

FSM SUPREME COURT TRIAL DIVISION

EMANUEL "MANNY" MORI,) CIVIL ACTION NO. 2008-1111
)
Plaintiff,)
)
vs.)
)
MYRON HASIGUCHI and TRUK)
TRANSPORTATION CO., INC.,)
)
Defendants,)
_____)
TRUK TRANSPORTATION CO., INC.,)
)
Counterclaimant,)
)
vs.)
)
EMANUEL "MANNY" MORI,)
)
Counter-Defendant,)
_____)
TRUK TRANSPORTATION CO., INC.,)
)
Third-Party Plaintiff,)
)
vs.)
)
MARION OLTER,)
)
Third-Party Defendant.)
_____)

ORDER GRANTING SUMMARY JUDGMENT AGAINST MARION OLTER

Ready E. Johnny
Associate Justice

Decided: May 13, 2013

APPEARANCES:

For the Plaintiff:

Sabino S. Asor, Esq.
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Weno, Chuuk FM 96942

For the Defendants:

Stephen V. Finnen, Esq.
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For the Third-Party Defendant: Marstella E. Jack, Esq.
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HEADNOTES

Domestic Relations – Probate

Under the Pohnpei Intestate Succession Act of 1977, $\frac{1}{3}$ of an intestate decedent's estate is to be distributed to the surviving spouse and the rest ($\frac{2}{3}$) is to be divided equally among the decedent's children. Pohnpei probate courts will deviate from this statutorily-required division of an intestate decedent's assets only when a family agreement has been presented to and approved by the probate court. Mori v. Hasiguchi, 19 FSM R. 16, 19 n.1 (Chk. 2013).

Attorney and Client

In representing a client, a lawyer must not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter unless the lawyer has the other lawyer's consent or is authorized by law to do so. Mori v. Hasiguchi, 19 FSM R. 16, 20 (Chk. 2013).

Civil Procedure – Summary Judgment – Grounds

Summary judgment will be denied when the opposing parties present conflicting affidavits from the same non-moving party and the affidavit submitted by the movant was obtained under unexplained, dubious, and murky circumstances. Mori v. Hasiguchi, 19 FSM R. 16, 20-21 (Chk. 2013).

Attorney and Client – Attorney Discipline and Sanctions

If a lawyer has knowledge that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, the lawyer must inform the Chief Clerk for referral to the Chief Justice. Mori v. Hasiguchi, 19 FSM R. 16, 21 n.3 (Chk. 2013).

Contracts; Property – Personal

A bona fide purchaser for value is someone who buys something for value without notice of another's claim to the property and without actual or constructive notice of any defects in or infirmities, claims, or equities against the seller's title; one who has in good faith paid valuable consideration for property without notice of prior adverse claims. Mori v. Hasiguchi, 19 FSM R. 16, 21-22 (Chk. 2013).

Contracts – Consideration

Courts generally do not inquire into the sufficiency of consideration. Mori v. Hasiguchi, 19 FSM R. 16, 22 n.4 (Chk. 2013).

Civil Procedure – Summary Judgment – Grounds – Particular Cases; Property

When, if the buyer had diligently inquired into or investigated the matter, all he would have found would have been a Pohnpei Supreme Court final distribution probate order transferring title to all the shares to the seller and stating that this was the final disposition of the case at bar, it was sufficient to create a prima facie case that the buyer was without notice of any prior adverse claims to seller's ownership of the shares and since the buyer paid good and valuable consideration for the shares he was a bona fide purchaser for value. Mori v. Hasiguchi, 19 FSM R. 16, 22 (Chk. 2013).

Domestic Relations – Probate; Property – Personal; Remedies

An improper sale by a fiduciary (estate administrator) that has already taken place can be vacated, but not if the buyer was a bona-fide purchaser because, when property of an estate has been transferred to a bona-fide purchaser for value, the latter is protected even if the fiduciary was acting improperly. The beneficiaries' remedy is not to void the transaction but to seek damages for the personal representative's breach of his fiduciary duty. Mori v. Hasiguchi, 19 FSM R. 16, 22 (Chk. 2013).

Domestic Relations – Probate; Property – Personal

A bona fide purchaser for value and without notice, should be as protected buying shares from the distributee as he would have been buying them from the fiduciary administrator, especially when it was the same person. Mori v. Hasiguchi, 19 FSM R. 16, 23 (Chk. 2013).

Domestic Relations – Probate; Property – Personal; Remedies

Someone who has wrongfully sold property to a bona fide purchaser for value without notice can be compelled to buy a replacement if this is reasonably possible. Sometimes damages are the only appropriate remedy. Either way, the rightful heir's remedy is against estate administrator. If it were any other way, then anyone who ever bought property after it had been inherited and distributed by a Pohnpei probate court final order could never be certain that his or her title would not be taken away by a future final probate court order that the distributee seller was not the proper distributee. Mori v. Hasiguchi, 19 FSM R. 16, 23 (Chk. 2013).

Civil Procedure – Discovery; Civil Procedure – Summary Judgment – Grounds

When, because of her failure to answer the opposing party's interrogatories the court ordered that those interrogatories will be deemed answered a certain way if the party has still failed to respond after 30 days and there was no response, the court may deem those interrogatories as answered a certain way and the opposing party may use those answers as a basis for summary judgment. Mori v. Hasiguchi, 19 FSM R. 16, 24 (Chk. 2013).

Civil Procedure – Summary Judgment; Judgments

When facts are designated established and then those facts are used to render summary judgment, the judgment then rendered is a decision on the merits. Mori v. Hasiguchi, 19 FSM R. 16, 24 (Chk. 2013).

* * * *

COURT'S OPINION

READY E. JOHNNY, Associate Justice:

This comes before the court on 1) the Plaintiff Mori's Motion for Summary Judgment Against the Remaining Third Party Defendants Marion Olter and Lisa Olter, filed August 8, 2012; 2) the third-party defendants' Opposition to Summary Judgment Motion, filed October 5, 2012; and 3) Plaintiff Mori's Reply to Defendants' Opposition to Plaintiff's Motion for Summary Judgment, filed October 8, 2012; and, in response to the court's request for additional briefing, 4) Third Party Defendant's Brief, filed March 14, 2013. Defendants Myron Hasiguchi and Truk Transportation Co., Inc. filed a Statement of No Position on August 22, 2012. The motion is granted. The reasons follow.

I. BACKGROUND

A. *Factual*

On May 8, 2005, Salter Olter died intestate on Pohnpei. He was survived by his wife, Marion Olter, and his four children, Barney Olter, Dwight Olter, Lisa Olter, and Roselt Pobuk. Among other things, Salter Olter owned 2,160 Truk Transportation Co., Inc. ("Transco") shares and a Transco annual dividend check for \$1,080. On September 23, 2005, petitioner Barney Olter filed an action in the Pohnpei Supreme Court to probate Salter Olter's estate. On December 4, 2005, the probate court approved Barney Olter's nomination as the estate's administrator and ordered him to distribute the estate assets among the heirs pursuant to Pohnpei state law ($\frac{1}{3}$ to the surviving spouse and the other $\frac{2}{3}$ to be divided equally among the decedent's children) and to file a distribution report.

The distribution report was filed on May 3, 2007, and approved by the Pohnpei probate court on May 30, 2007. The May 30, 2007 court order distributed the dividend check among the heirs and transferred the Transco shares to Barney Olter who would then be responsible to inform Transco of the ownership change. A July 12, 2007 partition report stated that the distribution of the Transco dividends to the heirs and transfer of all of the Transco shares to Barney Olter was done pursuant to the administrator's duties and with all the heirs' consent (that is, through a "family agreement").¹

On March 5, 2008, Barney Olter sold all of the Transco shares to Emanuel "Manny" Mori for \$3,000, Barney Olter's asking price. Mori and Barney Olter were not previously acquainted. Mori had learned of Barney Olter's desire to sell the Transco stock from Barney Olter's cousin whom Mori did know well and with whom Mori had a familial relationship. After Mori asked Transco to transfer the shares' title to him, Transco asked Barney Olter and his Micronesian Legal Services Corporation attorney to obtain clarification from the Pohnpei probate court about the exact number of shares that had been distributed to Barney Olter. Salter Olter had owned more than one Transco stock certificate. On July 21, 2008, the probate court's Amended Order confirmed that all 2,160 Transco shares from the Salter Olter estate were distributed to Barney Olter.² Transco still did not register title to the 2,160 Transco shares in Mori's name because, in October 2008, Barney Olter sent Transco a letter telling it not to transfer the shares to Mori because he had changed his decision since when he sold the Transco shares to Mori he was unsure how many his father had owned.

B. *After Lawsuit Started*

On November 28, 2008, Mori filed this lawsuit to, among other things, compel Transco to register the 2,160 shares in his name. Transco then named Barney Olter as a third-party defendant since Barney Olter had initiated a lawsuit in Pohnpei seeking to rescind his sale to Mori. See Mori v.

¹ Under the Pohnpei Intestate Succession Act of 1977, $\frac{1}{3}$ of an intestate decedent's estate is to be distributed to the surviving spouse, 49 Pon. C. § 1-105, and the rest ($\frac{2}{3}$) is to be divided equally among the decedent's children, 49 Pon. C. § 1-103. Pohnpei probate courts will deviate from this statutorily-required division of an intestate decedent's assets only when a family agreement has been presented to and approved by the probate court. See *In re* Estate of Peren, 1 Pon. S. Ct. R. 30, 32 (Pon. Sup. Ct. Tr. 1984) (when no family agreement to the contrary all heirs will enjoy their rights and privileges under the Ponape Intestate Succession Act).

² The amended order confirmed the transfer of all Salter Poll a/k/a Salter Olter Transco shares to Barney Olter. These were listed as Share Certificate No. 1094 (20 shares); Share Certificate No. 1695 (100 shares); and Share Certificate No. 2614 (2040 shares). Amended Order at 3 (July 21, 2008).

Hasiguchi, 16 FSM Intrm. 382, 384 (Chk. 2009) (staying this case until the Pohnpei case was decided). The Pohnpei case was dismissed on May 18, 2009, and Barney Olter filed in this case an affidavit confirming his sale of 2160 Transco shares to Mori and conceding Mori's ownership of those shares. See Third Party Defendant Barney Olter's Notice of Voluntary Dismissal (June 25, 2009).

Later, on April 9, 2010, on motion made by Barney Olter's Pohnpei MLSC attorney, the Pohnpei probate court amended its earlier order and redistributed the Transco shares with 720 shares (1/3 of the 2,160 shares) to Marion Olter and 360 shares to each of Salter Olter's four children – Barney Olter, Dwight Olter, Lisa Olter, and Roselt Pobuk. Transco was then permitted to amend its third-party complaint in this case to name all these persons as third-party defendants since they had potential claims to the 2,160 shares that Mori had bought from Barney Olter and to which Mori was seeking to have Transco register his title.

Since then, at various times and for various reasons, judgments have been entered in Mori's favor and against all of the third-party defendants except Marion Olter. Those Rule 54(b) judgments are final and the time for appeal has passed. Thus, only the 720 Transco shares that she claims remain in dispute. Mori contends that he is entitled to summary judgment on his claim to title to these 720 Transco shares.

C. *Procedural*

Mori contends that, in an affidavit executed July 25, 2012, third-party defendant Marion Olter waived any claim she had to the 720 Transco shares supposedly distributed to her in an April 2010 Pohnpei Supreme Court probate order. Mori also contends that summary judgment is appropriate against Marion Olter because she has not responded to his October 25, 2011 discovery requests as she was directed to by the court's April 19, 2012 Order Requiring Responses or Sanctions. And Mori further contends that he is entitled to summary judgment because he is a bona fide purchaser of the Transco shares.

Mori contends that Marion Olter in her July 25, 2012 affidavit canceled her claim to the Transco shares. Marion Olter contends, in an affidavit executed September 27, 2012, that when she executed the first affidavit her intention was to relinquish her shares to her children. Marion Olter states that she does not want to have anything more to do with the shares and argues that, at a minimum, her affidavit shows that there are genuine issues of material fact that would preclude summary judgment. Marion Olter avers that she is elderly and was mistaken when she made the first affidavit. Mori contends that Marion Olter's claim in her affidavit of making a supposed mistake in her first affidavit is insufficient to overcome her declaration in her first affidavit that she was canceling her claim to Transco shares.

When the court first considered these submissions, it was troubled by the two contradictory affidavits from the same party. The court, in its December 27, 2012 Order Granting Summary Judgment Against Lisa Olter and Deferring Ruling on Marion Olter, therefore decided that it could not rely on the first affidavit because, more troubling than it being contradicted by the second affidavit, was that the circumstances under which it was obtained were unexplained. When Mori moved for summary judgment and supported his motion with Marion Olter's July 25, 2012 affidavit, that affidavit surprised Marion Olter's attorney because she had not seen it before. This deeply troubled the court. Mori's counsel is ethically bound not to have any contact with a represented adverse party without either the presence of that party's counsel or that counsel's permission and there was no explanation of how Mori's counsel came into possession of the affidavit or in what manner it was obtained. "In representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so." FSM MRPC R. 4.2. The court therefore

disregarded the affidavit since it was obtained under dubious and murky circumstances.³ The court therefore could not grant Mori summary judgment based on the July 25, 2012 affidavit.

Mori did, however, raise in his chronology a summary judgment ground on which the court needed further briefing. He noted that the Pohnpei Supreme Court issued, on May 30, 2007, a final distribution order in the Salter Olter probate case, distributed all of Salter Olter's Transco shares to Barney Olter who, on March 5, 2008, sold them to Mori. A later Pohnpei Supreme Court order, on July 21, 2008, confirmed that the number of the Transco shares that the probate court earlier distributed to Barney Olter, totaled 2,160. Then on April 9, 2010, over a year after Barney Olter's sale to Mori, the Pohnpei probate court amended its prior order to divide the 2,160 shares between Marion Olter (720 shares) and her four children (360 shares each). Mori asserted that, based on these and other facts, he was entitled to judgment because he was a bona fide purchaser for value of the Transco shares.

The court therefore asked the parties to brief the following points:

1. What legal principle or on what legal basis was the *res* (the Transco shares) still in the Pohnpei probate court's jurisdiction (a) when the shares were sold to Mori on March 5, 2008; and (b) when, on April 9, 2010, it amended its order to redistribute the Transco shares it had already distributed to Barney Olter on May 30, 2007, and which were then sold by him on March 5, 2008, over a year before the redistribution order?

2. Would the Pohnpei probate court have jurisdiction to issue orders concerning the *res* (the Transco shares) if the *res* has been distributed by court order and the heir then sold the *res* to a non-party?

3. What jurisdiction, if any, did the Pohnpei probate court have over Mori, a non-party, when it ordered that the shares he had already bought from Barney Olter should be redistributed to heirs other than Barney Olter?

4. Did the Pohnpei probate court's April 9, 2010 order have any effect other than to realign the rights of Salter Olter's heirs among themselves, leaving any claims for redress by the other heirs solely against Barney Olter (or possibly against the law firm that represented either him or them in the probate case)?

II. MORI AS BONA FIDE PURCHASER FOR VALUE WITHOUT NOTICE

Mori contends that he should be acknowledged as the owner of Salter Olter's Transco shares because, when he bought them, he was a bona fide purchaser for value without notice of any other person's claim. A bona fide purchaser for value is someone "who buys something for value without

³ Marion Olter's counsel asks that an evidentiary hearing be set on Mori's counsel's conduct in his obtaining this affidavit. Since it is not clear to the court how the July 25, 2012 affidavit came into plaintiff counsel's possession or even whether Mori's counsel had direct contact with Marion Olter and since Marion Olter and her counsel have better knowledge of what transpired, Marion Olter or her counsel should, if the circumstances seem to warrant it, file a disciplinary complaint, FSM MRPC R. 8.3(a) ("A lawyer having knowledge that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority."), with the Chief Clerk for referral to the Chief Justice, FSM Dis. R. 4(b).

notice of another's claim to the property and without actual or constructive notice of any defects in or infirmities, claims, or equities against the seller's title; one who has in good faith paid valuable consideration for property without notice of prior adverse claims.'" Setik v. Ruben, 17 FSM Intrm. 465, 475 (App. 2011) (quoting BLACK'S LAW DICTIONARY 1355 (9th ed. 2009)).

Marion Olter contends that she is entitled to the 720 shares since she is the innocent victim here because if Barney Olter had been truthful with the probate court instead of misleading it to believe that there was a family agreement to give Barney Olter the Transco shares, the probate court would not have needed to amend its final order. Marion Olter asserts that because Barney Olter is the only one who benefitted from the transaction (he received \$3,000) his actions were fraudulent and that therefore Mori cannot own the shares because Barney Olter could not transfer more than he owned and his title was fraudulent. Marion Olter does not question or provide any evidence that Mori was not acting in good faith when he bought all the shares that Barney Olter was willing to sell.

It is undisputed that Mori bought the Transco shares for value – good and valuable consideration (\$3,000).⁴ Mori has provided evidence that he bought the shares from Barney Olter in good faith. Marion Olter does not dispute this nor has she provided any evidence to rebut Mori's good faith or to show that there is a genuine issue of material fact about whether Mori acted in good faith. Nor is there any evidence that when Mori bought the shares from Barney Olter that he had any notice, either actual or constructive, that anyone other than Barney Olter had any claim to the Transco shares. It is unclear exactly what Mori knew about Barney Olter's title to the Transco shares, but, if Mori had diligently inquired into or investigated the matter, all he would have found would have been the Pohnpei Supreme Court's May 30, 2007 final distribution order transferring title to all the Transco shares to Barney Olter and stating "that this report is the final disposition of the case at bar," Order Approving the Partition Report at 3 (PCA No. 255-05 May 30, 2007), and a July 12, 2007 partition report that confirmed that the distribution had been made according to the May 30, 2007 order, Partition Report at 2, ¶ 4 (PCA No. 255-05 July 12, 2007). Since the May 30, 2007 Order Approving the Partition Report was a "final disposition" of the probate case, it was sufficient to create a prima facie case that Mori was without notice of any prior adverse claims to Barney Olter's ownership of the Transco shares. Marion Olter has not produced or pointed to any evidence to show that there might be a genuine issue about whether Mori had notice of any prior adverse claim to Barney Olter's ownership of the Transco shares. Nor is any apparent to the court.

Accordingly, the court must conclude that Mori, when he purchased the Transco shares from Barney Olter, was a bona fide purchaser for value.

Barney Olter, as the administrator of Salter Olter's estate was a fiduciary who acted improperly in obtaining a court order granting him ownership of all 2,160 Transco shares. The Pohnpei Supreme Court said as much when it issued its redistribution order. Amended Order of Probate at 3-4 (PCA No. 255-05 Apr. 9, 2010). "An improper sale [by a fiduciary] that has already taken place can be vacated, but not if the buyer was a bona-fide purchaser." WILLIAM M. MCGOVERN, SHELDON F. KURTZ & DAVID M. ENGLISH, WILLS, TRUSTS AND ESTATES § 12.8, at 599 (4th ed. 2010) (footnote omitted). "When property of an estate . . . has been transferred to a bona-fide purchaser for value, the latter is protected even if the fiduciary was acting improperly." *Id.* § 12.9, at 619. "The beneficiaries' remedy is not to void the transaction but to seek damages for the personal representative's breach of his fiduciary duty." *Id.* § 12.9, at 620.

⁴ Courts generally do not inquire into the sufficiency of consideration. Goyo Corp. v. Christian, 12 FSM Intrm. 140, 148 (Pon. 2003).

In this case, when Barney Olter sold the shares to Mori he was acting as the heir and distributee who had received most of the shares (under the Pohnpei Intestate Succession Act of 1977 he would have received 360, not 2,160, Transco shares) through the improper actions of a fiduciary, the estate's administrator, that is, himself, because the fiduciary had represented to the Pohnpei Supreme Court that there was a family agreement about the Transco shares. Mori, as a bona fide purchaser for value and without notice, should be as protected buying the shares from the distributee as he would have been buying them from the fiduciary, especially since it is the same person. Accordingly, the court cannot void the transaction between Mori and Barney Olter. Mori is entitled to summary judgment that as a matter of law he is the owner of the 2,160 Transco shares formerly owned by Salter Olter.

Marion Olter emphasizes that she is an innocent party here. So is Mori. Thus, Marion Olter's remedy is against the wrongdoer who breached his fiduciary duty to her and the other beneficiaries of Salter Olter's estate – Barney Olter. Someone "who has wrongfully sold property to a bona fide purchaser can be compelled to buy a replacement if this is reasonably possible. . . . Sometimes damages are the only appropriate remedy." MCGOVERN, KURTZ & ENGLISH, *supra*, § 12.8, at 600. Either way, Marion Olter's remedy is against Barney Olter. If it were any other way, then anyone who ever bought property after it had been inherited and distributed by a Pohnpei probate court "final" order could never be certain that his or her title would not be taken away by a future "final" probate court order that the distributee seller was not the proper distributee.⁵

III. MORI AS ENTITLED TO JUDGMENT PER DISCOVERY SANCTIONS

Mori also contends that he is entitled to judgment against Marion Olter because she did not respond to his October 25, 2011 discovery requests which the court's April 19, 2012 Order Requiring Responses or Sanctions directed her to do. Marion Olter contends that under Civil Procedure Rule 37(b)(2)(A), the court must first issue a specific order designating the facts as established for the purpose of the litigation and that since the court has not issued an order subsequent to its April 19, 2012 order, Mori's motion must be denied. Marion Olter further contends that the court's stated preference for deciding matters on the merits rather than issuing a judgment based on mere technicalities, requires a denial of Mori's motion, especially when she has been unable to depose him.

The court's April 19, 2012 order directed that:

IF the Third Party Defendants do not file and serve their responses to the plaintiff's October 25, 2011 interrogatories by May 11, 2012, the court will order that, for the purpose of further proceedings:

- 1) Lisa Olter's and Marion Olter's answers to interrogatories # 4, 6, 7, 8, and 9 will be designated in the affirmative (# 5 does not call for a yes or no answer);
- 2) that their answers to interrogatories # 10 and 12 will be designated as answered in the negative (# 11 does not call for a yes or no answer);
- 3) that interrogatories # 22 through 25 are deemed answered in the affirmative (interrogatories # 25 through 29 do not call for yes or no answers); and

⁵ Mori contends that, under the Pohnpei Civil Procedure Rule 53, a motion to correct a mistake in a final order had to be made within one year of that final order so that the motion that resulted in the April 19, 2010 redistribution order was made too late and that order is thus not valid. Since Mori is a bona fide purchaser for value the court has no need to address this contention since it will not change the outcome.

4) the third party defendants will not be permitted to deny:

a) that they knew of Barney Olter's appointment as the Administrator of Salter Olter's estate;

b) that they knew the number of Truk Transportation Co. shares in the estate, and

c) that they knew that the Pohnpei Supreme Court distributed all 2,160 shares to Barney Olter.

Order Requiring Responses or Sanctions at 2-3 (Apr. 19, 2012). Mori relies on this order and the fact that Marion Olter still did not file and serve any responses to his interrogatories after the April 19th order. Mori therefore seeks to have the court implement or enforce its April 19th order by deeming or designating that Marion Olter's answers to interrogatories # 4, 6, 7, 8, and 9 are in the affirmative; that her answers to interrogatories # 10 and 12 are in the negative; that interrogatories # 22 through 25 are answered in the affirmative; and that she is not permitted to deny that she knew of Barney Olter's appointment as the Administrator of Salter Olter's estate; that she knew the number of Transco shares in the estate; and that she knew that the Pohnpei Supreme Court distributed all 2,160 shares to Barney Olter. By answering (or being deemed to have answered) interrogatories # 4, 6, 7, 8, and 9 in the affirmative, Marion Olter agreed to the Salter Olter probate petition as filed, with its outcome, with the way Barney Olter handled the estate, and with Barney Olter being the administrator of Salter Olter's estate. By answering (or being deemed to have answered) interrogatories # 10 and 12 in the negative, Marion Olter did not disagree with any part of Barney Olter's role as the estate administrator or the probate court's decision. And, by answering (or being deemed to have answered) interrogatories # 22-23 in the affirmative, Marion Olter agreed with the way MLSC handled the estate and knew what the estate's assets were before and after Salter Olter passed away. Based on those designated responses, Mori seeks to be granted summary judgment.

Marion Olter does not raise any grounds or list any reasons why the court should not designate such facts as established that Mori sought to be designated when he originally moved for sanctions on March 8, 2012. Marion Olter has not, at any time, filed and served responses to Mori's discovery requests even after April 19, 2012, when she was ordered to do so and informed that the consequences if she failed to do so would be that the designated facts would be deemed established for the purpose of this litigation. Nor has she sought more time to respond to Mori's discovery or given any reason for her failure to respond. What Marion Olter overlooks in her argument when referring to the court's preference for decisions on the merits is that when facts are designated established and then those facts are used to render summary judgment, the judgment then rendered is a decision on the merits.

Mori is entitled to have the facts he sought to have designated as established so designated for the purpose of these proceedings. The court so orders. Based on these designated facts, there are no genuine issues of material fact present. Mori is also thus entitled, as a matter of law, to summary judgment that he owns the 720 Transco shares to which Marion Olter had laid claim.

IV. CONCLUSION

There being no genuine issues of material fact, Emanuel "Manny" Mori is entitled, as a matter of law, to summary judgment that he owns the 720 Truk Transportation Co. shares also claimed by Marion Olter because he was a bona fide purchaser for value without notice and because of the facts designated as established for this litigation. There being no just cause for delay, the court clerk is

hereby expressly directed to enter judgment accordingly without further delay. See FSM Civ. R. 54(b).

With the entry of this Rule 54(b) judgment, all claims to the current ownership of the 2,160 Transco shares formerly owned by Salter Olter have been adjudicated. Mori's derivative action claims were previously dismissed. Mori v. Hasiguchi, 17 FSM Intrm. 630, 640-41 (Chk. 2011). Thus, the only claim left for resolution plaintiff Mori's claim that defendants Myron Hasiguchi and Truk Transportation Co., Inc. tortuously interfered with his stock purchase from Barney Olter. Counsel for Emanuel "Manny" Mori and defendants Myron Hasiguchi and Truk Transportation Co., Inc. shall therefore submit, no later than June 17, 2013, their proposals, including suggested trial dates if needed, to resolve the plaintiff's remaining claim.

* * * *

CHUUK STATE SUPREME COURT TRIAL DIVISION

CHUUK STATE,)	CSSC CR NO. 002-2006
)	
Plaintiff,)	
vs.)	
)	
RITAUO RANIK and SANTINO SOSI,)	
)	
Defendants.)	
_____)	

ORDER

Camillo Noket
Chief Justice

Decided: May 16, 2013

APPEARANCE:

For the Plaintiff:	Jayson Robert Deputy Attorney General Office of the Chuuk Attorney General P.O. Box 1050 Weno, Chuuk FM 96942
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HEADNOTES

Criminal Law and Procedure – Dismissal

Dismissal under Rule 48(a) is appropriate when the government represents that there is insufficient evidence to obtain a conviction. Chuuk v. Ranik, 19 FSM R. 25, 26-27 (Chk. S. Ct. Tr. 2013).

Criminal Law and Procedure – Dismissal

A dismissal under Criminal Rule 48(a) is granted without prejudice and by leave of court. In