

Accordingly, the plaintiff's motion for a stay pending appeal is denied.

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FSM SUPREME COURT TRIAL DIVISION

FSM DEVELOPMENT BANK,)	CIVIL ACTION NO. 2010-1010
)	
Plaintiff,)	
)	
vs.)	
)	
JOHN KANSOU, SUSAN KANSOU,)	
and PENRI KOFOT,)	
)	
Defendants.)	
_____)	

ORDER DENYING INTERVENTION

Ready E. Johnny
Associate Justice

Decided: August 8, 2011

APPEARANCES:

For the Plaintiff: Nora Sigrah, Esq.
P.O. Box M
Kolonias, Pohnpei FM 96941

For the Would-be Intervenors: Salomon M. Saimon, Esq.
Micronesia Legal Services Corporation
P.O. Box 129
Kolonias, Pohnpei FM 96941

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HEADNOTES

Civil Procedure – Intervention

Since both intervention as of right and permissive intervention must be upon timely application and a permissive intervention motion under Rule 24(b) filed after judgment has been entered and all rights to appeal have expired can never be timely, post-judgment movants must qualify as intervenors as of right in order to be permitted to intervene. FSM Dev. Bank v. Kansou, 17 FSM Intrm. 605, 607 & n.1 (Chk. 2011).

Property – Registered Land

A certificate of title is conclusive upon all persons who have had notice of the proceedings and all those claiming under them and is prima facie evidence of ownership as stated therein against the world. FSM Dev. Bank v. Kansou, 17 FSM Intrm. 605, 607-08 (Chk. 2011).

Property – Registered Land; Transition of Authority

Title 67 of the Trust Territory Code remains Chuuk state law pursuant to the Chuuk Constitution's Transition Clause and because it has not been amended or repealed. FSM Dev. Bank v. Kansou, 17 FSM Intrm. 605, 608 n.2 (Chk. 2011).

Civil Procedure – Intervention

In addition to timeliness, intervenors must make a three part showing to qualify for intervention as a matter of right under Rule 24(a): an interest, an impairment of that interest, and the inadequacy of representation by existing parties, but, absent extraordinary and unusual circumstances, intervention by a party who did not participate in the litigation giving rise to the judgment should not be permitted. FSM Dev. Bank v. Kansou, 17 FSM Intrm. 605, 608 (Chk. 2011).

Civil Procedure – Intervention

Would-be intervenors do not qualify to intervene in a case where they cannot show an interest in the litigation about a defaulted bank loan and where they cannot show either an interest in this litigation's post-judgment remedy of mortgage foreclosure on land or an impairment of that interest since they cannot show that they have any interest in the mortgaged land when that land is not registered to them and other persons have a certificate of title to it. FSM Dev. Bank v. Kansou, 17 FSM Intrm. 605, 608 (Chk. 2011).

Civil Procedure – Dismissal – Lack of Jurisdiction

The court may, at any time and on its own motion, move to dismiss a case when it appears that the court lacks subject-matter jurisdiction. FSM Dev. Bank v. Kansou, 17 FSM Intrm. 605, 608 (Chk. 2011).

Jurisdiction – Exclusive FSM Supreme Court; Property – Mortgages

In a collection case based on a defaulted loan, no interest in land was ever at issue when the fee simple ownership of the parcel was never at issue and when the bank's registered mortgage lien was not at issue, so the jurisdictional language in section 6(a) is not applicable. FSM Dev. Bank v. Kansou, 17 FSM Intrm. 605, 608 (Chk. 2011).

Property – Registered Land

When the land is registered land, the interests in it that are registered are the only interests that exist. FSM Dev. Bank v. Kansou, 17 FSM Intrm. 605, 608 (Chk. 2011).

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COURT'S OPINION

READY E. JOHNNY, Associate Justice:

This comes before the court on: 1) a Motion to Intervene with a supporting affidavit, filed by would-be intervenors Jack Walter, Joe Walter, Kachem Walter, David Walter Welle, Bruce Walter, Tenios Walter, Roer Walter, Rachy Walter, the Estate of Linda Walter, Cathleen Walter, Anna Walter, Berenta Walter, and Sophie Walter on June 29, 2011; 2) the would-be intervenors' Motion to Dismiss (Essentially Motion to Stop Land Auction Scheduled for June 30, 2011) with a supporting affidavit, filed on June 29, 2011; 3) the Plaintiff's Opposition to Motion to Intervene with supporting affidavits and exhibits, filed July 7, 2011; 4) the would-be intervenors' Reply to Opposition, Draft Answer, filed July 20, 2011; and 5) the Plaintiff's Surreply to Movant's [sic] Reply to Opposition and Draft Answer, filed August 3, 2011.

I. MOVANTS' POSITIONS

The movants, would-be intervenors, contend that the land that defendants Susan Kansou and Penri Kofot mortgaged to the plaintiff, the FSM Development Bank, to secure a loan from the bank to defendants John Kansou and Susan Kansou, is their property. The movants thus assert that they may intervene as a matter of right because they have an interest in this litigation (their claim to the land); because their interest is impaired by the bank's mortgage sale of the land; and because the existing parties will not adequately represent their interest since the existing parties have consented to the mortgaged land's sale. The supporting affidavit avers that the movants' late father, Katnat Walter, had been a claimant and was given some land in Sapuk called Winipon.

The movants, assuming that they become intervenors, also move to vacate the judgment and the attorney fee award in this case and also to dismiss this case for lack of subject-matter jurisdiction since the national government (the FSM Development Bank) is a party and since, in their view, an interest in land is at issue. They further contend that since they have filed a motion to dismiss they are not required to file a proposed pleading to accompany their motion to intervene, but as part of their Reply to the bank's opposition, they attach a proposed answer to the bank's original complaint. The movants, also in their Reply, further assert that their motions are timely because they only recently received notice of the sale; that the movants' interest is important because otherwise the court will not have afforded the other landowners notice and the opportunity to be heard; and that, since there are several lands with the name Winipon, the "compelling issue" was not who owned the mortgaged Parcel No. 61618 but that when other landowners come forth the court should allow a hearing to determine the status of the land offered as security. The movants also suggest that, even if they lack standing to intervene, the court can still, *sua sponte*, address the constitutional issue of its subject-matter jurisdiction and also, under the court's inherent power to regulate attorneys, bar an attorney fee award when there is an in-house attorney.

II. ANALYSIS

A. *Case Posture*

A judgment against the borrowers, John Kansou and Susan Kansou, who had defaulted on their FSM Development Bank loan, and an order in aid of judgment were both entered by stipulation on April 16, 2010. A judgment against co-mortgagor Penri Kofot was entered by default on July 30, 2010. Orders supplementing the order in aid of judgment and ordering the sale of Parcel No. 61618 were entered on April 20, 2011. The movants thus seek to intervene as of right in a defaulted loan collection case after the judgment¹ has been entered.

Susan N. Kansou and Penri N. Kofot were issued a certificate of title to Parcel No. 61618 on November 15, 1995. The FSM Development Bank's mortgage on that land was registered on June 11, 1996, and properly endorsed on the certificate. On November 16, 2009, the bank's notice of default was registered and properly endorsed on the certificate. A certificate of title is "conclusive upon all persons who have had notice of the proceedings and all those claiming under them and [is] *prima facie*

¹ Since both intervention as of right and permissive intervention must be upon timely application and a permissive intervention motion under Rule 24(b) filed after judgment has been entered and all rights to appeal have expired can never be timely, *Aggregate Sys., Inc. v. FSM Dev. Bank*, 11 FSM Intrm. 514, 518 (Chk. 2003), the movants must qualify as intervenors as of right in order to be permitted to intervene.

evidence of ownership as stated therein against the world." 67 TTC 117(1).² Thus, the certificate of title to Parcel No. 61618 held by Susan N. Kansou and Penri N. Kofot is prima facie evidence against the world of their ownership of Parcel No. 61618, and, since the person the movants claim under, Katnat Walter, had notice of the proceedings and was a claimant in and participated in ownership determination proceedings for Winipon (and apparently received part of Winipon), the certificate may even be conclusive against them.

B. *Movants' Intervention*

In addition to timeliness, intervenors must make a three part showing to qualify for intervention as a matter of right under Rule 24(a): an interest, an impairment of that interest, and the inadequacy of representation by existing parties, but, absent extraordinary and unusual circumstances, intervention by a party who did not participate in the litigation giving rise to the judgment should not be permitted. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM Intrm. 514, 518 (Chk. 2003). Assuming without deciding that their motion to intervene is timely, the movants (would-be intervenors) cannot show an interest in this litigation – the defaulted loan by the bank.

Nor can they show either an interest in this litigation's post-judgment remedy of mortgage foreclosure on Parcel No. 61618 or an impairment of that interest since they cannot show that they have any interest in Parcel No. 61618.³ That land is not registered to them. The movants thus do not qualify to intervene in this case. If they intend to challenge the validity of the certificate of title to Parcel No. 61618 held by Susan N. Kansou and Penri N. Kofot, this is neither the case nor the proper forum in which to do so.

C. *Movants' Alternate Suggestions*

The movants suggest that even if they have no standing to intervene in this case that the court can sua sponte examine the basis of its own subject-matter jurisdiction and dismiss this case for lack thereof. They assert that, since the bank is an instrumentality of the national government and since, in their view, an interest in land was at issue in this case, FSM Constitution Article XI, section 6(a) barred this court from exercising jurisdiction. It is correct that the court may, at any time and on its own motion, move to dismiss a case when it appears that the court lacks subject-matter jurisdiction. FSM Civ. R. 12(h)(3).

This was a collection case based on a defaulted loan. No interest in land was ever at issue in this case. The fee simple ownership of Parcel No. 61618 by Susan Kansou and Penri Kofot was never at issue. The bank's registered mortgage lien on Parcel No. 61618 was not at issue. Since these are the only interests in Parcel No. 61618 that are registered and since Parcel No. 61618 is registered land, these are the only interests that exist. 67 TTC 117. No interest in land was ever at issue in this case. Thus, the jurisdictional language in section 6(a) is not applicable.

The movants also questioned the court's attorney fee award, but did not address the court's previous holding in FSM Dev. Bank v. Kaminanga, 12 FSM Intrm. 454 (Chk. 2004) allowing attorney

² Title 67 of the Trust Territory Code remains Chuuk state law pursuant to the Chuuk Constitution's Transition Clause and because it has never been amended or repealed. Stephen v. Chuuk, 11 FSM Intrm. 36, 41 n.1 (Chk. S. Ct. Tr. 2002).

³ In their Reply, the movants acknowledge that there is more than one land called Winipon and appear to back off any claim to an interest in the Parcel No. 61618 part of Winipon.

fee awards when in-house counsel were employed. There is thus no reason to consider this point further.

III. CONCLUSION

Accordingly, the movants' motion to intervene is denied, and since they are not, and have not become, parties to this action, they can seek no other relief from the court.

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FSM SUPREME COURT TRIAL DIVISION

DAVID WELLE,)	CIVIL ACTION NO. 2011-1001
)	
Plaintiff,)	
)	
vs.)	
)	
CHUUK PUBLIC UTILITY CORPORATION)	
(CPUC) and CHUUK STATE GOVERNMENT,)	
)	
Defendants.)	
_____)	

ORDER GRANTING SUMMARY JUDGMENT

Martin G. Yinug
Chief Justice

Decided: August 10, 2011

APPEARANCE:

For the Defendant:	Joses R. Gallen, Esq.
(State of Chuuk)	Attorney General
	Office of the Chuuk Attorney General
	P.O. Box 1050
	Weno, Chuuk FM 96942

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HEADNOTES

Civil Procedure – Summary Judgment – Procedure

Since failure to oppose a motion is generally deemed a consent to the motion when a party has not filed a response to a summary judgment motion, that party is deemed to have consented to the granting of the motion, but even then, the court still needs good grounds before it can grant the motion. Welle v. Chuuk Public Utility Corp., 17 FSM Intrm. 609, 610 (Chk. 2011).

Jurisdiction – Arising under National Law

When a plaintiff clearly bases his cause of action on 11 F.S.M.C. 701, the national civil rights