

delegation of the Receiver’s duties to private persons – the class plaintiffs – would be unlawful since the statute only permits delegation to “relevant state authority.” 19 F.S.M.C. 902(2).

The court cannot approve any class action settlement agreement that includes an obviously illegal provision. In re Montgomery County Real Estate Antitrust Litig., 83 F.R.D. 305, 319 (D. Md. 1979). And the court cannot approve only the part of the agreement that is not illegal. “[T]he court cannot modify the terms of the proposed settlement; rather, the court must approve or disapprove of the proposed settlement as a whole.” Neff v. VIA Metro Transit Auth., 179 F.R.D. 185, 208 (W.D. Tex. 1998); *see also* Jeff D. v. Andrus, 899 F.2d 753, 758 (9th Cir. 1989). Thus, even if this were a settlement agreement between a plaintiff class and an adverse defendant, which it is not, the court still could not approve it.

IV. EFFECT ON OTHER MOTIONS

This order denying Eauripik’s request for preliminary approval and for a fairness hearing for its “settlement” with the FSM also implicitly denies any pending Eauripik motion premised on Eauripik’s supposition that it has succeeded to all of the FSM’s rights, claims, and statutory duties in this matter. The parties shall therefore file and serve, no later than November 15, 2013, a list of which motions or parts of motions are still viable and pending and need to be decided. Any party may file and serve a response by November 25, 2013.

V. CONCLUSION

The motion seeking preliminary approval of the supposed settlement between the class plaintiffs, the People of the Municipality of Eauripik, and the plaintiff in intervention, the Federated States of Micronesia, is denied.

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FSM SUPREME COURT TRIAL DIVISION

FSM DEVELOPMENT BANK,	)	CIVIL ACTION NO. 2007-008
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
MARIANNE B. SETIK, THE ESTATE OF MANNEY	)	
SETIK, ATANASIO SETIK, VICKY SETIK IRONS,	)	
IRENE SETIK WALTER, MARLEEN SETIK,	)	
JUNIOR SETIK, ELEANOR SETIK SOS, PATRICIA	)	
SETIK, JOANITA SETIK PANGELINAN,	)	
individually and d/b/a C-STAR APARTELLE,	)	
	)	
Defendants.	)	
	)	

ORDER DENYING MOTION TO DISMISS

Martin G. Yinug  
 Chief Justice

Decided: November 15, 2013

APPEARANCES:

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

For the Defendants: Salomon M. Saimon, Esq.  
Directing Attorney  
Micronesia Legal Services Corporation  
P.O. Box 129  
Kolonias, Pohnpei FM 96941

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HEADNOTES

Jurisdiction

State laws vesting state courts with exclusive jurisdiction cannot divest the FSM Supreme Court of its constitutional responsibilities. FSM Dev. Bank v. Setik, 19 FSM R. 233, 235 (Pon. 2013).

Jurisdiction

The FSM Constitution vests the FSM Supreme Court with jurisdiction over a matter when the FSM Development Bank, an instrumentality of the FSM government, is a party. A Pohnpei state law cannot divest the court of that subject matter jurisdiction. FSM Dev. Bank v. Setik, 19 FSM R. 233, 235 (Pon. 2013).

Civil Procedure – Pleadings; Property – Mortgages

The Pohnpei Mortgage Law requires that the complaint name all persons having or claiming an interest in the property subordinate to the mortgage interest. FSM Dev. Bank v. Setik, 19 FSM R. 233, 235 (Pon. 2013).

Civil Procedure – Notice; Property – Mortgages

When there are no transfers or encumbrances registered against the mortgaged parcels except for the bank's mortgages and a separate conveyance of a property interest in the land to the bank; when all the parties with an interest in the parcels are parties to the litigation; and when it is undisputed that the named defendants were duly served with a summons and complaint, an argument that the bank failed to comply with the statutory notice requirements must fail. FSM Dev. Bank v. Setik, 19 FSM R. 233, 235 (Pon. 2013).

Bankruptcy; Jurisdiction

When no defendant has started a case under bankruptcy law, the defendants cannot have the case dismissed because bankruptcy law would provide the legal framework for the case. FSM Dev. Bank v. Setik, 19 FSM R. 233, 236 (Pon. 2013).

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COURT'S OPINION

MARTIN G. YINUG, Chief Justice:

I. SUBJECT MATTER JURISDICTION

The matter before the Court is a post-judgment matter in which Plaintiff is seeking an order in aid of judgment that would allow FSM Development Bank to foreclose on mortgaged property belong to Defendants. Defendants do not dispute that the underlying debt, but rather argue that the case should be dismissed because of a defect in the Court's subject matter jurisdiction. Subject matter jurisdiction is a dispositive matter that may be brought at any time during the course of litigation. Hartman v. FSM, 6 FSM Intrm. 293, 296 (App. 1993). Defendants argue that this Court was divested of subject matter jurisdiction by an amendment to the Pohnpei Mortgage Law, 41 Pon. C. § 6-125, which was amended in 2006 to require that "[a]ll judicial actions for the foreclosure of a mortgage shall be brought in the Trial Division of the Pohnpei Supreme Court."

Defendants' argument that the amendment to the Pohnpei Mortgage Law divests this Court of jurisdiction is without merit. The Appellate division has ruled that state laws vesting state courts with exclusive jurisdiction cannot divest the FSM Supreme Court of its constitutional responsibilities. Gimnang v. Yap, 5 FSM Intrm. 13, 23 (App. 1991) (FSM Supreme Court has jurisdiction over the issue of the constitutionality of a Yap State tax law despite a Yap state law provision confining jurisdiction to Yap state courts). The FSM Supreme Court is vested with jurisdiction over this matter by the FSM Constitution which extended the Court's jurisdiction to matters in which the FSM Development Bank, an instrumentality of the government of the FSM, is a party.

The recent ruling in Helgenberger v. FSM Development Bank, 18 FSM Intrm. 498 (App. 2013), also supports the exercise of jurisdiction in this instance. That ruling is directly applicable here, where the FSMDB seeks an order in aid of judgment providing for the foreclosure of the mortgage and the sale of properties mortgaged to FSMDB, and where all the owners (except for FSMDB) are listed as defendants. Thus, the precedent from this Court is clear that the amendment to the Pohnpei state law enacted in 2006 does not divest this Court of subject matter jurisdiction over this case.

II. FAILURE TO FOLLOW STATE STATUTE

Defendants argue that this Court does not have subject matter jurisdiction over this matter because Plaintiff failed to comply with the notice procedures designated in 41 Pon. C. § 6-125(3).<sup>1</sup> That statute requires that the complaint name all persons having or claiming an interest in the property subordinate to the mortgage interest of the FSM Development Bank. In this instance, Defendants fail to list any persons claiming an interest in the mortgaged parcels who are not party to this litigation. Furthermore, FSM Development Bank has stated that there are no transfers or encumbrances registered against the mortgaged parcels, except for FSMDB's mortgages and a separate conveyance of a property interest in this land to FSMDB on the part of Vicky Irons. Thus, all the parties with an interest in these parcels are parties to this litigation, and it is undisputed that the named defendants in this action were duly served with a summons and complaint. For these reasons, Defendants' argument that the FSM Development Bank failed to comply with the statutory requirement of 41 Pon. C. § 6-125(3) must also fail.

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<sup>1</sup> Defendants do not cite authority for the proposition that failure to comply with the statutory requirements of 41 Pon. C. § 6-125(3) would strip this Court of subject matter jurisdiction.

III. INAPPLICABILITY OF BANKRUPTCY LAW

Defendants argue that this case should be heard in Pohnpei state court because the 2005 Bankruptcy law, codified at FSM Code Title 31, provides the appropriate legal framework for this matter. This argument must also fail as none of the Defendants have commenced a case under bankruptcy law.

IV. CONCLUSION

Plaintiff has successfully met the burden of demonstrating that this Court has subject matter jurisdiction over this case. Therefore, Defendants' motion to dismiss is HEREBY DENIED.

\* \* \* \*

FSM SUPREME COURT TRIAL DIVISION

FSM TELECOMMUNICATIONS CORPORATION,	)	CIVIL ACTION NO. 2010-035
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
BELLARMINE HELGENBERGER, individually and	)	
d/b/a BERNARDS, ISLAND CABLE TV POHNPEI,	)	
INC., CENTRAL MICRONESIA COMMUNICATIONS,	)	
INC., and BERNARD'S ENTERPRISES, INC.,	)	
	)	
Defendants.	)	
	)	

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

Ready E. Johnny  
Associate Justice

Trial: September 30, October 1-2, 2013  
Decided: January 16, 2014

APPEARANCES:

For the Plaintiff:	Fredrick L. Ramp, Esq. Ramp & Mida Law Firm P.O. Box 1480 Kolonias, Pohnpei FM 96941
For the Defendant:	Bellarmino Helgenberger, pro se P.O. Box 460 Kolonias, Pohnpei FM 96941