

The movants have thus had actual notice that the FSM is the Receiver of the stranded F/V *Teraka No. 168* notwithstanding the lack of statutory notice to the public that would be necessary to enforce the receivership against the general public. The FSM's Amended Verified Complaint thus states a civil cause of action. The extent to which Yuh Yow and Marin Marawa may avoid civil liability because they did not have actual notice of the receivership until after the refloating attempts is a question on the merits left for another day as is whether liability is avoided or lessened because material was removed, as part of the government permitted and supervised attempt to refloat the F/V *Teraka No. 168*, from that vessel to make it easier to refloat and to lessen the chance of pollution of the marine environment.

IV. CONCLUSION

Accordingly, the motion to dismiss for lack of personal jurisdiction over defendants Malayan Towage and Salvage Corporation, Hsin Horng Fishery Company, Ltd., and Captain Edgar R. Peleaz; for the plaintiffs' failure to properly verify the complaint is denied. The motion to dismiss the FSM's complaint in intervention for the failure to give statutory notice is denied but the court notes that the criminal punishment sought cannot be imposed in this civil case.

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FSM SUPREME COURT TRIAL DIVISION

IN THE MATTER OF THE ESTATE OF)	CIVIL ACTION NO. 2012-2004
MAKATO EDMOND,)	
)	
Deceased,)	
)	
FSM DEVELOPMENT BANK,)	
)	
Petitioner,)	
)	
RANDY EDMOND,)	
)	
Nominee.)	
_____)	

ORDER OF DISMISSAL

Dennis K. Yamase
Associate Justice

Hearing: February 27, 2013
Decided: May 31, 2013

APPEARANCE:

For the Petitioner: Nora E. Sigrah, Esq.
 P.O. Box M
 Kolonia, Pohnpei FM 96941

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HEADNOTES

Civil Procedure – Parties – Substitution

The proper party for substitution for a deceased party is either the executor or the administrator of the deceased's estate ("representative"), or, if the estate has been distributed by the time the motion to substitute is made, the distributee ("successor"). An administrator's identity cannot be presumed; there must be some designation by a court. In re Estate of Edmond, 19 FSM R. 59, 60-61 (Kos. 2013).

Domestic Relations – Probate; Jurisdiction – Diversity

The FSM Supreme Court is empowered to exercise authority in probate matters when there is an independent basis for jurisdiction under the Constitution, and the court has found such an independent basis when there was a diversity of citizenship among the heirs. In re Estate of Edmond, 19 FSM R. 59, 61 (Kos. 2013).

Domestic Relations – Probate; Federalism – National/State Power; Jurisdiction

The Constitution does not mandate such a sweeping expansion of the FSM Supreme Court's jurisdiction over probate cases as would result if creditors were considered parties for jurisdictional purposes. The better view is that only the heirs, potential heirs, or devisees in a probate case be considered parties for jurisdictional purposes and that, in the usual case, the decedent's creditors would file their claims in a state court probate proceeding. This view comports with the proper respect due to the state courts as courts of general jurisdiction that should normally resolve probate and inheritance issues. In re Estate of Edmond, 19 FSM R. 59, 62 (Kos. 2013).

Domestic Relations – Probate; Jurisdiction

For jurisdictional purposes, the parties in a probate case are those who have a claim that they are heirs. Creditors are not to be considered parties for jurisdictional purposes. This reasoning is suitable for the FSM. In re Estate of Edmond, 19 FSM R. 59, 62 (Kos. 2013).

Domestic Relations – Probate; Jurisdiction

A creditor may open a probate case in state court without destroying the state court's jurisdiction because a creditor is not an heir. In re Estate of Edmond, 19 FSM R. 59, 62 (Kos. 2013).

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COURT'S OPINION

DENNIS K. YAMASE, Associate Justice:

On February 27, 2013, this came before the court to hear the Petitioner's Motion for Entry of an Order of Appointment of Administrator, filed August 22, 2012, and the Petitioner's Brief Pursuant to Order Entered May 24, 2012, filed May 31, 2012. The motion is denied and the case dismissed. The reasons follow.

I. BACKGROUND

The petitioner, the FSM Development Bank, has filed this probate case and seeks the appointment of an administrator for the Estate of Makato Edmond. The bank needs an administrator appointed so that it can substitute the estate administrator for the deceased Makato Edmond in its suit (Civil Action No. 2009-2003) to collect on a defaulted loan and to foreclose on the mortgage on the property used as security and in which the deceased had a property interest and was a party to the mortgage. This is because "[t]he proper party for substitution is either the executor or the

administrator of the deceased's estate ("representative"), or, if the estate has been distributed by the time the motion to substitute is made, the distributee ("successor")." FSM Dev. Bank v. Paul, 18 FSM Intrm. 149, 151 (Pon. 2012) (quoting Damarlane v. FSM, 8 FSM Intrm. 10, 12 (Pon. 1997)). That is, "[t]he administrator of the deceased's estate is . . . the proper party for substitution rather than relatives of the deceased who are not legal representatives." George v. Jonithan, 15 FSM Intrm. 455, 457 (Kos. S. Ct. Tr. 2007). An administrator's identity cannot be presumed; there must be some designation by a court. Paul, 18 FSM Intrm. at 151; Damarlane, 8 FSM Intrm. at 12.

The bank seeks the appointment of administrator for Makato Edmond's estate in this court because no heir (or potential heir) has filed a probate case in the Kosrae State Court so no administrator for Makato Edmond's estate has yet been appointed. The bank contends that since it is the one filing the probate case and that since it is an instrumentality of the national government, it must file the probate case in this court because, under FSM Const. art. XI, § 6(a), the FSM Supreme Court has exclusive jurisdiction over cases where a national government instrumentality is a party.

II. ANALYSIS

The FSM Supreme Court has previously determined that, although state courts normally resolve probate and inheritance issues and have jurisdiction over probate, the FSM Supreme Court is empowered to exercise authority in probate matters when there is an independent basis for jurisdiction under the Constitution. In re Nahnsen, 1 FSM Intrm. 97, 97, 104 (Pon. 1982). The court has found such an independent basis for jurisdiction over a probate case when there was a diversity of citizenship among the heirs. See In re Estate of Hartman, 4 FSM Intrm. 386, 387 (Chk. 1989). The bank asserts that in this case the independent basis for jurisdiction is that it is a party to the probate proceeding and that, since it is a party, the FSM Supreme Court has exclusive jurisdiction. Thus, in this case, whether the court has jurisdiction to open this probate case and to appoint an administrator turns on whether the bank, a national government instrumentality, can be considered a party.

The bank is a creditor, not an heir. In In re Bamber's Estate, 265 N.Y.S. 798, 800 (N.Y. Sur. Ct. 1933), the court held that "[o]nly those persons are necessary parties to probate who would inherit if there were no will," and that a creditor did not have the status of a party. Also, if there is a will, the devisees would be necessary parties as well. The bank does not claim that it is a party in the sense that it claims that it would or should inherit part or all of Makato Edmond's estate. It claims to be a party because it is a judgment-creditor and a secured creditor (as a mortgagee) of the deceased. But "[a] secured creditor is not an 'interested party' in a probate proceeding and has no standing." Murg v. Barnsdale Nursing Home, 123 P.3d 11, 28 (Okla. 2005) (citing In re Estate of Dilley, 919 P.2d 458, 460 (Okla. 1996)).

If the court were to hold that a deceased's creditor is a party to a probate case for jurisdictional purposes, then the FSM Supreme Court would have exclusive jurisdiction over not only this case but also every other probate case where the decedent died owing the FSM Development Bank¹ money or where the decedent, such as a sole proprietor, died owing back taxes to the FSM Social Security Administration or to FSM Finance. Then, just because the national government or one of its instrumentalities, was a creditor, the FSM Supreme Court would have exclusive jurisdiction and would end up administering this and all these probate cases and deciding who the heirs and successors are and who inherits what after all the just claims are paid. Cf. In re Estate of Helgenberger, 11 FSM Intrm. 599, 600 (Pon. 2003) (FSM Supreme Court cannot remove part of probate case from state court; must

¹ This is one of several pending cases filed by the FSM Development Bank seeking, in similar circumstances, the appointment of an administrator for a debtor's estate.

be whole case or nothing). No state court could handle the matter. Additionally, the FSM Supreme Court would also have concurrent jurisdiction over virtually all probate cases where the decedent died owing money to off-island creditors or to one of the two banks doing business in the FSM because off-island creditors would usually have a diverse citizenship and the two banks do have diverse citizenship.

The court does not believe that the Constitution mandates such a sweeping expansion of the FSM Supreme Court's jurisdiction over probate cases. It seems the better view would be that only the heirs, potential heirs, or devisees in a probate case be considered parties for jurisdictional purposes and that, in the usual case, the decedent's creditors would file their claims in a state court probate proceeding. Furthermore, this view comports with the proper respect due to the state courts as courts of general jurisdiction that "should normally resolve probate and inheritance issues." *In re Nahnsen*, 1 FSM Intrm. at 97.

The court is aware that another FSM Supreme Court trial division judge has appointed an estate administrator as the result of an FSM Development Bank petition but it seems that that appointment was done without briefing or consideration of these issues because it was unopposed. It also appears that there might have been diversity of citizenship among the heirs in that case. The court is also aware that the appellate division might disagree, but this issue has never been before the appellate division or been addressed by it.

Accordingly, the court holds that, for jurisdictional purposes, the parties in a probate case are those who have a claim that they are heirs. Creditors are not to be considered parties for jurisdictional purposes. Having independently considered this reasoning the court adopts it as suitable for the Federated States of Micronesia.

This does not leave the bank without a remedy. Since its presence in a probate case is as a creditor not an heir, its presence in a state court as a creditor would not destroy the state court's jurisdiction. State law in Chuuk, 13 TTC 51, and Pohnpei, 49 Pon. C. § 3-101, specifically permit creditors to file probate cases after 90 days if one has not been filed. The statutes in the other two states, Kosrae and Yap, are silent about who may institute a probate proceeding – they neither authorize nor prohibit creditors (or, for that matter, heirs) from opening a probate proceeding. The court does not see this as an impediment to a creditor opening a probate case in the state court of either Kosrae or Yap. The bank may therefore seek the appointment of an administrator for Makato Edmond's estate in the Kosrae State Court.

III. CONCLUSION

The court having concluded that, as a creditor, the FSM Development Bank is not a party to a probate case for jurisdictional purposes, the motion to appoint an administrator is denied and this probate case is dismissed for the lack of an independent basis for jurisdiction.

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