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

ORDER AND MEMORANDUM

Martin G. Yinug
Acting Chief Justice

Decided: December 29, 2010

APPEARANCES:

For the Plaintiffs: Mary Berman, Esq.
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Kolonia, Pohnpei FM 96941

For the Defendants: Monaliza Abello-Pangelinan, Esq.
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HEADNOTES

Contempt; Judgments

A person with a judgment may initiate contempt proceedings when enforcement of a favorable judgment is required to prevent irreparable injury to the winning party's interests and is otherwise in the interests of justice. Damarlane v. Pohnpei Transp. Auth., 17 FSM Intrm. 307, 309 (Pon. 2010).

Contempt; Judgments

Final judgments may be enforced by contempt proceedings provided that enforcement at such time is required to prevent irreparable injury or multiple damage to the interests of the winning party and is otherwise in the interests of justice. Damarlane v. Pohnpei Transp. Auth., 17 FSM Intrm. 307, 310 (Pon. 2010).

Contempt

For a party to be held in contempt, the court must find that he knew of the order and had the ability to comply. Implicit in the charge that the party knows of the order is the requirement that the order is in existence and is valid and actionable. Damarlane v. Pohnpei Transp. Auth., 17 FSM Intrm. 307, 310 (Pon. 2010).

Civil Procedure – Res Judicata

Once a judgment has been issued and the decision is affirmed on appeal, the parties are precluded from challenging that judgment or litigating any issue that was or could have been raised in that action. Damarlane v. Pohnpei Transp. Auth., 17 FSM Intrm. 307, 311-12 (Pon. 2010).

Civil Procedure – Res Judicata

When the plaintiffs' arguments in their motion for contempt proceedings and subsequent filings were all made or could have been made during the pendency of Civil Action No. 1990-075 and the plaintiffs either failed to raise these arguments during trial or raised them and failed to succeed on the merits, the *res judicata* doctrine precludes the plaintiffs from raising these arguments again. Damarlane v. Pohnpei Transp. Auth., 17 FSM Intrm. 307, 312 (Pon. 2010).

Civil Procedure – Motions; Civil Procedure – Sanctions

Rule 11 provides for sanctions against an attorney for filing frivolous and baseless motions. Rule 11 requires that before affixing her signature to a document, an attorney must undertake a reasonable inquiry to determine whether the pleading, motion, or other paper is well-grounded in fact and warranted either by current law, or a good faith argument of what the law ought to be. A purely frivolous argument, even if made in good faith, may be sanctionable. Damarlane v. Pohnpei Transp.

Auth., 17 FSM Intrm. 307, 312 & n.2 (Pon. 2010).

Civil Procedure – Sanctions

An attorney may be sanctioned for raising matters already decided and offering no new arguments. Damarlane v. Pohnpei Transp. Auth., 17 FSM Intrm. 307, 312 (Pon. 2010).

Civil Procedure – Sanctions

The manner in which Rule 11 sanctions are imposed must comport with due process requirements. At a minimum, notice and an opportunity to be heard are required. Damarlane v. Pohnpei Transp. Auth., 17 FSM Intrm. 307, 312 (Pon. 2010).

Civil Procedure – Sanctions

When the court is generally inclined to grant the defendants' motion for sanctions on the grounds of *res judicata* and the complete lack of merit in the plaintiffs' arguments but recognizes a possibility, however remote, that the plaintiffs genuinely and inadvertently misconstrued the relationship between the March 15, 1991 preliminary injunction and the May 17, 1991 order, the court, in its discretion, may deny the defendants' motion for sanctions and warn the plaintiffs that it may not look so charitably upon future filings of this type and caution their counsel to carefully review Civil Rule 11 and its requirements before filing further motions in the case. Damarlane v. Pohnpei Transp. Auth., 17 FSM Intrm. 307, 312 (Pon. 2010).

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COURT'S OPINION

MARTIN G. YINUG, Acting Chief Justice:

On September 21, 2009, Plaintiffs Kadalino Damarlane, et al. filed a motion for contempt proceedings in this matter against Pohnpei Transportation Authority, Pohnpei State, and the FSM Government. Plaintiffs claim that defendants have failed to comply with a court order in this matter dated May 17, 1991, which plaintiffs allege requires defendant Pohnpei Transportation Authority ("PTA") to remove a causeway it built in Mesenpal, Awak, U Municipality, Pohnpei State.

Plaintiffs claim that the Court's May 17, 1991 order essentially constitutes a judgment and that the FSM Code permits contempt proceedings to be initiated pursuant to 6 F.S.M.C. §§ 1403 and 1404. These sections provide that a person with a judgment may initiate contempt proceedings when enforcement of a favorable judgment is required to prevent irreparable injury to the interests of the winning party and is otherwise in the interests of justice. 6 F.S.M.C. 1403(1). Plaintiffs allege that because the PTA and the FSM Department of Human Resources have not prepared a monitoring plan or removed the causeway, a PTA official should be held in contempt and jailed until the order is obeyed. In the alternative, plaintiffs argue that earthmoving equipment should be seized to perform the tasks set forth in the May 17, 1991 order, pursuant to 6 F.S.M.C. 1404.

In their opposition to plaintiffs' motion, defendants contend that the order upon which plaintiffs rely was dissolved on October 10, 1995, and cite to Damarlane v. United States, 8 FSM Intrm. 45, 50 (App. 1997) in support. They further note that this civil action, 1990-075, was adjudicated on the merits and a final judgment entered in favor of defendants, which was affirmed on appeal. *Id.* Defendants argue that the doctrine of *res judicata* precludes parties from re-litigating issues that were or could have been raised in a previous action. Bank of FSM v. Hebel, 10 FSM Intrm. 279, 285 (Pon. 2001); Ittu v. Charley, 3 FSM Intrm. 188, 190 (Kos. S. Ct. Tr. 1987).

Plaintiffs argue that even if the preliminary injunction had been dissolved in its entirety on October 10, 1995, the other provisions of the Court's May 17, 1991 order are still in effect, requiring the PTA to obtain an earthmoving permit and remove the causeway. They claim that regardless of the applicability of the May 17, 1991 order, the FSM Department of Human Resources' issuance of an earthmoving permit to PTA for "coral dike removal" in September 1991 requires the PTA to remove the berms after cessation of earthmoving. Plaintiff cites to the record of Civil Action No. 1990-075 and its appeal, P1-1996, in support.

In response to plaintiffs' filings on September 21, 2009, and October 13, 2009, defendants filed a motion for sanctions under FSM Civil Rule 11. They argue that an attorney may be sanctioned for filing frivolous and baseless motions, and for raising matters already decided which offer no new arguments. FSM Civ. R. 11; Damarlane v. United States, 7 FSM Intrm. 350, 356-57 (Pon. 1995). Defendants contend that plaintiffs have not raised any arguments not already ruled upon by this Court in Civil Action No. 1990-075 and its appeal, or in a related case, Civil Action No. 2008-036, Mary Berman and Kadalino Damarlane v. Pohnpei State Government and Pohnpei State Transportation Authority.

I. Plaintiffs' Motion for Contempt Proceedings

The FSM Code section cited by plaintiffs, 6 F.S.M.C. 1403, provides that final judgments may be enforced by contempt proceedings "provided, that enforcement at such time is required to prevent irreparable injury or multiple damage to the interests of the winning party and is otherwise in the interests of justice." *Id.* For a party to be held in contempt, the court must find that he knew of the order and had the ability to comply. Hadley v. Bank of Hawaii, 7 FSM Intrm. 449, 452 (App. 1996). Implicit in the charge that the party knows of the order is the requirement that the order is in existence and is valid and actionable.[1] Defendants contend that plaintiffs' motion fails on this first point because the applicability of the motion upon which plaintiffs rely, issued on May 17, 1991, is wholly contingent on the status of the preliminary injunction issued by the Court on March 18, 1991. Defendants note that the preliminary injunction was dissolved on October 10, 1995, and is no longer valid or actionable. Accordingly, defendants reason, the May 17, 1991, order is no longer valid or actionable and cannot serve as a basis for plaintiffs' contempt motion.

A. *Case History*

To make its determination on the preliminary issue of whether a valid order exists, the Court finds a review of this case's long and convoluted history to be instructive.

The record shows that on October 28, 1990, the Court granted plaintiffs' request for a preliminary injunction based on its finding that defendants had violated certain earthmoving regulations by failing to obtain a valid permit for dredging operations undertaken near Mesenpal, Awak, U Municipality, Pohnpei. Damarlane v. Pohnpei Transp. Auth., 4 FSM Intrm. 347 (Pon. 1990). The Court subsequently enjoined defendants from performing further earthmoving activities without first obtaining a valid permit. Damarlane v. Pohnpei Transp. Auth., 5 FSM Intrm. 1 (Pon. 1991). The Pohnpei Transportation Authority obtained a valid earthmoving permit from the FSM Government on February

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[1] For example, Guam law requires that a movant prove the following facts: "1) a valid order, 2) knowledge of the order, 3) ability to comply with the order, and 4) willful failure to comply with the order." Lamb v. Hoffman, 2008 Guam 2, ¶ 45 & n.4 (internal citations omitted). *See also* FSM Social Sec. Admin. v. Weilbacher, 17 FSM Intrm. 217, 225 (Kos. 2010) ("by definition, allegation of knowledge of the order implies existence of that order . . .").

5, 1991. On February 8, 1991, the Court modified the existing injunction to permit PTA to conduct certain, limited earthmoving activities. Subsequently, on March 18, 1991, the Court entered a second preliminary injunction due to the defendants' violations of the injunction and the earthmoving permit. On May 17, 1991, the Court issued an order listing conditions to which defendants must comply for the Court to consider modifying or vacating the March 18, 1991 preliminary injunction. A subsequent published order by the FSM Appellate Division, Damarlane v. Pohnpei Transp. Auth., 5 FSM Intrm. 332 (App. 1992), clarified that the May 17, 1991 order provided four conditions to be met by defendants before the Court would consider modifying its injunction. *Id.* at 333. The Court stated: "The [May 17, 1991] order is explicit that upon the presentation of written and documentary evidence indicating that the conditions have been fulfilled satisfactorily the court may modify the injunction." *Id.* at 334.

Following a lengthy pretrial period, trial in this matter commenced on July 20, 1995, against defendants Pohnpei State, PTA, and the FSM Government. Following the dismissal of several of plaintiffs' claims, trial proceeded as to plaintiffs' claim that defendants' dredging activities had destroyed their fish trap. On August 17, 1995, the Court issued its findings of fact and conclusions of law, determining that plaintiffs had not proven their case by a preponderance of the evidence. On September 12, 1995, the Clerk of Courts entered an amended judgment ordering the March 18, 1991 preliminary injunction to be dissolved on October 10, 1995.

B. *Post-Judgment Applicability of May 17, 1991 Order*

Plaintiffs argue that the Court may have dissolved the March 18, 1991 preliminary injunction, but that it did not dissolve the May 17, 1991 court order upon which they rely in the pending motion for contempt proceedings. They claim that the May 17, 1991 order remains valid and actionable, and require defendants to remove the Awak causeway. In support, plaintiffs cite to Damarlane v. Pohnpei Transportation Authority, 5 FSM Intrm. 332, 334 (App. 1992).

Following its review of the record, this Court finds that plaintiffs' interpretation of 5 FSM Intrm. 332 completely misconstrues the plain intent of the order. Plaintiffs represent that the May 17, 1991 order was unrelated to the preliminary injunction ("took no action concerning the injunction"). Damarlane, 5 FSM Intrm. at 334. However, a fuller reading of both the May 17, 1991 order and the opinion cited at 5 FSM Intrm. 332 reveals that the March 18, 1991 preliminary injunction and the May 17, 1991 order were directly and inextricably related. The May 17, 1991 order set important conditions for the (potential) modification or dissolution of the March 18, 1991 preliminary injunction. *Id.* at 334. The May 17, 1991 order, while not modifying or vacating the preliminary injunction itself, is completely contingent upon and cannot be divorced from the March 18, 1991 preliminary injunction. Because the Court has long since dissolved the preliminary injunction, the May 17, 1991 order has no independent effect. It cannot be relied upon by plaintiffs as a basis for initiating contempt proceedings against defendants or otherwise compelling them to act.

The Court further finds that plaintiffs' motion for contempt proceedings is an attempt to re-litigate issues that have already been determined by a final judgment on the merits, which has been affirmed on appeal. Civil Action No. 1990-075 went to trial on July 20, 1995 on all plaintiffs' claims up to the date of trial, including their contention that the dredging site located at Mesenpal, Awak, U Municipality, must be removed by defendants. Judgment was entered for the defendants on all claims, and was affirmed on appeal. *See* Damarlane v. United States, 8 FSM Intrm. 45, *reh'g denied*, 8 FSM Intrm. 70 (App. 1997).

As correctly noted by defendants, plaintiffs' arguments are precluded by the common law doctrine of *res judicata*. Under this doctrine, "[o]nce a judgment has been issued and . . . the decision is affirmed on appeal, the parties are precluded from challenging that judgment or litigating any issue

that was or could have been raised in that action." Nahnken of Nett v. United States, 7 FSM Intrm. 581, 586 (App. 1996). While the doctrine of *res judicata* formally addresses situations involving prior and subsequent lawsuits, its reasoning and purpose apply with equal force where a litigant attempts to revisit an earlier phase of a lawsuit that has already been adjudged. Berman v. FSM Supreme Court (III), 7 FSM Intrm. 11, 16 (App. 1995).

The arguments plaintiffs make in their September 21, 2009 motion for contempt proceedings and subsequent filings were all made or could have been made during the pendency of Civil Action No. 1990-075. Plaintiffs either failed to raise these arguments during trial or raised them and failed to succeed on the merits. Accordingly, pursuant to the doctrine of *res judicata*, plaintiffs are precluded from raising these arguments again.

Plaintiffs' motion for contempt proceedings is DENIED.

II. DEFENDANTS' MOTION FOR SANCTIONS

On October 28, 2009, defendants filed a motion for sanctions against plaintiffs pursuant to FSM Rule of Civil Procedure 11. Rule 11 provides for sanctions against an attorney for filing frivolous and baseless motions.[2] As defendants correctly note, an attorney may also be sanctioned for raising matters already decided and offering no new arguments. Damarlane v. United States, 7 FSM Intrm. 350, 356-57 (Pon. 1995). The manner in which Rule 11 sanctions are imposed must comport with due process requirements. In re Sanction of Michelsen, 8 FSM Intrm. 108, 110 (App. 1997). At a minimum, notice and an opportunity to be heard are required. *Id.* Plaintiffs have had an opportunity to submit a brief in response to defendants' motion, and submitted additional filings to the Court on November 6, 2009.

Based on defendants' arguments and the record before it, this Court is generally inclined to grant defendants' motion for sanctions on the grounds of *res judicata* and the complete lack of merit in plaintiffs' arguments. However, because the Court recognizes a possibility, however remote, that plaintiffs genuinely and inadvertently misconstrued the relationship between the March 15, 1991 preliminary injunction and the May 17, 1991 order, and because the season of holiday cheer is upon us, the Court, in its discretion, DENIES defendants' motion for sanctions at this time. This Court warns plaintiffs that it may not look so charitably upon filings of this type in the future and cautions their counsel to carefully review Civil Rule 11 and its requirements before filing further motions in this cause of action.

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[2] As the Court stated in Damarlane v. United States, 8 FSM Intrm. 45, 57-58, (App. 1997),

> Rule 11 requires that before affixing her signature to a document, an attorney must undertake a reasonable inquiry to determine whether the pleading, motion, or other paper is well-grounded in fact and warranted either by current law, or a good faith argument of what the law ought to be. Berman v. Kolonia Town, 6 FSM Intrm. 433, 435 (App. 1994). A purely frivolous argument, even if made in good faith, may be sanctionable. *Id.*