

(Pon. 1993). Even if the parties moving for preliminary injunction relief do not appear more likely than not to succeed on the merits, which would be a factor weighing against granting such relief, it is only one of four factors and is not necessarily determinative when the other factors point toward such relief. Ponape Transfer & Storage v. Pohnpei State Public Lands Auth., 2 FSM Intrm. 272, 278 (Pon. 1986). Therefore the court does not need to determine the plaintiffs' likelihood of success on the merits of this action. It only needs to determine that they have some likelihood of success since if they had absolutely no likelihood of success, no injunction could issue. Without knowing the details of the Chuuk State Supreme Court proceeding, the court can perceive that there is a possibility that it could result in Marsolo being the Tolensom mayor (or even as a remote possibility, that neither Marsolo nor Esa end up mayor because the state court orders a new election and some unexpected third person is chosen mayor by the electorate). There is also some likelihood that the plaintiffs could prevail on their claim that the national government was required to remit the municipal CIP funds into the state's custody for use by the various Chuuk municipalities. The court expects that that issue will be the subject of future cross-motions for (partial) summary judgment.

Defendants Esa, Farawey, and Elias ask that, if an injunction issues, that the movants be required to post a \$50,000 cash bond as the security for "such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained," FSM Civ. R. 65(c). Since the injunction will consist of freezing Tolensom municipal CIP funds, no bond will be necessary because the damages would be the inability to use those funds and, if defendants Esa, Farawey, and Elias prevail, then those funds would be released for Tolensom municipal use.

Accordingly, a preliminary injunction will issue freezing any further expenditure of the Tolensom CIP funds remitted and instruct the depository institution not to honor any checks drawn on that account presented after the issuance of this injunction until further order of the court. The injunction shall be served on the Bank of Guam at both its Chuuk and Pohnpei branches.

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CHUUK STATE SUPREME COURT TRIAL DIVISION

TRUK TRADING CO., INC.)	CSSC CIVIL ACTION NO. 124-2010
)	
Plaintiff,)	
)	
vs.)	
)	
TAKAKO JOHN, CHIYODA JOHN,)	
CHINDA JOHN,)	
)	
Defendants.)	
)	

ORDER DENYING DEFENDANT'S MOTION TO DISMISS, ORDER DENYING PLAINTIFF'S MOTION TO ORDER LAND SURVEY, ORDER TO HOLD ACTION IN ABEYANCE

Repeat R. Samuel
Associate Justice

Hearing: January 26, 2011
Decided: February 24, 2011

APPEARANCES:

For the Plaintiff: Stephen V. Finnen, Esq.
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For the Defendants: Fredrick A. Hartmann
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HEADNOTES

Property – Registered Land

Certificates of title are by statute, prima facie evidence of ownership stated therein as against the world. Because of this, a court is required to attach a presumption of correctness to them when considering challenges to their validity or authenticity. Truk Trading Co. v. John, 17 FSM Intrm. 382, 384 (Chk. S. Ct. Tr. 2010).

Property – Registered Land

When the defendants do not dispute the veracity of the certificates of title provided, nor have they presented or offered any relevant or even meaningful evidence that would support a claim that the plaintiff uses or occupies or has otherwise encroached upon land it does not own, the court, accepting the certificates of title as prima facie evidence, will find that the land ownership is certain and a remand to the Land Commission for the purpose of establishing ownership is not warranted because ownership is not at issue. Truk Trading Co. v. John, 17 FSM Intrm. 382, 384 (Chk. S. Ct. Tr. 2010).

Property – Registered Land

A certificate of title must, with exception of rights of way, taxes, and leases of less than one year, set forth the names of all persons or groups of persons holding interest in the land and should include a description of the land's boundaries. Truk Trading Co. v. John, 17 FSM Intrm. 382, 384 (Chk. S. Ct. Tr. 2010).

Property – Registered Land

If the plaintiff requires a description of the boundaries of lots that he unquestionably owns, then it behooves him to obtain the relevant documentation from Land Commission directly, especially in light of its trespass accusations since it has demonstrated no special circumstances that would justify or otherwise necessitate the court ordering the Land Commission to re-survey the lots. Truk Trading Co. v. John, 17 FSM Intrm. 382, 384 (Chk. S. Ct. Tr. 2010).

Torts – Trespass

A plaintiff must prove a wrongful interference with his possessory interest in the property to include possession of the property, the time and location of the trespass, and the act of trespass in order to prevail, but it is not for the court to assist him in proving any or all of these elements by ordering a Land Commission re-survey absent a showing of special circumstances. For the plaintiff to make the request in the first place suggests that uncertainty about his land boundaries implicates the allegation of trespass; otherwise it is unclear what the purpose of such a survey would be and while a court order might expedite the certification or surveying of boundaries, that alone is not sufficient to warrant accommodating the request. Truk Trading Co. v. John, 17 FSM Intrm. 382, 384 (Chk. S. Ct. Tr. 2010).

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COURT'S OPINION

REPEAT R. SAMUEL, Associate Justice:

A hearing was scheduled on January 26, 2011 for argument on issues parties were ordered to brief and for defendant's motion to dismiss filed November 4, 2010. Defendants failed to file a brief.

On the issue of whether this Court has jurisdiction to order Chuuk State Land Commission to survey, or re-survey plaintiff's land, plaintiff cites, among other cases, Kapas v. Church of Latter Day Saints, 6 FSM Intrm. 56 (App. 1993), Pau v. Kansou, 8 FSM Intrm. 524 (Chk. 1998), and Small v. Roosevelt, Innocenti, Bruce and Crisotomo, 10 FSM Intrm. 367 (Chk. 2001), in support of his position that the court should issue such an order. The Court finds that the most relevant of the cases cited are distinguishable under the facts before it.

Kapas began as a trespass action and became a boundary dispute. Pau v. Kansou, 8 FSM Intrm. 524, 527. The court in Kapas vacated a trial court decision and remanded it to Land Commission for boundary determination so that other issues in the case might be resolved. *Id.* It did this in part because ownership of the land where the alleged trespass occurred was disputed. Small v. Roosevelt, Innocenti, Bruce and Crisotomo, 10 FSM Intrm. 367 at 369. But, as plaintiff correctly states, "[c]ertificates of title are by statute, prima facie evidence of ownership stated therein as against the world. Because of this, a court is required to attach a presumption of correctness to them when considering challenges to their validity or authenticity. Stephen v. Chuuk, 11 FSM Intrm. 36, 41 (Chk. S. Ct. Tr. 2002). The Court is bound to follow this rule. Plaintiff has provided copies of certificates of title to Lot Nos. 040-A-07 and 040-A-23. Defendants do not dispute the veracity of the copies provided, nor have they presented or offered any relevant or even meaningful evidence to the Court that would support a claim that TTC uses or occupies or has otherwise encroached upon land it does not own.

Accepting the certificates of title as prima facie evidence, the Court finds that the ownership of Lot Nos. 040-A-07 and 040-A-23, under the facts presently before it, is certain: they are owned by Truk Trading Co., Inc. Unlike Kapas, remand to Land Commission for the purpose of establishing ownership is not warranted because ownership is not at issue. A Certificate of Title must, with exception of rights of way, taxes, and leases of less than one year, set "forth the names of all persons or groups of persons holding interest in the land," *and should include a description of the land's boundaries.*" Small, 10 FSM Intrm. at 370 (emphasis added). If plaintiff requires a description of the boundaries of lots that he unquestionably owns, then it behooves him to obtain the relevant documentation from Land Commission directly, especially in light of his accusations of trespass. Plaintiff has demonstrated no special circumstances that would justify or otherwise necessitate the kind of assistance he requests of the Court.

The Court agrees that plaintiff must "prove a wrongful interference with his possessory interest in the property . . . [to include] possession of the property, the time and location of the trespass, [and] the act of trespass" in order to prevail. In re Parcel No. 046-A-01, 6 FSM Intrm. 149, 155 (Pon. 1993). But it is not for the Court to assist him in proving any or all of these elements in the manner requested absent a showing of special circumstances. For plaintiff to make the request in the first place suggests that uncertainty about his land boundaries implicates the allegation of trespass; otherwise it is unclear what the purpose of such a survey would be. While true that upon the Court's order the certification or surveying of boundaries might be expedited, that alone is not sufficient to warrant accommodating the request. His motion is denied.

Defendant's motion to dismiss was tendered in part to enable Land Commission to determine ownership of Lot No. 040-A-07. But that is not necessary. His motion is also denied.

That aside, the Court is willing to hold the matter open in abeyance until such time as plaintiff has obtained the documentation he requires from Land Commission to proceed with his action for trespass. Plaintiff is advised to inform the Court by letter, copying defendants, as to how he wishes to proceed and request the next date for a status conference in this matter. He should do so within the next 4-12 weeks. Any status conference previously set at the last hearing is hereby adjourned unless parties advise to the contrary.

IT IS SO ORDERED.

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CHUUK STATE SUPREME COURT TRIAL DIVISION

CHUUK STATE)	CSSC. CRIMINAL CASE NO. 206-2009
)	
Plaintiff,)	
vs.)	
)	
KAMU ALLUKI,)	
)	
Defendant.)	
_____)	

ORDER DENYING MOTION TO SUPPRESS

Camillo Noket
Chief Justice

Hearing: February 11, 2011
Decided: February 27, 2011

APPEARANCES:

For the Plaintiff: Charleston Bravo
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