

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 DISMISSING MATTER WITHOUT PREJUDICE

Ready E. Johnny
Associate Justice

Decided: December 17, 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

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HEADNOTES

Civil Procedure – Venue; Courts

The general rule is that the first-filed lawsuit 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. This 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. 304, 306 (Chk. 2010).

Civil Procedure – Parties; Constitutional Law – Due Process; Property – Registered Land

In any lawsuit that, in effect, seeks to change the registered ownership of the land that a certificate of title represents and deprive the certificate titleholder of the titleholder's property interest, due process would require that that person be an indispensable party to the action. Any action that seeks to claim an interest in land for which a certificate of title or a determination of ownership has been issued, must, at a minimum, name the registered titleholder as a party. Setik v. Pacific Int'l, Inc., 17 FSM Intrm. 304, 306 (Chk. 2010).

Civil Procedure – Parties

When the plaintiff urges the court to hold the lessors' certificate of title null and void ab initio, the lessors, as registered titleholders, would need to be joined if the suit for trespass against the lessee were to proceed. Setik v. Pacific Int'l, Inc., 17 FSM Intrm. 304, 307 (Chk. 2010):

Civil Procedure – Dismissal; Courts; Torts – Trespass

When there is a prior Chuuk State Supreme Court case that deals with the ownership issue and in which the alleged trespasser may soon be joined, and when the state court, unlike Chuuk Land Commission, has the power to issue monetary awards, the later-filed FSM Supreme Court trespass case will be dismissed without prejudice. Setik v. Pacific Int'l, Inc., 17 FSM Intrm. 304, 307 (Chk. 2010).

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COURT'S OPINION

READY E. JOHNNY, Associate Justice:

This comes before the court on the parties' 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 this case's resolution. On November 4, 2010, plaintiff Pius Setik and defendant Pacific International, Inc. ("PII") each filed a memorandum addressing this point and stating their respective positions. The third-party defendants did not file a memorandum.

I.

In January 1999, Setik purchased part of the land known as Meseichuk from its owners, Aiako Nitaro and her family. On September 10, 2001, the Chuuk Land Commission issued Setik a certificate of title for 4,251 square meters of Meseichuk. On December 9, 2008, the Land Commission issued a determination of ownership, and on December 18, 2009, issued a certificate of title to "Aiako Tira and her children" [Benita Nitaro] for 4,688 square meters of Meseichuk. Thereafter, PII, under a December 18, 2009 rock quarry land use agreement with the Tira landowners, began using the 4,688 square meter tract to obtain materials for its road construction project.

On January 12, 2010, Setik filed suit in the Chuuk State Supreme Court, claiming ownership of the land being quarried. Setik named Chuuk State Land Management, Chuuk State Land Commission, and Lesko Tira, representatives of Aiako Tira and her children, as the defendants. On March 2, 2010, Setik filed this suit in the FSM Supreme Court trial division, alleging trespass and naming only PII as a defendant. On March 15, 2010, PII answered and filed a third-party complaint against Chuuk State Land Commission and Chuuk Land Management, alleging that it had relied on their documents when executing the land use agreement and seeking a declaratory judgment on those documents' accuracy. On June 15, 2010, PII moved to intervene in the state court litigation. The state court has, apparently,

not yet ruled on that motion.

On June 21, 2010, Kotaro Bualuay's motion to intervene as a plaintiff was denied because Bualuay's cause of action was unrelated to Setik's cause of action since Bualuay alleged that PII stole rocks and dirt from his land and trespassed on his land in order to get to and trespass on the land Setik claimed and because Bualuay further alleged that he may have some contingent interest in the [non-party] lessors' land if he was unsuccessful in some lawsuit over nearby tideland. Order Denying Intervention at 2-3 (June 21, 2010). Bualuay's claim was thus different from Setik's because it alleged injury to land different from the land Setik claimed. *Id.* The court further noted that neither Setik nor PII had joined the lessors as parties, and that that was an issue that may need to be addressed in the future. *Id.* at 2 n.1.

On September 1, 2010, Setik filed an application for a preliminary injunction. Attached to the application were supporting documents that, for the first time, apprised this court of the existence of the earlier-filed state court case. On October 13, 2010, the court denied the preliminary injunction application and sought briefing on whether PII's motion to dismiss should be granted on the ground of the state court litigation earlier filing. Setik v. Pacific Int'l, Inc., 17 FSM Intrm. 277 (Chk. 2010).

II.

Setik asserts that the Chuuk State Supreme Court case is currently awaiting an order to delineate the boundary between his land and that of the Tira landowners, and that he is confident that the state court will determine that he and not Benita Nitara owns the land that she leased to PII for quarrying purposes. Setik asks that this court either order the Land Commission to expedite its "relocation survey to finalize the issue of boundaries between the Plaintiff and the defendant" or in the alternative hold this case in abeyance until the Chuuk State Supreme Court has rendered its decision and "verified" Setik's ownership of the land PII is using.

III.

The general rule is that the first-filed lawsuit 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). This 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.

The parties in this case and the state court litigation are not completely identical. This case has PII, the lessee, as a defendant and the state court case has the lessors as defendants. But Setik, in various filings in this case, urges this court to hold the lessors' certificate of title null and void ab initio and declare Setik the owner of at least the major part of the land covered by the December 18, 2009 certificate of title.

In any lawsuit that seeks, in effect, to change the registered ownership of the land that a certificate represents and deprive the certificate titleholder of the titleholder's property interest, due process would require that that person be an indispensable party to the action and that any action that seeks to claim an interest in land for which a certificate of title or a determination of ownership has been issued, must, at a minimum, name the registered titleholder as a party. Ruben v. Hartman, 15

FSM Intrm. 100, 110 (Chk. S. Ct. App. 2007); Dereas v. Eas, 14 FSM Intrm. 446, 455 (Chk. S. Ct. Tr. 2006); Marcus v. Truk Trading Corp., 11 FSM Intrm. 152, 158 n.4 (Chk. 2002). Thus, if this case were to proceed, the lessors, as registered titleholders, would need to be joined. This case and the state court case would then each have the same parties (with the possible exception of PII whose joinder is pending before the state court and if PII is joined there, then Setik can bring his claim for monetary damages for PII's alleged trespass there as well).

IV.

The central issue in both this case and the state court litigation is the dispute over ownership of the land leased to PII, which Setik characterizes as a boundary dispute. The state court case was filed first.

In Small v. Roosevelt, Innocenti, Bruce & Crisostomo, 10 FSM Intrm. 367, 369 (Chk. 2001), the plaintiffs' complaint alleged that the defendants' rock-quarrying operation encroached on their land and sought money damages for trespass. Since that case's outcome was dependent on the location of the plaintiffs' property line and since there already was a pending Land Commission case over the disputed land and its boundaries, the court remanded the matter to Land Commission. But since the Land Commission could not determine or award damages even if the defendants' operation was found to be on the plaintiffs' land, the court indicated that the parties could return to court if the Land Commission failed to act within a reasonable time. *Id.* at 370.

Here, there is a prior Chuuk State Supreme Court case dealing with the ownership issue and in which the alleged trespasser, PII, may soon be joined, and the state court, unlike Chuuk Land Commission, has the power to issue monetary awards. Accordingly, this case is dismissed without prejudice. If Setik should prevail in state court and if PII never becomes a party in the state court litigation, Setik may return to this court to pursue his trespass remedies.

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FSM SUPREME COURT TRIAL DIVISION

KADALINO DAMARLANE et al.)	CIVIL ACTION NO. 1990-075
)	
Plaintiffs,)	
)	
vs.)	
)	
POHNPEI TRANSPORTATION AUTHORITY,)	
STATE OF POHNPEI and the FEDERATED)	
STATES OF MICRONESIA,)	
)	
Defendants.)	
_____)	

ORDER AND MEMORANDUM

Martin G. Yinug
Acting Chief Justice

Decided: December 29, 2010