

FSM SUPREME COURT TRIAL DIVISION

PIUS SETIK,	)	CIVIL ACTION NO. 2010-1019
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
PACIFIC INTERNATIONAL INC.,	)	
	)	
Defendant/Third-Party Plaintiff,	)	
	)	
vs.	)	
	)	
CHUUK STATE LAND COMMISSION and LAND MANAGEMENT,	)	
	)	
Third-Party Defendants.	)	
	)	

ORDER DENYING PRELIMINARY INJUNCTION AND JUDGMENT ON THE PLEADINGS

Ready E. Johnny  
Associate Justice

Hearings: August 20, September 24, 2010  
Decided: October 13, 2010  
Amended: October 26, 2010

APPEARANCES:

For the Plaintiff:	Pius Setik, pro se P.O. Box 453 Weno, Chuuk FM 96942
For the Defendant:	Sabino Asor, Esq. P.O. Box 95 Weno, Chuuk FM 96942
For the Third-Party Defendants:	Joses Gallen, Esq. Attorney General Office of the Chuuk Attorney General P.O. Box 1050 Weno, Chuuk FM 96942

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HEADNOTES

Civil Procedure – Injunctions

To support a preliminary injunction, a movant must show that irreparable injury will occur if the

relief is not granted to maintain the status quo until a final adjudication on the merits and that there is a reasonable probability of success on the merits. Setik v. Pacific Int'l, Inc., 17 FSM Intrm. 277, 279 (Chk. 2010).

Civil Procedure – Injunctions – Irreparable Harm

A movant has not made a showing that irreparable injury will occur if injunctive relief is not granted when his complaint seeks only money damages since if money damages will fully compensate for the threatened interim action, then the preliminary injunction should be denied because, under such circumstances, the injury cannot accurately be deemed irreparable. Setik v. Pacific Int'l, Inc., 17 FSM Intrm. 277, 279 (Chk. 2010).

Civil Procedure – Injunctions

When the non-movant has been using and quarrying the land since December 2009 and the plaintiff did not seek injunctive relief until September 2010 although he filed this case on March 2, 2010, enjoining the non-movant's continued use of the land would not preserve the status quo because the status quo was the non-movant's continued use of the land. Setik v. Pacific Int'l, Inc., 17 FSM Intrm. 277, 279 (Chk. 2010).

Civil Procedure – Injunctions

In granting or refusing interlocutory injunctions the court must set forth the findings of fact and conclusions of law which constitute the grounds of its action. Setik v. Pacific Int'l, Inc., 17 FSM Intrm. 277, 279 (Chk. 2010).

Civil Procedure – Dismissal – Before Responsive Pleading; Civil Procedure – Judgment on the Pleadings

For purposes of a motion for judgment on the pleadings, all well-pleaded material allegations of the opposing party's pleadings are taken as true and all allegations of the moving party that have been denied are taken as false, and judgment is granted only if the movant is clearly entitled to judgment on the facts as so admitted. Setik v. Pacific Int'l, Inc., 17 FSM Intrm. 277, 280 (Chk. 2010).

Civil Procedure – Judgment on the Pleadings

When, taking the non-movant's well-pleaded material allegations as true, a dispute exists over the title to the leased land, the court cannot grant judgment on the pleadings or dismiss the complaint on the ground that it fails to state a claim. Setik v. Pacific Int'l, Inc., 17 FSM Intrm. 277, 280 (Chk. 2010).

Civil Procedure – Venue; Courts

The general rule is that the lawsuit filed first has priority over any other case involving the same parties and issues, even if one is filed later before a court that could also take jurisdiction. The rule, although not absolute, is a principle of sound judicial administration under which the first-filed suit should have priority absent special circumstances. This salutary principle avoids unseemly conflicts that might arise between courts if they could, at the same time, make inconsistent or contradictory decisions relating to the same dispute and it protects litigants from the expense and harassment of multiple litigation. Setik v. Pacific Int'l, Inc., 17 FSM Intrm. 277, 280 (Chk. 2010).

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COURT'S OPINION

READY E. JOHNNY, Associate Justice:

On August 20, 2010, this came before the court for hearing the defendant/third-party plaintiff

Defendant PII's Motion for Judgment on the Pleadings and/or for Dismissal, filed June 14, 2010, and on September 24, 2010, this came before the court for hearing plaintiff Pius Setik's Application for Preliminary Injunction, filed on September 1, 2010, and other pending matters. These other matters were the plaintiff's motion for enlargement of time to respond to the defendant's motion to dismiss and Plaintiff's Opposition to Dismissal and Response to Defendant's Motion for Judgment on the Pleadings, all filed August 24, 2010. Plaintiff Pius Setik did not appear at either hearing. No party subpoenaed any witnesses and none testified at either hearing.

#### I. PRELIMINARY INJUNCTION MOTION

Setik, the preliminary injunction movant, did not appear at the preliminary injunction hearing, or subpoena any witnesses, or present any testimony. Nor did Setik move to continue the preliminary injunction hearing to a later date. A trial counselor admitted to the Chuuk State Supreme Court, Fredrick Hartmann, did appear. Hartmann did not move to represent Setik pro hac vice but merely stated that Setik was ill that day and that since Setik was his uncle, he was appearing not as Setik's counsel but as Setik's "attorney-in-fact." (Hartmann did acknowledge that he had ghostwritten Setik's pleadings and filings.)

To support a preliminary injunction, a movant must show that irreparable injury will occur if the relief is not granted to maintain the status quo until a final adjudication on the merits and that there is a reasonable probability of success on the merits. Continental Group, Inc. v. Amoco Chem. Corp., 614 F.2d 352, 356 (3d Cir. 1980); *see also* Carlos Etscheit Soap Co. v. Epina, 8 FSM Intrm. 155, 161 (Pon. 1997) (movant must be faced with the threat of irreparable harm before the litigation's conclusion unless injunction is granted). Setik has not made that showing. Setik, in his complaint, seeks only money damages. When money damages will fully compensate for the threatened interim action, then the preliminary injunction should be denied, Billimon v. Marar, 15 FSM Intrm. 87, 89 (Chk. 2007); Epina, 8 FSM Intrm. at 161; Ponape Transfer & Storage v. Pohnpei State Public Lands Auth., 2 FSM Intrm. 272, 276 (Pon. 1986), because, under such circumstances, the injury cannot accurately be deemed irreparable. GE Seaco Servs., Ltd. v. Federated Shipping Co., 14 FSM Intrm. 159, 162 (Pon. 2006). Moreover, Setik does not seek to maintain the status quo. PII has been using and quarrying the land since December 2009 and Setik did not seek injunctive relief until September 2010 although he filed this case on March 2, 2010. Thus, enjoining PII's continued use of the land would not preserve the status quo. The status quo is PII's continued use of the land.

Furthermore, "in granting or refusing interlocutory injunctions the court shall . . . set forth the findings of fact and conclusions of law which constitute the grounds of its action." FSM Civ. R. 52(a). In this case, the court is unable to make the requisite findings of fact to the degree that it should be able to. Setik did not put before the court any evidence to support his motion other than what was attached to his motion. Those attachments were: his certificate of title, his own affidavit, and a copy of a February 10, 2010 answer to a complaint that Setik had filed in the Chuuk State Supreme Court before he filed this case and which apparently is a quiet title action for the same land as is involved in this case and which, unlike this case, names as defendants PII's lessors, whose certificate of title Setik asserts is contradictory and invalid.

Accordingly, Setik's motion for a preliminary injunction is denied.

#### II. MOTION FOR JUDGMENT ON THE PLEADINGS AND/OR FOR DISMISSAL

PII moves for judgment on the pleadings or, in the alternative, a dismissal for failure to state a claim. PII contends that it is entitled to judgment because Setik only bought a portion of the land Meseichuk and the sellers retained the portion which they have now leased to PII for rock quarrying.

In support, PII relies, in part, on Setik's 1999 purchase agreement showing purchase of one part of Meseichuk, Pl.'s Ex. E, Setik's September 10, 2001 certificate of title for 4,251 ± square meters of Meseichuk, and the lessors' December 18, 2009 certificate of title for 4,688 square meters of Meseichuk. In the alternative, PII asks that the court the case be dismissed because the documentary evidence (including sketch maps of the parties' respective holdings) before the court that is contrary to Setik's claim of title to PII's leased land establish that Setik does not own all of Meseichuk. The third-party defendants stated orally that their position is that Meseichuk comprises two pieces of land, only one of which Setik owns.

Setik responds<sup>1</sup> that he bought all or substantially all of Meseichuk and that the lessors' certificate of title is, or should be, void, and that therefore PII is not entitled to a judgment in its favor but is liable to him for damages for failing to verify that he was the land's owner.

For purposes of a motion for judgment on the pleadings, all well-pleaded material allegations of the opposing party's pleadings are taken as true and all allegations of the moving party that have been denied are taken as false. In re Kuang Hsing 182, 7 FSM Intrm. 465, 467 (Yap 1996). Judgment is granted only if the movant is clearly entitled to judgment on the facts as so admitted. *Id.* Taking Setik's well-pleaded material allegations as true, a dispute exists over the title to the land PII leased. The court therefore cannot grant PII judgment on the pleadings. Nor can the court dismiss Setik's complaint on the ground that it fails to state a claim.

Setik also filed a lawsuit in the Chuuk State Supreme Court disputing title to the land that Setik, in this case, alleges that PII is trespassing upon. That state court suit names as defendants those persons from whom PII leased the land and Chuuk State Land Management, a third-party defendant in this case. The state court suit was filed before this one.

The general rule is that the lawsuit filed first has priority over any other case involving the same parties and issues, even if one is filed later before a court that could also take jurisdiction. Mori v. Hasiguchi, 16 FSM Intrm. 382, 384 (Chk. 2009); Election Comm'r v. Petewon, 6 FSM Intrm. 491, 498, 1 CSR 5, 10 (Chk. S. Ct. App. 1994). The rule, although not absolute, is a principle of sound judicial administration under which the first-filed suit should have priority absent special circumstances. Mori, 16 FSM Intrm. at 384. This salutary principle avoids unseemly conflicts that might arise between courts if they could, at the same time, make inconsistent or contradictory decisions relating to the same dispute and protects litigants from the expense and harassment of multiple litigation. Petewon, 6 FSM Intrm. at 498 n.6, 1 CSR at 10 n.6.

That state court case does not have exactly the same parties as this case since the lessors (along with Chuuk Land Management) are the defendants in that case and the lessee, PII, is the named defendant in this case. (Chuuk Land Management is also a party in both cases.) But the underlying issues upon which both cases turn is the same – Setik's claim that he has title to the land that PII leased from the state court defendants and Setik's claim that those persons' certificate of title to that land is invalid.

Accordingly, the parties shall file, no later than November 12, 2010, their memorandums on whether this case should be dismissed without prejudice to await the outcome of Setik's title challenge case filed earlier in the Chuuk State Supreme Court, with the result that if Setik should prevail, in whole

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<sup>1</sup> The court considers Setik's Opposition to Dismissal and Response to Defendant's Motion for Judgment on the Pleadings, filed August 24, 2010, in absence of any opposition to Setik's motion to enlarge time to file it.

or in part, in his Chuuk State Supreme Court case, he may then refile his complaint against PII.

III. CONCLUSION

Pius Setik's motion for a preliminary injunction is denied. PII's motion for judgment on the pleadings or for dismissal for failure to state a claim is denied. The parties shall file memorandums on whether this case ought to be dismissed without prejudice because of the existence of an earlier-filed case in the Chuuk State Supreme Court that directly addresses the underlying land title dispute vital to the resolution of this case.

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FSM SUPREME COURT APPELLATE DIVISION

MARTIN JANO d/b/a MARTIN JANO )	APPEAL CASE NO. P2-2009
LAW OFFICES, )	Civil Action No. 2005-014
)	
Appellant, )	
)	
vs. )	
)	
KAZUHIRO FUJITA, )	
)	
Appellee. )	
)	

ORDER GRANTING MOTION TO DISMISS APPEAL

Decided: November 5, 2010

BEFORE:

Hon. Martin G. Yinug, Acting Chief Justice, FSM Supreme Court  
Hon. Dennis K. Yamase, Associate Justice, FSM Supreme Court  
Hon. Ready E. Johnny, Associate Justice, FSM Supreme Court

APPEARANCES:

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