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JUL 22 2021

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REPUBLIC OF THE MARSHALL ISLANDS

IN THE SUPREME COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS

MAUJ EDMUND, et al.,

Plaintiff-Appellee,

vs.

MARSHALL ISLANDS MARINE
RESOURCES AUTHORITY, et al.

Defendants-Appellants.

Supreme Court Case No. 2021-00406

**ORDER GRANTING MOTION FOR
ENLARGEMENT OF TIME TO FILE
REPLY BRIEF**

**TO ALL PARTIES HEREIN THROUGH THEIR RESPECTIVE COUNSEL OF
RECORD:**

CADRA, C.J.; SINGLE JUDGE PROCEDURAL ORDER [Supreme Court Rule of Procedure
27(c)]

**I. APPELLANT'S "MOTION FOR ENLARGEMENT OF TIME TO FILE
REPLY"**

On July 21, 2021, Appellant MIMRA filed a "Motion For Enlargement Of Time" in which to
file its reply brief in the above captioned appeal pursuant to SCRP 26(b).

Appellant argues the requisite "good cause" under Rule 26(b) exists because "1. Off Island
Counsel who has been assisting Appellants in this case has been ill and will need more time to
complete the Reply Brief; and, (2) Appellee's Answering Brief has raised issues that require

further research to be addressed in Appellant’s Reply Brief.” (“Declaration of Laurence Edwards II, Attorney for Defendants/Appellants” appended to motion.)

II. APPELLEE’S OPPOSITION TO MOTION

On July 21, 2021, Appellee Mauj Edmund, et al, promptly filed an “Opposition to Appellant MIMRA’s Motion For Enlargement of Time.” Appellee recounts the unusual procedural background of this appeal noting Appellant’s failure to make timely service of Notice of Appeal pursuant to the Rules and pointing out that this is Appellant’s third motion for extension of time in which to comply with the Rules regarding filing of briefing.

Appellee contends “good cause” does not exist for granting the instant requested enlargement of time because “MIMRA employs at least two experienced attorneys. It is unknown why MIMRA would require ‘off-island counsel’ to assist it. If the mysterious off-island counsel was ill, MIMRA’s in-house counsel should have stepped to the plate. This alleged reason is unsatisfactory.” (Opposition, p. 2). Secondly, Appellee argues “MIMRA does not identify a single ‘issue’ raised in appellee’s answering brief that requires *further* research. The only new issues raised in the answering brief were those detailing MIMRA’s repeated failure to follow the Supreme Court Rules of Procedure in its submission of its opening brief(!) This is not a valid reason to request an extension of time.” (Id.)

III. DISCUSSION

In the interests of promptly resolving the instant motion, the undersigned makes the following observations and findings:

1. **The requested three (3) day enlargement of time will not prejudice Appellee’s ability to respond to any arguments raised by Appellant in its Reply Brief.**

Appellee filed and served its Answering Brief on July 12, 2021. (Record). Appellant thus had 10 days from the date of service of the Answering Brief in which to file its Reply, or until July 23, 2021, pursuant to Rule 28(d). Appellant is requesting an extension until July 26, 2021, or 3 days, in which to file its Reply. This requested 3 day enlargement of time does not unduly delay these appellate proceedings and will not prejudice Appellee's ability to respond to any arguments raised in that Reply at oral argument. There is no discernable prejudice to Appellee by granting the requested 3-day extension.

2. The Reply Brief will or may be of benefit to the Court in resolving this appeal.

The parties' briefing is for the benefit of the Court in resolving the issues presented on appeal. Allowing the filing of a Reply Brief will likely assist the Court in resolving the issues presented or, alternatively, reveal the inadequacy of Appellant's position. The Court's interest in being fully advised in the premises of this appeal weighs in favor of granting the requested enlargement of time. Appellant should be allowed to address Appellee's arguments made in its Answering Brief by way of a written Reply. This furthers not only the Court's interests in being fully advised as to the parties' positions and authorities but also give appellee an opportunity to anticipate arguments likely to be made at oral argument.

3. Appellee's Answering Brief raises an issue which Appellant should be afforded an opportunity to reply.

Appellee's Answering Brief requests that "this Court disregard MIMRA's questions presented pursuant to SCRP 28(b)(6) and dismiss MIMRA's appeal in its entirety." Appellee points out that Appellant has failed to timely designate the issue of whether its failure to timely assert the damages limitation in the Government Liability Act 1980 constitutes a waiver of that defense and failed to identify this as an issue on appeal. (Appellee's Answering Brief at p. 4).

The general rule is that issues not timely raised are waived. Even so, Appellant should be given the opportunity to be heard or explain itself on these issues raised by Appellee. This is not to say that issues not timely raised will be entertained; only that Appellant should have the opportunity to argue they should.

4. Appellant's reliance on the undisclosed illness of unidentified "off island" counsel as "good cause" for an enlargement of time is problematic.

Appellant's motion for enlargement of time is premised on the unknown illness of undisclosed "off-island counsel." The exact role of "off-island counsel" in this litigation is not disclosed: whether the Reply is being ghost written; whether "off-island counsel" is directing the litigation; whether merely legal research is being performed, etc. The nature of the illness is not disclosed and its impact on whatever role "off-island counsel" is playing in this appeal is not known.

Whether "good cause" has been shown for granting an enlargement of time lies in the discretion the Court. Nevertheless, case law is instructive. While a quick, non-exhaustive Westlaw search reveals instances where the illness of a party's attorney of record might constitute "good cause" for granting an enlargement of time [*see, e.g., Johnson Sales Company v. Lizana*, 508 S.W.2d 693 (TX 1974)(Good cause exists for granting an extension of time to file a brief based on a showing that appellant's attorney had been unable to sit for the time and concentration required for an appellate brief due to severe lower back pain)], no decisional authority is cited by either party as to whether the illness of undisclosed counsel, who is not a party's attorney of record, suffering an undisclosed illness constitutes "good cause" for either granting or denying an enlargement of time (and the undersigned has found none on a quick internet search).

Counsel's declaration in support of the motion for enlargement of time contains conclusory allegations and is devoid of any facts or specifics. A question is thus raised as to whether a bare allegation of an unidentified counsel's undisclosed illness constitutes sufficient factual averments which would support the "good cause" finding required to grant an enlargement of time.

In *Johnson Sales, supra*, the nature of the illness of Appellant's counsel was disclosed to the court (severe low back pain). The identity of counsel was also disclosed as well as his involvement in the litigation as counsel of record. The court could thus make a factual finding that counsel's back pain interfered with his ability to timely file a brief and that "good cause" existed for granting an extension.

In this case, the identity of "off-island counsel" is not disclosed and even a general disclosure of that counsel's illness is not given along with an explanation of how that illness interferes with whatever role he/she may play in this appeal. Those bare allegations are not verifiable, thus, making any challenge by the Appellee impossible. A finding of "good cause" by the Court based on such bare allegations would essentially amount to a finding that "some unknown person with some unknown illness who has some unknown role in this litigation" justifies an extension of time. The point is that Appellant alleges insufficient facts to support a finding of "good cause."

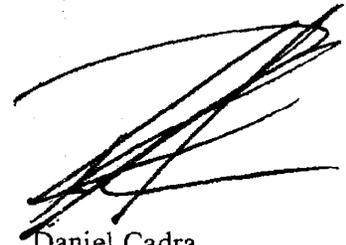
What is clear, however, is that Appellant's counsel of record bears the ultimate responsibility for compliance with briefing deadlines and for the content of the briefing itself. It is not known what efforts, if any, have been undertaken by MIMRA's counsel of record to timely file a Reply Brief or why counsel of record must rely on outside counsel to discharge his responsibilities under the Rules.

IV. CONCLUSION & ORDER

Despite the vague and conclusory allegations in Appellant's moving papers, the undersigned **FINDS** "good cause" exists for the granting of a three (3) day enlargement of time for Appellant to file its Reply Brief due to (1) the interest of the Court being fully advised in the premises of this appeal and (2) so as to allow Appellant the opportunity to reply to Appellee's request for dismissal for violation of the Rules. The undersigned **FURTHER FINDS** (3) Appellee is not prejudiced by this brief extension of time. Any arguments raised in Reply can be addressed at oral argument.

IT IS THEREFORE ORDERED that Appellant shall have until close of business on **July 26, 2021** in which to file its Reply Brief.

Dated this 21st day of July, 2021. (AST)



Daniel Cadra
Chief Justice, Supreme Court

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