default judgment is attacked under Rule 60(b), that the movant show that he has a meritorious defense. Lee v. Lee, 13 FSM R. 252, 256 (Chk. 2005).

Unlike other grounds under Rule 60(b), the court does not have any discretion when relief from judgment is sought on the ground that the judgment was void because either a judgment is void or it is valid. A judgment is not void merely because it is erroneous. It is void only if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process of law. Lee v. Lee, 13 FSM R. 252, 256 (Chk. 2005).

When an amended complaint asserted additional factual claims, the defendant had to be served a summons with the amended complaint and the service had to be effected as would the service of any complaint and summons, and since he was served by ordinary mail, he was not properly served the amended complaint. The judgment based on the amended complaint is thus void as to him and a motion for relief from judgment will therefore granted as to him. Lee v. Lee, 13 FSM R. 252, 258 (Chk. 2005).

There is no time limit on relief from a void judgment. The reason for this is obvious. If a judgment is void when issued, it is always void. When relief is sought from a void judgment, a court has no discretion but must grant relief from judgment. Ruben v. Petewon, 13 FSM R. 383, 389 (Chk. 2005).

If it appears that the court lacks subject matter jurisdiction, the case must be dismissed since any judgment rendered by a court without subject matter jurisdiction would be void.

Harper v. William, 14 FSM R. 279, 281 (Chk. 2006).

A judgment (or final order) entered against a person without notice or an opportunity to be heard is void and is subject to direct or collateral attack at any time, and a court that lacks personal jurisdiction over a person cannot enter a valid judgment against that person. Dereas v. Eas, 14 FSM R. 446, 455 (Chk. S. Ct. Tr. 2006).

A judgment is void when the court lacked subject matter jurisdiction or when indispensable parties were not joined or when a certificate of title had previously been issued for the land and that certificate or the validity of the process that resulted in that certificate was never challenged. Ruben v. Hartman, 15 FSM R. 100, 109-10 (Chk. S. Ct. App. 2007).

When neither the Wito Clan nor the Rubens were ever duly summoned in Civil Action No. 64-98 before the August 20, 1998 judgment was issued so that court never had personal jurisdiction over them, the judgment, as to any interest either of them might have, is void. Ruben v. Hartman, 15 FSM R. 100, 110 (Chk. S. Ct. App. 2007).

There is no time limit to seek relief from a void judgment because if a judgment is void when issued, it is always void, and when relief is sought from a void judgment, a court has no discretion but must grant relief from judgment. Ruben v. Hartman, 15 FSM R. 100, 112 (Chk. S. Ct. App. 2007).

In any action where a party seeks relief that would result in that party being declared the winner of an election rather than some other person, that other person is an indispensable party whose absence would make any judgment void and subject to collateral attack. Murilo Election Comm'r v. Marcus, 15 FSM R. 220, 224 (Chk. S. Ct. App. 2007).

A judgment is void only if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 633 (Pon. 2008).

A trial court's failure to notify the appellants of trial was plain error and the judgment that was entered is therefore void. Farek v. Ruben, 16 FSM R. 154, 157 (Chk. S. Ct. App. 2008).

Since any judgment *in personam* against an unknown defendant would be void, the retention of "John Doe" defendants is pointless. Berman v. Pohnpei, 17 FSM R. 360, 366 n.1 (App. 2011).

Civil Procedure Rule 60(b)(4) provides for the relief from judgment when the judgment is void. Unlike other grounds for relief from judgment under Rule 60(b), the court does not have any discretion when the relief is sought because the judgment is void since a judgment is either void or it is valid and if it is void the court must vacate it. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 613 (Pon. 2013).

If a judgment is void when issued, it is always void. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 613 (Pon. 2013).

Although the court has no discretion and must grant the relief when relief is sought from a void judgment, a judgment is void only if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 613 (Pon. 2013).

The court cannot give any weight to the argument that the passage of time is enough to bar vacating a void judgment. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 614 (Pon. 2013).

A judgment is void only if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 304 (App. 2014).

When a judgment has been entered against a party without notice or an opportunity to be heard, it is void and is subject to direct or collateral attack at any time. A judgment cannot be collaterally attacked merely because it is wrong. It can only be attacked on the grounds of lack of jurisdiction or due process violations that make the judgment void. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 304 (App. 2014).

A judgment is void only if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 289 (Pon. 2016).

Whether a judgment is joint and several or not has no affect on whether the court has subject-matter jurisdiction. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 292 (Pon. 2016).

A judgment in a default case that awards relief that either is more than or different in kind from that requested originally is null and void. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 292 (Pon. 2016).

A judgment rendered without the requisite subject-matter jurisdiction is void *ab initio*. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 507 (App. 2016).

A void judgment is a legal nullity. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 507, 509 (App. 2016).

Although the term "void" describes a result, rather than the conditions that render a judgment unenforceable, a void judgment is one so affected by a fundamental infirmity that the infirmity may be raised after the judgment becomes final. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 507 (App. 2016).

The reason for there being no time limit on relief from a void judgment is obvious. If a judgment is void when issued, it is always void. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 507 (App. 2016).

In the interests of finality, the concept of void judgments is narrowly construed. A judgment is not void merely because it may be erroneous or because the precedent upon which it was based is later altered or even overruled. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 507-08 (App. 2016).

A judgment is void and therefore subject to relief under Rule 60(b)(4), only if the court that rendered judgment lacked jurisdiction or in circumstances in which the court's action amounted to a plain usurpation of power constituting a violation of due process. The total want of jurisdiction must be distinguished from an error in the exercise of jurisdiction and only rare instances of a clear usurpation of power will render a judgment void. In other words, a court has

the power to determine its own jurisdiction and an error in that determination will not render the judgment void. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 508 (App. 2016).

Even when the motion for relief from judgment was not filed within the prescribed reasonable time, the court's analysis will not conclude, because if the judgment was void, relief may nevertheless be granted under Rule 60(b)(4). Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 509 (App. 2016).

Unlike its counterparts, Rule 60(b)(4), which provides relief from void judgments, is not subject to any time limitation. If a judgment is void, it is a nullity from the outset and any Rule 60(b)(4) motion for relief is therefore filed within a reasonable time. However, the concept of void judgments is narrowly construed. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 509 (App. 2016).

Since the requirement of subject matter jurisdiction is never capable of being waived, judgments rendered without such allocation of authority are void *ab initio* and can be attacked at any time. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 509 (App. 2016).

When the movants have failed to cite any reasons for the elongated delay in filing their motion for relief from judgment, much less extraordinary circumstances that would warrant having their Rule 60(b)(4) motion supersede the doctrine of *res judicata*, prejudice would invariably inure to the judgment creditor, in light of its justified reliance on the relevant December 28, 2007 default judgment's finality. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 509-10 (App. 2016).

A manifest abuse of authority, a judgment obtained unfairly or working a serious injustice, fraud or collusion by a court, fraud, and lack of jurisdiction have been considered grounds to ignore a judgment's validity. Validity fundamentally includes the court's competence to adjudicate the matter with regard to subject-matter jurisdiction, territorial jurisdiction, and notice. Waguk v. Waguk, 21 FSM R. 60, 71 (App. 2016).

It is well established, that when a judgment has been entered against a party without notice or an opportunity to be heard, it is void and subject to direct or collateral attack at any time. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 121 (App. 2017).

A court that lacks personal jurisdiction over a defendant cannot enter a valid judgment against that defendant. Setik v. FSM Dev. Bank, 21 FSM R. 505, 516 (App. 2018).

If a default judgment has been entered when the court lacked personal jurisdiction over the defendant, then that default judgment is void and relief can be sought under Rule 60(b)(4), for which there is no time limit to seek relief. Setik v. FSM Dev. Bank, 21 FSM R. 505, 516 (App. 2018).

Default judgments against a real party of interest will be voided for lack of due process when that party lacked a notice and hearing before being disposed of its claim to a property – even when the real party of interest lacked a certificate of title. Einat v. Chuuk Land Comm'n, 22 FSM R. 130j, 130L (Chk. S. Ct. Tr. 2018).

A judgment rendered by a court without subject-matter jurisdiction is void from the start. A void judgment is a legal nullity. Suzuki v. Chuuk, 22 FSM R. 491, 494 (Chk. 2020).

A court should never enter a judgment it knows would be void. Suzuki v. Chuuk, 22 FSM R. 491, 494 (Chk. 2020).

When the parties' stipulation to enter a judgment would result in a void judgment, the court must reject the stipulation for judgment and dismiss the case for the lack of subject-matter jurisdiction because whenever it appears that the court lacks jurisdiction of the subject matter, the court must dismiss the action. Suzuki v. Chuuk, 22 FSM R. 491, 494 (Chk. 2020).