IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

HIROSHI ISHIMATSU, BERNARDO A. HIPONIA, and SERAFIN ESPERANCILLA,
Plaintiffs-Appellees/Cross-Appellants,

v.

ROYAL CROWN INSURANCE CORP.,
Defendant-Appellant/Cross-Appellee.

SUPREME COURT NO. 2011-SCC-0016-CIV
SUPERIOR COURT NO. 02-0065C

Cite as: 2012 MP 17

Decided December 27, 2012

G. Anthony Long, Saipan, MP, for Defendant-Appellant/Cross-Appellee Royal Crown Insurance Corp.
Joseph E. Horey, Saipan, MP, for Plaintiffs-Appellees/Cross-Appellants Bernardo A. Hiponia and Serafin Esperancilla.

BEFORE: ALEXANDRO C. CASTRO, Chief Justice; JOHN A. MANGLONA, Associate Justice; ROBERT C. NARAJA, Justice Pro Tem.

CASTRO, C.J.:

¶ 1 Defendant-Appellant/Cross-Appellee Royal Crown Insurance Corporation ("Royal Crown") appeals the trial court's amended judgment, which awarded attorney fees and post-judgment interest to Plaintiffs-Appellees/Cross-Appellants Bernardo A. Hiponia and Serafin Esperancilla ("Plaintiffs").[1] On appeal, Royal Crown contends this Court exceeded its jurisdiction in authorizing the trial court to award fees for appellate work completed in *Ishimatsu v. Royal Crown Insurance Corp.*, 2010 MP 8.[2] Royal Crown also alleges the trial court: (1) exceeded the scope of this Court's mandate from *Ishimatsu II* by awarding appellate attorney fees and costs to Plaintiffs, (2) abused its discretion by refusing to force Plaintiffs to segregate their appellate attorney fees, and (3) abused its discretion by awarding unreasonable appellate fees to Plaintiffs. Plaintiffs filed a cross-appeal, claiming the trial court erred in refusing to award attorney fees to Plaintiffs for their work to force Royal Crown to obtain a supersedeas bond ("supersedeas bond phase"), which they completed after trial, but prior to the *Ishimatsu II* appeal. For the reasons stated herein, we AFFIRM the trial court's amended judgment.

I

¶ 2 The original action between Plaintiffs and Royal Crown involved claims arising from Royal Crown's refusal to provide insurance coverage for a car accident between Plaintiffs (who both held insurance from Royal Crown). The case proceeded to a jury trial, where the jury found for the Plaintiffs on all claims and awarded both compensatory and punitive damages. After the jury returned its verdict, Plaintiffs filed its first motion for attorney fees in March 2005. That same month, Royal Crown challenged the jury award through several post-trial motions in the trial court. After briefing these post-trial motions, Plaintiffs filed a supplemental motion for attorney fees in June 2005 for work completed from the first fee motion until the end of April 2005. In August 2005, the trial court issued an omnibus order where it: (1) sided with Royal Crown on certain claims but upheld the jury's verdict as to many of Plaintiffs' claims, including a claim for breach of the covenant of good faith and fair dealing as well as a claim under the Commonwealth Consumer Protection Act ("CPA"), 4 CMC § 5101-5123; (2) reduced the jury's compensatory and punitive damages awards; and (3) awarded Plaintiffs attorney fees for work completed through April 2005. After the trial court's omnibus order, Plaintiffs, seeking to protect their recovery, convinced the trial court to order a supersedeas bond consisting of: (a) their recovery in the trial

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[1] Plaintiff Hiroshi Ishimatsu is not involved in the appeal.

[2] This matter has previously been before this Court two times, in *Ishimatsu v. Royal Crown Insurance Corp.*, 2006 MP 9, and *Ishimatsu v. Royal Crown Insurance Corp.*, 2010 MP 8. For convenience, we will refer to 2010 MP 8 as *Ishimatsu II*.

court, (b) ten percent interest on that recovery, and (c) $250 for costs. After further legal wrangling, this time regarding a separate document, the trial court issued a final entry of judgment in October 2006. Plaintiffs never filed a second supplemental motion for attorney fees for work performed during the supersedeas bond phase (May 2005 through October 2006).

¶ 3 In *Ishimatsu II*, this Court affirmed the trial court on the merits, found the attorney fee award reasonable, and reduced the cost award slightly. 2010 MP 8 ¶ 76. Neither the opinion nor the accompanying judgment mentioned interest on the damages award, attorney fees for appellate work, or attorney fees for the supersedeas bond phase. Royal Crown filed a petition for rehearing after our opinion, which we denied on August 31, 2010. After denying the petition, this Court issued a mandate for the case on September 7, 2010. Royal Crown Appendix ("RC App.") at 22,26 ("[T]he Superior Court is instructed to act upon the JUDGMENT.").

¶ 4 Plaintiffs then filed a motion for attorney fees for their appellate work on September 14, 2010, in this Court.[3] Due to a peculiarity in the NMI Supreme Court Rules in place at the time, Plaintiffs' fee motion was timely despite being filed after the mandate. Rather than recall the mandate and determine Plaintiffs' fee motion, we denied the motion based on our lack of jurisdiction over the matter and indicated that 4 CMC § 5112(a), the CPA provision allowing for attorney fees for prevailing parties, seemed to identify the trial court as the proper court to decide all motions for attorney fees.

¶ 5 On remand, Plaintiffs filed a motion to amend the trial court's judgment in February 2011 to: (1) conform with the mandate from *Ishimatsu II*, (2) add post-judgment interest to the previous judgment at a rate of nine percent per year, and (3) award attorney fees and costs. Plaintiffs sought attorney fees for two sets of work: (a) supersedeas bond phase work, and (b) appellate phase work. The trial court separated its consideration of the motion into phases. First, the trial court ordered the release of $103,895.14 from the supersedeas bond to Plaintiffs. This payment reflected the amount of damages, attorney fees, and costs that we upheld in *Ishimatsu II*. The trial court then issued an order regarding Plaintiffs' fee motion.

¶ 6 In its order on Plaintiffs' fee motion, the court found the motion timely because NMI Rule of Civil Procedure 54 mandates that a fee motion be filed within fourteen days of entry of judgment and the trial court had yet to enter an amended judgment on remand. Regarding fees for appellate work in *Ishimatsu II*, the court awarded Plaintiffs all claimed fees, holding that: (1) Plaintiffs were entitled to fees as prevailing parties pursuant to 4 CMC § 5112[4] of the CPA; (2) Plaintiffs did not need to segregate their

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[3] Plaintiffs' motion for appellate fees did not include a request for supersedeas bond phase fees.

[4] In relevant part, 4 CMC § 5112 provides:

> (a) Any person aggrieved as a result of a violation of this article may bring an action in the Commonwealth Superior Court for such legal or equitable relief as the court may order. In

fees for work on different claims because the claims involved the same facts; and (3) Plaintiffs' appellate fees were reasonable. *Ishimatsu v. Royal Crown Ins. Corp.*, No. 02-0065-C (NMI Super. Ct. May 17, 2011) (Order Granting in Part Plaintiffs' Request for Attorneys Fees at 6) ("Remand Fee Order"). Regarding fees for the supersedeas bond phase, however, the court rejected Plaintiffs' request, reasoning that these fees were "not part of the appeal" and could not, therefore, be recovered by Plaintiffs on remand. *Id.* at 5. Finally, the trial court awarded $39,964.05 in post-judgment interest. The court issued an amended final judgment in July 2011 summarizing its previous decisions, itemizing the various elements of the amended judgment, and awarding Plaintiffs an additional $79,108.75.[5]

II

¶ 7 The Supreme Court has appellate jurisdiction over final judgments and orders of the Commonwealth Superior Court. 1 CMC § 3102(a). The amended final judgment issued in July 2011 is a final judgment of the Superior Court.

III

A. Jurisdiction of Supreme Court to Authorize Trial Court to Hear a Claim for Attorney Fees

¶ 8 Royal Crown argues this Court exceeded its jurisdiction by authorizing the trial court to award Plaintiffs appellate attorney fees in the Court's order denying attorney fees in *Ishimatsu II*. Jurisdictional questions are reviewed de novo. *Commonwealth v. Yi Xiou Zhen*, 2002 MP 4 ¶ 13. Background regarding the procedural history of *Ishimatsu II* is necessary to determine this issue. In June 2010, we issued our opinion in *Ishimatsu II*. We then denied Royal Crown's petition for rehearing on August 31, 2010 and issued the mandate on September 7, 2010, pursuant to NMI Supreme Court Rule 41, which requires this Court to issue the mandate "7 calendar days after entry of an order denying a timely petition for rehearing." NMI Sup. Ct. R. 41(b). Thereafter, on September 14, 2010, Plaintiffs filed a request for appellate attorney fees pursuant to NMI Supreme Court Rule 39-1. When Plaintiffs made their request, NMI Supreme Court Rule 39-1 allowed prevailing parties to seek fees "no later than 14 days after the court's disposition of the petition [for rehearing]." NMI Sup. Ct. R. 39-1(a)(1) (amended January 2011).

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addition to actual damages, the court shall award liquidated damages in an amount equal to the actual damages in cases of willful violations, and shall award costs and reasonable attorney's fees if the plaintiff prevails.

[5] The itemization breaks down as follows:

$105,811.65	Original Judgment
- $1,916.51	Costs rejected by the Supreme Court in *Ishimatsu II*
+ $609.10	Costs awarded by the Supreme Court in *Ishimatsu II*
+ $38,535.60	Attorney fees for appellate work
+ $39,964.05	Post-judgment interest through 2-15-11
- $103,895.14	Credit for payment of partial judgment from supersedeas bond
$79,108.75	**Total Amended Judgment**

RC App. at 2-3.

Thus, under the Supreme Court Rules in place at the time of Plaintiffs' request, their request was timely even though this Court had lost jurisdiction over the appeal by issuing the mandate.[6] *Pac. Amusement, Inc. v. Villanueva*, 2006 MP 8 ¶ 6 ("A mandate brings the proceedings in a case on appeal to a close and removes it from the jurisdiction of the appellate court . . . ." (internal quotation marks and citation omitted)).

¶ 9 When faced with the conundrum of a timely fee request filed after issuance of the mandate, this Court had two options: (1) recall the mandate and decide the fee request on the merits, or (2) deny the request for lack of jurisdiction without prejudice to the timely filing of a request with the trial court on remand. Recognizing that the Court will only withdraw a mandate when presented with "extraordinary circumstances," this Court chose the latter option and denied the fee request. *Ishimatsu v. Royal Crown Ins. Corp.*, No. CV-06-0043-GA (NMI Sup. Ct. Dec. 27, 2010) (Order Denying Attorney Fees at 2 n.3, 4). Royal Crown claims this Court's order denying attorney fees instructed the trial court to award attorney fees upon remand. Although the order denying fees included some discussion of 4 CMC § 5112(a), it clearly stated "we lack jurisdiction to consider the request for attorneys fees pursuant to 4 CMC § 5112(a), and the request is DENIED without prejudice to the same being filed with the trial court." *Id.* at 4. It is unreasonable to suggest that the order's statement, "the same being filed with the trial court," was in any way an authorization for the trial court to award attorney fees. Our order merely left open the possibility that a fee motion might be filed on remand. As such, we reject Royal Crown's argument on this point.

B. Trial Court's Appellate Fee Award

¶ 10 Royal Crown challenges the trial court's appellate attorney fee award on three grounds. First, Royal Crown claims the award of appellate attorney fees was outside the scope of this Court's mandate in *Ishimatsu II*. Second, Royal Crown claims the trial court's award was an abuse of discretion because the lower court did not require Plaintiffs to segregate their time entries for claims on which they prevailed from entries for claims on which they lost. Third, Royal Crown contends that the amount of fees awarded was unreasonable.[7]

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[6] In order to ensure that fee motions are filed prior to issuance of the mandate in future cases, NMI Supreme Court Rule 39-1 now requires prevailing parties to request attorney fees "no later than 5 days after the court's disposition of the petition [for rehearing]." NMI Sup. Ct. R. 39-1(a)(1).

[7] Our review of the trial court's award of appellate attorney fees was severely hampered by the parties' failure to include any attorney billing slips in the appendix to the briefs. As the party challenging the decision, Royal Crown bears the burden of providing an adequate record to allow this Court to determine the issues. *Guerrero v. Tinian Dynasty Hotel & Casino*, 2006 MP 26 ¶ 28 ("It is the appellant's burden to submit the relevant evidentiary record before this Court and identify the parts of the record which support the appeal.").

1. Scope of the Ishimatsu II Mandate

¶ 11 Royal Crown argues that the trial court could not award appellate attorney fees because that issue was beyond the scope of the mandate. Questions concerning the trial court's compliance with the mandate are reviewed de novo. *In re Estate of Malite*, 2010 MP 20 ¶ 28. Generally, "the trial court must 'comply strictly' with the mandate of the appellate court." *Id.* ¶ 29 (quoting *Loren v. E'Saipan Motors, Inc*., 1 NMI 133, 138 (1990)). However, "in the 'absence of a specific remand directive[,]' the trial court [can] take action as long as it 'would not be inconsistent with the mandate of the earlier opinion[,] as gleaned from the judgment together with the accompanying opinion.'" *Id.* ¶ 30 (quoting *Wabol v. Villacrusis*, 2000 MP 18 ¶ 16). In sum, the "lower court may consider issues not foreclosed by the mandate." *Id.* ¶ 33 (citations omitted).

¶ 12 The mandate in *Ishimatsu II* ordered the trial court to act upon the judgment and also addressed the issue of appellate costs. The judgment, in turn, instructed the trial court to comply with the Supreme Court's slip opinion. The slip opinion addressed Royal Crown's appeal of the substantive claims made by Plaintiffs, as well as the trial court's award of attorney fees and costs for the original trial. The issue of appellate attorney fees was not addressed in the slip opinion, judgment, or mandate. This is most likely because the Court was unaware of Plaintiffs' intention to seek appellate attorney fees when it issued the *Ishimatsu II* slip opinion, judgment, and mandate. On remand, the trial court had no official direction regarding the matter of appellate attorney fees apart from this Court's non-binding order denying attorney fees. Because the issue of appellate attorney fees was not addressed by–or inconsistent with–anything in the *Ishimatsu II* mandate, we hold that the trial court adhered to its duty to strictly comply with the mandate.[8]

2. Segregation of Time Entries

¶ 13 Royal Crown concedes that in *Ishimatsu II* this Court upheld the trial court's award of attorney fees despite Plaintiffs' failure to segregate "given the interrelating facts." Royal Crown Opening Br. at 6. Unlike fees for the trial court phase of the case, Royal Crown claims "the segregation of attorney fees on appeal is more feasible given that research and briefing is limited to the precise issues Royal Crown raised on appeal." *Id.* at 6-7. Because of this difference, Royal Crown asks this Court to find that the trial court abused its discretion by failing to require segregation or at least an explanation as to why the appellate fees could not be segregated. Plaintiffs urge this Court to uphold the trial court's decision

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[8] While we hold that the trial court's award of appellate attorney fees was not foreclosed by the mandate, we do not review the trial court's determination that Plaintiffs were *entitled* to appellate attorney fees. This is because Royal Crown waived any challenge to Plaintiffs' entitlement to appellate attorney fees by failing to raise the issue in its briefs. *Commonwealth v. Delos Reyes*, 4 NMI 340, 343 n.11 (1996) ("The appellant bears the burden of pointing out clearly and specifically the error asserted on appeal. Where the appellant fails to carry this burden, we need not even address his or her argument." (citation omitted)).

because, like the trial court fee award reviewed in *Ishimatsu II*, "the claims in this case were intertwined and could not and need not be segregated." Plaintiffs' Opp'n Br. at 6-7 (citing *Ishimatsu II*, 2010 MP 8 ¶ 67) ("The theories Esperancilla and Hiponia sought to recover under all involve a common core of facts, and are also based on related legal theories." (internal quotation marks and citation omitted)).

¶ 14 Generally, this Court "require[s] the segregation of fees when several causes of action are joined and tried in a single suit." *Ishimatsu II*, 2010 MP 8 ¶ 66. However, trial courts have "'discretion in determining the amount of a fee award.'" *Id.* ¶ 65 (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983)). As part of this exercise of discretion, we recognize an exception to the general rule requiring segregation "when the attorney fees rendered are in connection with claims arising out of the same transaction and are so interrelated that their prosecution or defense entails proof or denial of essentially the same facts." *Id.* ¶ 66 (quoting *Werdann v. Mel Hambelton Ford, Inc.*, 79 P.3d 1081, 1091-92 (Kan. 2003)).

¶ 15 In *Ishimatsu II*, this Court reviewed the trial court's award of attorney fees for the trial court phase of the case. Plaintiffs had prevailed in their cause of action brought under the CPA, but not on other causes of action. One issue on appeal was whether the trial court erred in not requiring Plaintiffs to segregate time expended on the CPA claim from time spent on claims where Plaintiffs did not prevail. The Court concluded that segregation of the trial court phase attorney fees in *Ishimatsu II* was unnecessary because "[t]he theories Esperancilla and Hiponia sought to recover under all 'involve a common core of facts,' and are also 'based on related legal theories.'" *Id.* ¶ 67 (quoting *Hensley*, 461 U.S. at 435).

¶ 16 After concluding that segregation was unnecessary, the *Ishimatsu II* Court analyzed whether Plaintiffs were entitled to recover fees for the claims they lost. Rather than adopt a rule whereby prevailing parties can only recover for claims on which they prevail, the Court adopted a more holistic approach, requiring trial courts to analyze "'the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation.'" *Id.* (quoting *Hensley*, 461 U.S. at 435). Regarding the facts of *Ishimatsu II*, the Court upheld the trial court's order awarding fees for all work performed during the trial court phase of the case, reasoning that "Plaintiff's [sic] counsel enjoyed a high degree of success in this particular lawsuit, and we largely uphold that success on appeal." *Id.*

¶ 17 *Lee v. Lee*, relied on by Plaintiffs, addresses both trial court and appellate attorney fees in a case with a similar factual scenario. 47 S.W.3d 767 (Tex. App. 2001). In *Lee*, an estate brought suit against a trustee to recover damages related to a breach of fiduciary duty and to remove the trustee. *Id.* at 797. The estate prevailed and made a motion for attorney fees. The trial court awarded the estate attorney fees for both claims despite a statute precluding recovery of attorney fees for actions seeking the removal of a trustee. *Id.* On appeal, the appellate court noted that the effort and facts supporting the estate's damages

claims were "inextricably intertwined" with the facts related to their action to remove the trustee. *Id.* Because of this interrelation, the appellate court applied the exception to the general rule requiring segregation of attorney fees and held that the trial court erred in refusing to award fees to the estate for its work before the trial court. *Id.* The appellate court also addressed the estate's claim for appellate attorney fees. The court stated that the issues on appeal were the same as those before the trial court and, thus, the court's holding–that segregation was unnecessary–applied equally to the estate's claim for appellate attorney fees. *Id.*

¶ 18 The issues on appeal in *Ishimatsu II* were the same as the issues before the trial court. As such, we find this Court's holding in *Ishimatsu II* regarding segregation equally applicable to Plaintiffs' claim for appellate attorney fees. Royal Crown's only argument to distinguish Plaintiffs' work on appeal from its work before the trial court is that Plaintiffs' appellate work was limited solely to defending the judgment against issues raised on appeal by Royal Crown. This statement is false because Plaintiffs cross-appealed certain decisions of the trial court, meaning that their briefing on appeal was not limited to issues raised by Royal Crown. Additionally, Royal Crown's effort to distinguish the trial court and appellate court phases is unconvincing. Appellate work is at least as complex as work before trial courts. *See Center for Biological Diversity v. County of San Bernardino*, 115 Cal. Rptr. 3d 762, 776 (Cal. Ct. App. 2010) ("[P]reparation of an appellate brief and record is far more complicated than merely 'repackaging' the trial court brief."). As the court in *Center for Biological Diversity* noted:

> Appellate work is most assuredly not the recycling of trial level points and authorities. . . . For better or worse, appellate briefs receive greater judicial scrutiny than trial level points and authorities, because three judges (or maybe seven) will read them, not just one judge. The judges will also work under comparatively less time pressure, and will therefore be able to study the attorney's 'work product' more closely. They will also have more staff (there are fewer research attorneys per judge at the trial level) to help them identify errors in counsel's reasoning, misstatements of law and miscitations of authority, and to do original research to uncover ideas and authorities that counsel may have missed, or decided not to bring to the court's attention.

Id. (quoting *In re Marriage of Shaban*, 105 Cal. Rptr. 2d 863, 870 (Cal. Ct. App. 2001)). In sum, we find no abuse of discretion in the trial court's conclusion that Plaintiffs did not have to segregate their appellate attorney fees.

3. Reasonableness of Plaintiffs' Appellate Attorney Fees

¶ 19 Royal Crown claims the "trial court did not make a sufficient and thorough determination on the reasonableness of the requested fees and it certainly did not make an independent analysis or determination." Royal Crown Opening Br. at 9 (citation omitted). We review the amount of fee awards for abuse of discretion. *Ishimatsu II*, 2010 MP 8 ¶ 64. Although trial courts have "wide latitude in awarding fees," that latitude is not endless. *Estate of Malite*, 2010 MP 20 ¶ 44. When reviewing fee motions, trial courts should determine whether requested fees are reasonable through analysis of the

factors in Rule 1.5(a) of the ABA Model Rules of Professional Conduct ("MRPC").[9] *Id.* ¶ 40 (citing *Camacho v. J.C. Tenorio Enters.*, 2 NMI 509, 511 (1992)). As we stated in *Estate of Malite*:

> What is crucial for purposes of our ruling is not *how* the MRPC Rule 1.5 factors are balanced, but that the lower court must consider more than only time billings. . . . While time billings constitute an important element of a reasonableness hearing as the Court considers the time and labor a case required, billings alone are insufficient. While the trial court is empowered to balance the MRPC Rule 1.5 factors as it deems appropriate, it is not free to disregard all of the factors (and MRPC Rule 1.5 in the process), and reduce a reasonableness hearing to only a review of time billings. In many cases . . . a court will want to consider the time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the requested legal services. Depending on the circumstances in a given case, some factors may be weighted more heavily than others.

Id. ¶ 44 (footnotes omitted). At the end of the day, "a trial court must exercise its discretion and wisdom to tailor the balancing of factors to the particular circumstances in a given case." *Id.*

¶ 20 The Remand Fee Order's section on the reasonableness of Plaintiffs' appellate attorney fees is quite short. The trial court spends only two sentences laying out the standard for determining the reasonableness of attorney fees and makes no reference to *Estate of Malite*, this Court's most recent and in-depth discussion of attorney fees. Remand Fee Order at 5. The order states: "[a]fter reviewing the billing summaries, the Court finds that Plaintiffs [sic] billings are not vague or excessive." *Id.* The trial court then states, without citation to any evidence, that the fees requested are reasonable, "based on counsel's hourly rates[,] which are on par with the rates charged for similar work done here, in the CNMI." *Id.* Finally, the trial court refused to award Plaintiffs fees for work done to prepare and file the fee motions before the Supreme Court and the trial court. *Id.*

¶ 21 As mentioned above, when reviewing a trial court's attorney fee award, we look to see if the "lower court . . . consider[ed] more than only time billings." *Estate of Malite*, 2010 MP 20 ¶ 44. Here, the trial court reviewed the "billing summaries" and compared counsel's hourly rates to other rates in the

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[9] MRPC Rule 1.5(a) states, in relevant part:

> (a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:
>
> > (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
> > (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
> > (3) the fee customarily charged in the locality for similar legal services;
> > (4) the amount involved and the results obtained;
> > (5) the time limitations imposed by the client or by the circumstances;
> > (6) the nature and length of the professional relationship with the client;
> > (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
> > (8) whether the fee is fixed or contingent.

Commonwealth. Remand Fee Order at 5. Comparison of hourly rates is one of the MRPC Rule 1.5 factors. MRPC Rule 1.5(a)(3) ("the fee customarily charged in the locality for similar legal services"). Because the trial court considered more than just Plaintiffs' time billings, and Royal Crown provided this Court with no billing slips that might have led us to a contrary conclusion, we find no abuse of discretion in the appellate attorney fee award. However, we note that the Remand Fee Order's anemic analysis is far from ideal. While trial courts need not provide an exhaustive analysis of every MRPC Rule 1.5(a) factor when awarding fees, we urge the trial court to provide greater analysis and discussion of relevant MRPC Rule 1.5(a) factors to facilitate more effective review of trial court orders by this Court. *Cf. Colon v. Howard*, 215 F.3d 227, 232 (2d Cir. 2000) (noting that "development of a detailed record [by trial courts] will assist appellate review.").

C. Trial Court's Award of Post-Judgment Interest

¶ 22 Royal Crown claims that the award of post-judgment interest[10] exceeded the scope of this Court's mandate from *Ishimatsu II*. Royal Crown Opening Br. at 5, 9-10. Royal Crown then argues that the trial court's release, on remand, of supersedeas bond funds to Plaintiffs satisfied the judgment and took away the trial court's authority to award post-judgment interest. *Id.* at 9-10. In support, Royal Crown quotes the trial court's order releasing the bond money, where it stated, "the only issue that remains is the attorney fees and costs for the appeal which is currently before the Supreme Court. All other issues have been resolved." *Id.* at 11 (emphasis omitted) (quoting RC App. at 14) (internal quotation marks omitted). This court reviews both compliance with the mandate and awards of interest de novo. *Estate of Malite*, 2010 MP 20 ¶ 28; *Tano Group, Inc. v. Dep't of Pub. Works*, 2009 MP 18 ¶ 52.

¶ 23 Regarding the trial court's compliance with the mandate, the award of post-judgment interest is permissible, despite the absence of a discussion of post-judgment interest in this Court's mandate from *Ishimatsu II*, because our mandate did not foreclose the award of post-judgment interest. *Estate of Malite*, 2010 MP 20 ¶ 33 ("[T]he lower court may consider issues not foreclosed by the mandate."). Post-judgment interest is not mentioned in the slip opinion, judgment, or mandate in *Ishimatsu II*, and nothing in these documents foreclosed the trial court's consideration of Plaintiffs' request.

¶ 24 Turning to the merits of the award, the trial court awarded $39,964.05 in post-judgment interest. A statute, 7 CMC § 4101, controls this issue: "[e]very judgment for the payment of money shall bear

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[10] We find Royal Crown's argument on this point unacceptably misleading. Royal Crown's section heading is "The Superior Court Awarding *Pre*judgment Interest Was Improper." Royal Crown Opening Br. at 9 (emphasis added). Its two subsection headings also refer to prejudgment interest. *Id.* at 9-10. However, this Court has determined that Royal Crown's argument is actually related to the trial court's award of post-judgment interest. *Id.* at 10-11 ("Amending the judgment to award post judgment interest did not affect an existing issue or any matter before the Superior Court as Hiponia and Esperancilla had have [sic] received payment for the judgment ordered and mandated by the Supreme Court."). Counsel for Royal Crown must take greater care in the future to prevent such easily avoidable errors.

interest at the rate of nine percent a year from the date it is entered." *See N. Marianas Housing Corp. v. Flores*, 2006 MP 23 ¶ 5 (noting that "7 CMC § 4101 is unambiguous" regarding entitlement to post-judgment interest). Strangely, neither party mentions this controlling provision. This section does not discuss any deadline for requesting post-judgment interest. Instead, the section merely defines a mandatory amount of interest that the trial court must add to every judgment. Because of the mandatory nature of 7 CMC § 4101, the trial court's isolated statement that "[a]ll other issues have been resolved" in its order regarding release of the supersedeas bond has no bearing on Plaintiffs' entitlement to post-judgment interest. For these reasons, we affirm the trial court's award of post-judgment interest.[11]

D. Trial Court's Denial of Supersedeas Bond Phase Attorney Fees

¶ 25 On cross-appeal, Plaintiffs argue that the trial court applied the wrong legal standard when denying their request for supersedeas bond phase attorney fees by stating that the fees were "not part of the appeal." Plaintiffs' Opp'n Br. at 13 (quoting Remand Fee Order at 5). They contend that the correct standard is whether the fees were reasonable. *Id.* (quoting 4 CMC § 5112(a) ("[T]he court shall award . . . reasonable attorney's fees if the plaintiff prevails.")). Royal Crown counters that the trial court properly denied supersedeas bond phase fees because Plaintiffs' request for supersedeas bond phase fees was untimely, relying on NMI Rule of Civil Procedure 54(d)(2)(B),[12] which requires a fee motion to be filed "no later than 14 days after entry of judgment." This Court reviews an award of attorney fees for abuse of discretion, but we review de novo whether the trial court applied the right legal standard. *Estate of Malite*, 2010 MP 20 ¶ 38.

¶ 26 As noted by Plaintiffs, the trial court denied the supersedeas bond phase fees because those fees were "not part of the appeal." Remand Fee Order at 5. This is not a standard for determining an award of attorney fees. Assuming, without deciding,[13] that 4 CMC § 5112(a) entitled Plaintiffs to attorney fees, the standard is whether those fees are reasonable, since the statute allows recovery only of "reasonable attorney's fees." 4 CMC § 5112(a).

¶ 27 Having held that the trial court applied the wrong legal standard, we must now determine whether Plaintiffs' fee request was timely. NMI Rule of Civil Procedure 54(d)(2)(B) requires a fee motion to be

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[11] Royal Crown only challenged Plaintiffs' entitlement to post-judgment interest, not the amount awarded. Although the trial court did not provide an accounting of exactly how it arrived at the $39,964.05 figure, Royal Crown waived the ability to challenge the amount by failing to discuss the issue in its brief. *Delos Reyes*, 4 NMI at 343 n.11 ("The appellant bears the burden of pointing out clearly and specifically the error asserted on appeal. Where the appellant fails to carry this burden, we need not even address his or her argument." (internal citations omitted)).

[12] Royal Crown incorrectly cited NMI Rule of Civil Procedure 54(b).

[13] We assume this entitlement without deciding the issue because Royal Crown failed to challenge Plaintiffs' entitlement on appeal. *See Delos Reyes*, 4 NMI at 343 n.11 ("The appellant bears the burden of pointing out clearly and specifically the error asserted on appeal. Where the appellant fails to carry this burden, we need not even address his or her argument." (internal citations omitted)).

filed "no later than 14 days after entry of judgment." The trial court's order addressed Royal Crown's timeliness argument in a single section–presumably regarding Plaintiffs' fee request for both the supersedeas bond phase and the appellate phase. The court found both requests timely based on an Advisory Committee Note regarding the 1993 amendments to Federal Rule of Civil Procedure 54(d)(2)(B).[14] Remand Fee Order at 2-3 (citing Fed. R. Civ. P. 54 advisory committee's note). The trial court's interpretation of NMI Rule of Civil Procedure 54(d)(2)(B) is a question of law reviewed de novo. *Commonwealth v. Jai Hoon Yoo*, 2004 MP 5 ¶ 2.

¶ 28 After remand from *Ishimatsu II*, Plaintiffs filed a motion for attorney fees related to the supersedeas bond phase that occurred prior to the appeal. This February 2011 motion was the first request for supersedeas bond phase fees filed by Plaintiffs in any court, even though these fees were incurred between April 2005 and October 2006. The October 2006 final entry of judgment constituted the separate document perfecting Royal Crown's appeal that became *Ishimatsu II*. Had no appeal been filed, the plain language of NMI Rule of Civil Procedure 54(d)(2)(B) required Plaintiffs' supersedeas bond phase fee request to be filed no later than 14 days after the October 2006 final entry of judgment. However, since Royal Crown appealed the October 2006 judgment, we must determine the effect of that appeal on the timeliness of Plaintiffs' request for supersedeas bond phase fees.

¶ 29 While the Advisory Committee Notes to the Federal Rules of Civil Procedure do not bind this Court because they interpret the Federal Rules (and would not bind us even if we applied the federal rules), federal courts "accord[] great weight [to advisory notes] in interpreting federal rules." *United States v. Davenport*, 668 F.3d 1316, 1321 n.9 (11th Cir. 2012) (citation omitted). In 1993, Federal Rule of Civil Procedure 54(d)(2)(B) was amended to add the 14-day filing deadline for attorney fee motions. The 1993 Advisory Committee Note states that the 14-day deadline is meant to "assure that the opposing party is informed of the claim before the time for appeal has elapsed." Fed. R. Civ. P. 54(d)(2)(B) advisory committee's note. The Note continues that "[p]rompt filing affords an opportunity for the court to resolve fee disputes shortly after trial . . . in time for any appellate review of a dispute over fees to proceed at the same time as review on the merits of a case." *Id.* After discussing these purposes, the Note discusses the effect of filing an appeal. While "[a] notice of appeal does not extend the time for filing a fee claim based on the initial judgment, . . . [a] new period for filing will automatically begin if a new judgment is entered following a reversal or remand by the appellate court." *Id.*

¶ 30 Although the Advisory Committee Note states that a new period for filing fee motions beings automatically following reversal or remand after appeal, it is unclear whether this means a new period for filing fee requests related to the *entire* case or just a new period for requesting *appellate* attorney fees.

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[14] Though not identical, Federal Rule of Civil Procedure 54(d)(2)(B) also requires a fee motion to be filed "no later than 14 days after the entry of judgment."

Few cases address this specific issue.[15] This is likely because in most cases the prudent prevailing party will file a request in the trial court before appeal so that no timeliness issues arise. *See, e.g.*, *Quigley v. Rosenthal*, 427 F.3d 1232, 1233, 1236 (10th Cir. 2005) (movant brought motion for trial court fees before appeal and then renewed motion on remand). Of the cases surveyed by this Court, only two address the timeliness of a request for fees related to trial court services made after remand from an appeal. As these two cases reach opposite conclusions, we will address each case in detail.

¶ 31 In *Committee for Idaho's High Desert v. Yost*, the prevailing party failed to request attorney fees within 14 days of the entry of judgment, and the trial court refused to allow the untimely request. 92 F.3d 814, 824 (9th Cir. 1996). The United States Court of Appeals for the Ninth Circuit affirmed the trial court, reasoning that "[t]he district court did not abuse its discretion in holding that . . . counsel's ignorance of the amended procedural requirements for the filing of a request for attorney's fees was not excusable neglect." *Id.* at 825. Though the court upheld the trial court's denial, it quoted the Advisory Committee Note to Federal Rule of Civil Procedure 54(d)(2)(B) in a footnote and stated, "[b]ecause we today reverse the district court's dismissal of the individual appellants, *further proceedings below may lead to the entry of a new judgment that will begin a new period for filing*." *Id.* at n.5 (emphasis added). This footnote suggests that the 14-day window to request fees after remand reopens as to any and all attorney fees. However, this statement is merely dicta because the only issue before the court was the timeliness of the fee request prior to appeal.

¶ 32 The second case addressing this timeliness issue is *District of Columbia v. Jackson*. 878 A.2d 489 (D.C. 2005). In *Jackson*, the jury found for the plaintiff on three separate claims: negligence, assault and battery, and violation of 42 U.S.C. § 1983. *Id.* at 493. The jury awarded a lump sum of compensatory damages for all three claims. *Id.* On appeal, the court found the evidence sufficient to support the assault and battery verdict and the compensatory damages award. *Id.* Because the appellate court upheld the entire compensatory damages award, it deemed the District of Columbia's challenge to the negligence and 42 U.S.C. § 1983 claims moot. *Id.* On remand, the plaintiff requested attorney fees "under 42 U.S.C. § 1988 as the prevailing party in her [42 U.S.C. §] 1983 'excessive force' claim." *Id.* at 491. After the trial court awarded plaintiff's attorney fees, the District of Columbia appealed, claiming that plaintiff's request was untimely because it was not filed until after remand from the appeal. *Id.*

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[15] Most cases addressing the 14-day deadline and the Advisory Committee Note, including all of the cases relied upon by Plaintiffs, involve the effect that a motion filed pursuant to Federal Rule of Civil Procedure 59 has on the time to request attorney fees. *See, e.g.*, *Militmore Sales, Inc. v. Int'l Rectifier, Inc.*, 412 F.3d 685, 688-89 (6th Cir. 2005) (holding that the filing of a Rule 59 motion tolls the deadline to file a fee request until the trial court resolves the Rule 59 motion). Because these cases do not address the effect of an appeal on the time to file a fee request, they are not useful in determining the question before us.

¶ 33 Before determining whether the plaintiff's request was timely, the *Jackson* court analyzed District of Columbia Superior Court Rule 54(d)(2)(B)[16] and the purposes for the addition of a deadline to file fee requests. First, the court, relying on the explanatory note to the local rule, noted that timely filing of a fee request provides notice of the fee claim prior to the deadline to file an appeal. *Id.* at 492. Second, timely filing "facilitate[s] the [trial court's] review of the services performed . . . while the services performed are still fresh in mind and . . . in time for appellate review of a dispute over fees along with any review of the merits of the case." *Id.* (internal quotation marks and citations omitted). Third, timely filing can "clarify for the parties, as well as for the court, what are the contested legal issues relevant to entitlement to fees that need to be decided as part of the underlying case." *Id.* Fourth, a timely fee request "counsels against a party's pursuing an appeal of questionable merit that might well add to the fees eventually awarded." *Id.* at 493.

¶ 34 After exploring the purposes of the 14-day deadline, the *Jackson* court addressed the timeliness of the plaintiff's request. Analyzing the Advisory Committee Note outlining the rule's rationale, the court rejected the plaintiff's heavy reliance on a phrase in the note suggesting the time to file the motion had not expired "if a new judgment is entered following a reversal or remand by the appellate court." *Id.* (quoting Fed. R. Civ. P. 54 advisory committee's note). The court examined the statement in the context of the entire Advisory Committee Note and concluded that the Note "begins with an assumption that a motion for fees had been duly filed before the appeal, and that assumption continues throughout the paragraph." *Id.*[17] From this, the court determined that the Advisory Committee Note's language regarding the reopening of the window for filing a fee request did not apply to requests that could have been made, but were not, prior to the appeal. *Id.* at 494. The court found further support for its holding in the language of the note, which "provide[s] for a new filing period in the event of a reversal or a remand, *but not an affirmance*, as a reversal or remand could potentially change which party would be entitled to attorney's

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[16] District of Columbia Superior Court Rule 54(d)(2)(B) is identical to NMI Rule of Civil Procedure 54(d)(2)(B), and reads, in relevant part: "Unless otherwise provided by statute or order of the court, the motion must be filed and served no later than 14 days after entry of judgment . . . ." *Jackson*, 878 A.2d at 491 n.3.

[17] The paragraph of the Advisory Committee Note referenced by the *Jackson* court reads:

> Filing a motion for fees under this subdivision does not affect the finality or the appealability of a judgment, though revised Rule 58 provides a mechanism by which prior to appeal the court can suspend the finality to resolve a motion for fees. If an appeal on the merits of the case is taken, the court may rule on the claim for fees, may defer its ruling on the motion, or may deny the motion without prejudice, directing under subdivision (d)(2)(B) a new period for filing after the appeal has been resolved. A notice of appeal does not extend the time for filing a fee claim based on the initial judgment, but the court under subdivision (d)(2)(B) may effectively extend the period by permitting claims to be filed after resolution of the appeal. A new period for filing will automatically begin if a new judgment is entered following a reversal or remand by the appellate court or the granting of a motion under Rule 59.

Fed. R. Civ. P. 54 advisory committee's note.

fees." *Id.* The exclusion of affirmance as a ground to reopen the filing window convinced the court that "the 'new period for filing' provides newly-prevailing parties the opportunity to request attorney's fees, and is not intended simply to allow a party who continues to prevail post-appeal a second bite at the apple." *Id.*

¶ 35 The final issue addressed by the *Jackson* court was the ample opportunities that prevailing parties have to preserve their right to request attorney fees in the trial court prior to appeal. Prevailing parties can seek an extension of the 14-day period by order of the trial court. *Id.* at 494 (citations omitted). Additionally, a prevailing party can file a request for fees within the 14-day window and ask that the trial court: (1) decide the matter, (2) defer the matter until resolution of the appeal, or (3) deny the request without prejudice so that the prevailing party can submit a new request if successful on appeal. *Id.* (quoting Fed. R. Civ. P. 54 advisory committee's note). Since no evidence suggests that the plaintiff used any of these methods or that the trial court had taken any of those actions sua sponte, the appellate court held that the plaintiff's request for attorney fees was untimely. *Id.*

¶ 36 After reviewing these two cases, we find *Jackson* to be the more persuasive and hold that Plaintiffs' request for supersedeas bond phase fees was untimely. As discussed in *Jackson*, neglecting to file a fee motion for the supersedeas bond phase until after appeal and remand does not serve the purposes of the 14-day filing deadline. For instance, while a timely fee motion would have allowed the trial court to rule on the fee motion with its memory of the supersedeas bond phase proceedings still fresh, the trial court would now have to determine the motion several years after the fees accrued. *See Id.* at 492 (noting that timely filing "facilitate[s] the [trial court's] review of the services performed . . . while the services performed are still fresh in mind and . . . in time for appellate review of a dispute over fees along with any review of the merits of the case." (internal quotation marks and citations omitted)). Additionally, requiring parties to file fee motions before appeal serves the judicial efficiency purpose of the 14-day deadline by deterring meritless appeals. *See id.* at 493 (reasoning that timely fee request "counsels against a party's pursuing an appeal of questionable merit that might well add to the fees eventually awarded").

¶ 37 Further support for our holding comes from the surrounding language of the Advisory Committee Note to Federal Rule of Civil Procedure 54(d)(2)(B). The *Jackson* court commented that the note "begins with an assumption that a motion for fees had been duly filed before the appeal, and that assumption continues throughout the paragraph." *Id.* (footnote omitted). While the *Jackson* court did not explain this observation, our review of the text leads us to the same conclusion. The second sentence of the paragraph discussed by the *Jackson* court lays out the three options a trial court has "[i]f an appeal on the merits . . . is taken": "the court [(1)] may rule on the claim for fees, [(2)] may defer its ruling on the motion, or [(3)] may deny the motion without prejudice, directing under subdivision (d)(2)(B) a new period for filing after

the appeal has been resolved." Fed. R. Civ. P. 54(d)(2)(B) advisory committee's note. All three options assume the filing of a fee motion prior to appeal.

¶ 38 We also agree with the *Jackson* court's reasoning that the absence of "affirmance" as a trigger for a new deadline to file a fee motion is significant. *See Ada v. Calvo*, 2012 MP 11 ¶ 17 (Slip Opinion, September 5, 2012) (citing *Bank of Saipan v. Carlsmith Ball Wichman Case & Ichiki*, 1999 MP 20 ¶ 14) ("When a law does not address a specific issue, that silence can be significant."). Exclusion of "affirmance" suggests that the Advisory Committee Note only "provides newly-prevailing parties the opportunity to request attorney's fees, and is not intended simply to allow a party who continues to prevail post-appeal a second bite at the apple." *Jackson*, 878 A.2d at 494.

¶ 39 Finally, our holding is informed by the number of opportunities Plaintiffs had to preserve their request for supersedeas bond phase fees. Plaintiffs could have filed a timely request before the trial court and asked the court to decide the matter, defer the ruling until after the appeal, or deny the request without prejudice to the Plaintiffs renewing the request after the appeal. Additionally, Plaintiffs could have sought an extension from the trial court in the event that they missed the initial deadline to file a fee request. Plaintiffs did not avail themselves of these options.

¶ 40 In conclusion, we find Plaintiffs' request for supersedeas bond phase fees untimely because it was not filed within 14 days of the October 2006 final entry of judgment. For this reason,[18] we affirm the trial court's denial of supersedeas bond phase fees.

IV

¶ 41 For the foregoing reasons, we AFFIRM the trial court's (1) award of appellate phase attorney fees, and (2) denial of supersedeas bond phase attorney fees.

SO ORDERED this 27th day of December, 2012.

/s/
ALEXANDRO C. CASTRO
Chief Justice

[18] Though we hold that the trial court applied the wrong legal standard in denying Plaintiffs supersedeas bond phase fees, we can affirm the trial court "on any ground that is supported in the record." *Sablan v. Tenorio*, 4 NMI 351, 358 n.21 (1996) (citation omitted). Because we find Plaintiffs' fee request untimely, we affirm the trial court on this ground.

/s/
JOHN A. MANGLONA
Associate Justice

/s/
ROBERT C. NARAJA
Justice Pro Tem