

**FRIEND SORA TAIMA,
Appellant,**

v.

**SUN XIU CHUN,
Appellee.**

CIVIL APPEAL NO. 09-005
Small Claims No. 07-085

Supreme Court, Appellate Division
Republic of Palau

Decided: December 10, 2009

[1] **Appeal and Error:** Standard of Review; **Civil Procedure:** Motion for Relief from Judgment

When reviewing the denial of a Rule 60(b) motion for relief from judgment, the Court only reviews the trial court’s order denying the motion and not the substance of the court’s initial judgment. The Court reviews the denial of a motion for relief for an abuse of discretion.

[2] **Civil Procedure:** Motion for Relief from Judgment

An allegation of fraud under Rule 60(b)(3) typically encompasses most types of misconduct or misrepresentations by an adverse party, including perjury, the use of a fraudulent instrument, nondisclosure by a party or his attorney, false discovery responses, or other similar misconduct that operates to prevent an opposing party from presenting its case.

[3] **Civil Procedure:** Motion for Relief from Judgment

Unlike fraud of an adverse party, fraud upon the court is narrower and consists of situations where the impartial functions of the court have been directly corrupted. A fraud upon the court is limited to fraud which seriously affects the integrity of the normal process of adjudication.

[4] **Civil Procedure:** Motion for Relief from Judgment

Fraud upon the court is limited to the most serious types of misconduct and to those that are directed at the court and the judicial process, rather than an adverse party. This may include conduct such as bribing a judge, using an officer of the court to improperly influence the proceeding or judge, or any form of jury tampering.

Counsel for Appellant: Mariano W. Carlos

Counsel for Appellee: Garth Backe

BEFORE: KATHLEEN M. SALII, Associate Justice; LOURDES F. MATERNE, Associate Justice; ALEXANDRA F. FOSTER, Associate Justice.

Appeal from the Court of Common Pleas, the Honorable HONORA E. REMENGESAU RUDIMCH, Senior Judge, presiding.

PER CURIAM:

Friend Sora Taima, the owner of the Red Dragon karaoke bar and restaurant, appeals the lower court’s denial of his motion for relief from a default judgment. Despite

waiting over one year to challenge the judgment, he now asserts that the court violated his rights and that Sun Xiu Chun, a former employee, perpetrated a fraud upon the court. We find no error below and affirm.

BACKGROUND

Sun Xiu Chun is a Chinese national who came to Palau in January 2004 to work at the Red Dragon karaoke bar and restaurant. Sun and her employer, Friend Sora Taima, agreed to a two-year contract, and Taima assisted Sun in obtaining a nonresident work permit.

It is somewhat unclear from the record what occurred in the years after Sun arrived in Palau, but on July 3, 2007, she filed a complaint in the Court of Common Pleas claiming that Taima owed her \$3,000. Sun stated that Taima never paid her salary according to her employment contract, that she had to pay her own taxes and renew her work permit, and that Taima borrowed \$225.00 from her but did not pay it back.

On July 10, 2007, Taima was served with Sun's complaint and a summons notifying him of these allegations and that a hearing was scheduled for August 13, 2007. The summons informed Taima that "[a] default judgment may be entered against you if you fail to appear." Taima signed the Proof of Service form, acknowledging that he understood the meaning of the documents.

Taima claims that he appeared at the courthouse on August 13 but that Sun Xiu Chun did not. There is no record of attendance on that day because no hearing occurred. In a subsequent order, the trial

judge noted that she rescheduled the hearing because she was out on sick leave, not because Sun was absent. The court postponed the hearing until August 21, 2007. In the Hearing Notice, which Taima received on August 16, the court noted that "Defendant is ordered to appear."

As with the prior hearing, Taima claims that he appeared at the courthouse on August 21 and that Sun was not present. Taima is uncertain whether Sun's counsel appeared on her behalf. Once again, there is nothing in the court's records indicating the attendance on that day or whether any proceeding actually occurred. It appears that Sun was served with a notice setting the hearing for August 21, but nothing indicates whether she or her counsel was present.

In any event, the next document in the record states that the court postponed the hearing again, this time until September 10, 2007. Both parties were served with the new Hearing Notice, which included a comment that "[a]ll parties must appear." On September 6, however, the court postponed the hearing a final time, setting it for September 19. Taima received notice of the hearing on September 6.

The court finally held the hearing regarding Sun's claims on September 19. Sun appeared with counsel; Taima did not appear. In Taima's absence, the court heard from Sun and her counsel, reviewed her Complaint and the evidence before it, and found good cause in favor of her claim. The court therefore entered a default judgment against Taima,

ordering him to pay Sun \$2,623.00¹ within thirty days of the date of service. Taima was served with the default judgment on September 21, two days after the hearing, and he signed the Proof of Service form.

In the words of Taima's own counsel, after the court entered the default judgment, "[n]othing happened in this case for almost a year." (Appellant's Br. at 3.) Taima neither paid Sun any money, nor did he challenge the default judgment. On August 11, 2008, Sun filed a motion for an order in aid of the judgment entered on September 19, 2007. Sun stated that she had been unable to collect any of the money Taima owed her. Taima was served with this motion on August 12, and on August 14 the court issued an order for Taima to appear for a hearing on his ability to pay the judgment.

This hearing occurred on December 1, 2008.² Taima represented himself; Sun was represented by counsel. The court heard from both Taima and Sun's counsel, but the only record from the proceeding is the court's final order, issued the same day.

At this hearing, Taima appears to have told the court a version of the same facts that he later recorded in a sworn affidavit. Taima acknowledged that he received notice of the September 19, 2007, hearing regarding Sun's complaint against him, but he claimed that it

¹ Although Sun sought \$3,000.00 in her complaint, the trial court noted in the default judgment that Sun orally amended this amount during the hearing.

² Like the earlier proceedings, this hearing was postponed several times.

was scheduled around the same time that his father had suffered a stroke. Taima, who was caring for his father, admitted that he forgot about the hearing. He also appears to have argued to the court that Sun was lying, that he did not owe her any money, and that he could obtain evidence to prove this assertion.

The trial court treated these statements as a request for relief from the prior default judgment and denied his request. The court found that Taima simply forgot about the hearing, and after Taima received the judgment two days later, he made no further inquiry or objection for one year. The court held that Taima's forgetfulness and the circumstances surrounding his father did not amount to excusable neglect, particularly in light of his disregard for the court's order to pay Sun. Next, the court construed Taima's statements about obtaining evidence to support his defense as a motion for relief based on newly discovered evidence, but it held that this evidence was not newly discovered and did not merit relief.

After the court's order denying relief from the judgment, Taima finally found a lawyer to represent him. On December 30, 2008, Taima's new counsel filed a second motion for relief from judgment, accompanied by an affidavit in which Taima explained his version of the relevant facts. Taima's motion claimed that the default judgment (1) was obtained through fraud upon the court, (2) violated ROP Small Claims Rule 12, and (3) violated Taima's equal protection rights.

In his affidavit, Taima claimed that Sun falsified her complaint. He stated that she used his assistance to enter Palau and, within three days after arriving, refused to work for

him and moved out of the Red Dragon. Taima claims to have searched for Sun over the next two years, with little success. On the few occasions when he located her, she refused to return to work. Taima claims that after Sun's work permit expired sometime in 2006, a police officer escorted Sun to the airport, removed her handcuffs, and handed her a plane ticket. Sun purportedly shredded the ticket and slapped the officer in the face, earning her a trip to the Koror jail rather than back to China. Taima did not speak with Sun after this event and is unaware of her current employment status.

Taima's motion for relief from judgment averred that Sun's false allegations in her complaint constituted fraud upon the court. Specifically, he argued that Sun fabricated her claim and thereby used the court as a "weapon" to extort money from him, (Appellant's Mot. for Relief from J., Dec. 30, 2008), and that it would be unfair to hold Taima to a judgment entered after he missed the hearing.

On January 26, 2009, the trial court denied Taima's motion. The court held that Taima's allegations, even if true, did not constitute fraud upon the court, but rather fraud or misrepresentation of an adverse party. As such, the motion should have been made under ROP Rule of Civil Procedure 60(b)(3). Motions for relief under this provision, however, must be filed within one year after the court enters the judgment, *see* ROP R. Civ. P. 60(b), a period that had expired when Taima filed both of his motions for relief. Finally, the court rejected Taima's additional arguments regarding Small Claims Rule 12 and equal protection, noting that it postponed

the hearing because the judge was unavailable, not because Sun failed to appear.

Taima now appeals the trial court's order denying his motion for relief from judgment.

ANALYSIS

[1] When reviewing the denial of a Rule 60(b) motion for relief from judgment, we review only the court's order denying the motion and not the substance of the court's initial judgment. *Secharmidal v. Tmekei*, 6 ROP Intrm. 83, 85 (1997). We review the denial of a motion for relief for an abuse of discretion. *Id.*; *see also Idid Clan v. Olngembang Lineage*, 12 ROP 111, 119 (2005). We review the court's conclusions of law *de novo*. *Idid Clan*, 12 ROP at 115.

On appeal, Taima recapitulates the arguments he made below. Specifically, he asserts that (1) Sun's purportedly false allegations constituted fraud upon the court; (2) the trial court violated Small Claims Rule 12 by not dismissing the case when Sun failed to appear at an earlier hearing; and (3) the court violated his right to equal protection by treating him differently than Sun.³ We address each argument in turn.

I. Rule 60(b) – Fraud Upon the Court

³ Taima has not appealed the trial court's conclusion that his reason for missing the hearing on September 19, 2007, was not excusable neglect, nor its holding that Taima failed to establish that newly discovered evidence merited relief from the default judgment. We will not address these issues further.

Taima first claims that the trial court erred by ruling that his motion for relief from judgment alleged fraud of an adverse party rather than fraud upon the court. According to Taima, this determination improperly led the court to reject his motion as untimely. The proper characterization of Taima's motion matters because a party seeking relief for fraud of an adverse party under Rule 60(b)(3) must file such a motion no later than one year after the court entered judgment,⁴ whereas an allegation of fraud upon the court is not subject to such a limit. *See* ROP R. Civ. P. 60(b). Taima does not dispute that a motion under Rule 60(b)(3) based solely on fraud of an adverse party would have been untimely because he filed it more than a year after being served with the court's default judgment; therefore, whether his motion properly alleged fraud upon the court is determinative.

[2] A party may seek relief from a judgment under Rule 60(b) for multiple reasons, one of which is if the judgment was procured by fraud, misrepresentation, or other misconduct of an adverse party. *See* ROP R. Civ. P. 60(b)(3).⁵ Fraud under this provision

typically encompasses most types of misconduct or misrepresentations by an adverse party, including perjury, the use of a fraudulent instrument, nondisclosure by a party or his attorney, false discovery responses, or other similar misconduct that operates to prevent an opposing party from presenting its case. *See generally* 12 James Wm. Moore et al., *Moore's Federal Practice* §§ 60.21(4), 60.43(1) (3d ed. 1998).

[3] Unlike fraud of an adverse party, fraud upon the court is a narrower category of misconduct that consists of situations where “the impartial functions of the court have been directly corrupted.” *Secharmidal v. Tmekei*, 6 ROP Intrm. 83, 89 (1997) (quoting *Amstar Corp. v. Envirotech Corp.*, 823 F.2d 1538, 1550 (10th Cir. 1987)). Stated another way, a fraud upon the court “is limited to fraud which seriously affects the integrity of the normal process of adjudication.” *Ngerketiit Lineage v. Ngirarsaol*, 9 ROP 27, 30 n.3 (2001); *see also Secharmidal*, 6 ROP at 89.

[4] Although these definitions are broad and nebulous, courts have limited the bounds of fraud upon the court to the most serious types of misconduct and to those that are directed at the court and the judicial process, rather than an adverse party. *See generally* 11 Charles Alan Wright, et al., *Federal Practice and Procedure (Civil)* § 2870 (2d ed. 1995); *see also* 12 *Moore's Federal Practice* § 60.21(4) (“Fraud on the court must involve more than injury to a single litigant . . .”). This concept includes conduct such as bribing a judge, using an officer of the court to improperly influence the proceeding or judge, or any form of jury tampering. *See* 12 *Moore's Federal Practice* § 60.21(4); *see also*

⁴ A party must bring a motion under Rule 60(b)(3) within a “reasonable time” after entry of the judgment, a period which may expire prior to—but may not exceed—one year. ROP R. Civ. P. 60(b).

⁵ As the trial court noted, the Court of Common Pleas is not bound by the Rules of Civil Procedure in a small claims action, but it may look to them for guidance, and they may apply to cases to the extent not inconsistent with the Small Claims Rules. *See Cura v. Salvador*, 11 ROP 221, 223 n.2 (2004) (citing ROP R. Civ. P. 1(a)).

Hazel Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238 (1944) (finding fraud upon the court where plaintiff's attorney fabricated an article praising a process for which plaintiff was seeking a patent, obtained signatures on it, published it, and then used the article to validate the patent in court). A common, although not requisite, component of fraud upon the court is the participation of an officer of the court in perpetrating the fraud, as compared to fraud by a party or a witness. 12 *Moore's Federal Practice* § 60.21(4); *see also Hazel Atlas*, 322 U.S. at 240-44. Furthermore, fraud upon the court does not have to be committed by a party—or even benefit a party—before it may justify granting relief from a judgment. 12 *Moore's Federal Practice* § 60.21(4).

With this distinction in mind, we find no error in the trial court's ruling that Taima's motion for relief did not allege a fraud upon the court. Taima attempts to characterize what occurred below as such a fraud by stating that Sun's purportedly false claims were an attempt to extort money from Taima, using the court as a weapon to do so by legitimizing her claims. He is trying to fit a round peg in a square hole. The only source of Taima's fraud claim is that Sun lied in her complaint. This is tantamount to perjury, which is a classic example of fraud between the parties. He does not allege misconduct that strikes the heart of the court's integrity, nor one perpetrated by an officer of the court. Furthermore, Taima had an opportunity to challenge the veracity of Sun's complaint—that is the purpose of civil litigation. Discovery and trial are the means by which a party contests a complaint, not a motion for relief based on fraud upon the court.

For these reasons, we agree with the trial court that Taima's motion raises fraud of an adverse party, which renders it untimely under Rule 60(b)(3).

II. Small Claims Rule 12

Taima next asserts that the court violated Small Claims Rule 12 and that this is a sufficient basis to relieve him from a default judgment.⁶ Small Claims Rule 12 reads as follows:

[I]f the plaintiff fails to appear at the hearing, the court shall enter a judgment for the defendant. If the defendant fails to appear, the court may enter judgment for plaintiff, or may require plaintiff to present evidence to prove his or her claim, and if such evidence is provided, the court shall enter judgment for the plaintiff.

Taima relies on the *shall* language in the first sentence, arguing that the court was required to enter a judgment against Sun because she did not appear at the hearings on August 13 and August 21, 2007. Taima acknowledges that the reason for rescheduling the first of these hearings was that the trial judge was on sick leave, not because Sun was

⁶ Taima does not actually explain under what authority the court's purported violation of Small Claims Rule 12 provides a basis for relieving him from the default judgment. This is a particularly notable absence given that he waited over a year after the judgment to raise the issue. We need not address this, however, because we find no violation of Small Claims Rule 12.

absent. Nothing in the record suggests the reason for postponing the August 21 hearing, but the court said nothing about Sun being absent. Taima admitted that he is uncertain whether Sun's counsel was present.

According to Taima, "[s]trict application of Rule 12 makes the Judge's absence irrelevant," (Appellant's Br. at 16), *i.e.*, so long as he can prove Sun missed a scheduled hearing, it is irrelevant whether such hearing actually took place. This argument is seriously misplaced. The purpose of requiring a plaintiff at the hearing is so that she may present evidence to prove her claim and for the judge to hear and determine the case. Without the plaintiff, the hearing cannot proceed, wasting the court's and the remaining parties' time. But without the presiding judge, no hearing can even begin, and, consequently, there is no hearing for either party to miss.

We find no violation of Small Claims Rule 12. There is no judicial record of a hearing at which the plaintiff failed to appear. Perhaps Sun was lucky that the judge was on sick-leave on August 13, 2007, but that does not alter the fact that no hearing took place, and there was no opportunity for the judge to enter a judgment for Taima. By the express language of Rule 12, when Taima did not appear for the hearing on September 19, 2007, the court had discretion to enter judgment for Sun, after taking evidence from her if it so chose. It heard from Sun, as contemplated by Rule 12, and entered judgment in her favor.

III. Equal Protection

Taima's last argument is that the court violated his right to equal protection by permitting Sun to miss a hearing but entering

judgment against him for the same transgression. *See* Palau Const. art. IV, § 5. Taima presents almost no legal support for this conclusion. Setting aside the intricacies of our constitutional jurisprudence,⁷ Taima's claim fails for the same simple reason as his previous argument: for purposes of the trial court's ruling, Sun never missed a hearing. The court postponed the hearings for its own reasons, not because Sun was absent. There was no hearing for Sun to miss on August 13 and August 21, 2007, and the parties were not treated differently. Taima's constitutional claim fails.

⁷ For example, we have made abundantly clear that the Equal Protection Clause "does not assure uniformity of judicial decisions or immunity from judicial error." *Palau Marine Indus. Corp. v. Seid*, 9 ROP 173, 176 (2002) (quoting *Beck v. Washington*, 369 U.S. 541, 554 (1962)). In *Seid*, the plaintiff asserted that the trial court's decision to permit an amendment in one case but to deny a similar amendment in another case constituted an equal protection violation. *See id.* at 175-76. Not only were there justifiable reasons for the differential treatment in the two cases, we cited thirteen cases supporting the principle that judicial error and lack of uniformity in judicial decisions do not create a constitutional issue. *Id.* at 176. In *Beck*, for example, the United States Supreme Court noted that if we permitted such claims, "every alleged misapplication of state law would constitute a federal constitutional question." 369 U.S. at 555. Returning to *Seid*, we found that the plaintiff's equal protection argument was frivolous and appeared sanctionable, and we ordered plaintiff to show cause why we should not sanction it. 9 ROP at 176. We decline to go so far here, but Taima's claims in this case do not rise to a constitutional level.

CONCLUSION

We are cognizant that Taima, as a pro se litigant, may not have fully understood how to obtain relief from a default judgment. He states in his brief that “[a] motion to set aside a default judgment is as foreign to the Appellant as what exists on the far side of the moon.” (Appellant’s Br. at 16.) We are also sympathetic to the circumstances surrounding his father’s health. But we must demand some accountability from any party called to appear before a court, otherwise our system of justice would be inoperable. Ignorance of the law is no excuse for failing to abide by it, a maxim that applies no less stringently in the context of a default judgment. At a minimum, a party served with a default judgment can enquire at the court about his available options. Even if Taima was unsure about how to challenge a default judgment, he must have been clear that the court ordered him to pay Sun almost \$3,000, and he had better options than to sit quietly for over a year.

We find that the trial court did not abuse its discretion in denying Taima’s motion for relief from the default judgment. Sun’s conduct, even if Taima’s allegations are true, did not constitute fraud upon the court, and his motion was therefore untimely. Taima’s arguments regarding Small Claims Rule 12 and his right to equal protection are meritless. For these reasons, we AFFIRM.