The Board's decision was entered on August 27, 2013, and was received by Palikkun on September 17, 2013. The 60-day deadline would fall on October 26, 2013, which would have given Palikkun thirty (39) days to file her claim after service of the Board's decision. In line with the holding in Andrew, the court finds that Palikkun had adequate time to file her claim, and she failed to file her claim in time pursuant to 53 F.S.M.C. 708. The court is unwilling to extend the timeframe to file a claim when the language of the statute is clear.

Because the allegations of the plaintiff's own complaint demonstrate that certain of its claims are subject to the defense of statute of limitations, the court may chose to dismiss those claims on the statute of limitations, although it is an affirmative defense. Mobil Oil Micronesia, Inc. v. Pohnpei Port Auth., 13 FSM Intrm. 223, 228 (Pon. 2005). Accordingly, the Plaintiff's complaint is dismissed based on its filing being untimely under 53 F.S.M.C. 708.

B. *Other Claims*

Palikkun makes a claim for violation of procedural due process under the FSM Constitution, and that Public Law 15-73 does not apply to this matter. Because the court finds that the Palikkun's complaint is untimely, and as a result, dismisses the complaint, the other issues presented need not be considered.

IV. Conclusion

The Defendant's Motion to Dismiss is HEREBY GRANTED. The Plaintiff's complaint is DISMISSED.

* * * *

FSM SUPREME COURT APPELLATE DIVISION

GINN P. NENA,
Appellant,
vs.
HAMLIN SAIMON, JOSHAIA SAIMON, and LENORA SIGRAH,
Appellees.

APPEAL CASE NO. K7-2013
Civil Action No. 39-2013

OPINION

Argued: February 19, 2014
Decided: March 26, 2014

BEFORE:

Hon. Martin G. Yinug, Chief Justice, FSM Supreme Court
Hon. Dennis K. Yamase, Associate Justice, FSM Supreme Court
Hon. Ready E. Johnny, Associate Justice, FSM Supreme Court

APPEARANCES:

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* * * *

HEADNOTES

Appellate Review – Decisions Reviewable – Interlocutory

Since a party in the Kosrae State Court may appeal to the appellate court from an interlocutory order granting, continuing, modifying, refusing, or dissolving injunctions, or refusing to dissolve or modify an injunction, the FSM Supreme Court appellate division has jurisdiction over an appeal of a Kosrae State Court preliminary injunction. Nena v. Saimon, 19 FSM R. 317, 324 (App. 2014).

Appellate Review – Standard – Civil Cases – Abuse of Discretion; Civil Procedure – Injunctions

Whether a trial court erred in issuing an injunction is reviewed using the abuse of discretion standard. A trial court abuses its discretion when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence on which the court could rationally have based its decision. Nena v. Saimon, 19 FSM R. 317, 324 (App. 2014).

Appellate Review – Standard – Civil Cases

Conclusions of law are reviewed de novo, and, since a trial court's findings are presumptively correct, any challenged findings of fact are reviewed using the clearly erroneous standard. Nena v. Saimon, 19 FSM R. 317, 324 (App. 2014).

Civil Procedure – Service; Jurisdiction – Personal

A court obtains personal jurisdiction over a defendant when service of process – service of the complaint and summons – is properly made on that defendant. A court must have personal jurisdiction over a party before its orders can bind that party. Nena v. Saimon, 19 FSM R. 317, 324 (App. 2014).

Civil Procedure – Service; Jurisdiction – Personal

For personal service of a complaint and summons to be effective when a defendant refuses to accept the papers, the complaint and summons must be left with the defendant or where they might reasonably be found and the process server must make an attempt to describe generally the meaning of the papers in a language the defendant can understand. Nena v. Saimon, 19 FSM R. 317, 324-25 (App. 2014).

Civil Procedure – Service; Jurisdiction – Personal

When a person refused to accept the complaint and summons and the papers were not left with him, he was not properly served with the complaint and summons and the court therefore did not acquire personal jurisdiction over him. Nena v. Saimon, 19 FSM R. 317, 325 (App. 2014).

Civil Procedure – Injunctions

Where the court did not have personal jurisdiction over a person when it held a temporary injunction hearing and when it issued a preliminary injunction, the preliminary injunction can be vacated

on that ground alone. Nena v. Saimon, 19 FSM R. 317, 325 (App. 2014).

Jurisdiction – Personal

A court that lacked personal jurisdiction over a person because the complaint and summons were not properly served on him later acquired personal jurisdiction over that person when he filed an answer in which he did not challenge personal jurisdiction over him although he did challenge the court's personal jurisdiction over "his immediate family" since none of them had been named or served. Nena v. Saimon, 19 FSM R. 317, 325 & n.1 (App. 2014).

Civil Procedure – Injunctions

A temporary restraining order cannot last for more than fourteen days and can be renewed only once for another fourteen days. If a temporary restraining order is issued and a preliminary injunction hearing is not held, the temporary restraining order expires. If the parties stipulate to its extension for a longer time, they have actually consented to a preliminary injunction. But even if no temporary restraining order is issued, the court can still set a hearing on a preliminary injunction and either grant or deny it. Nena v. Saimon, 19 FSM R. 317, 325 (App. 2014).

Civil Procedure – Injunctions

Issuing both a preliminary injunction and a temporary restraining order at the same time makes no sense because a temporary restraining order is issued before a preliminary injunction is issued, not with one. A court cannot simultaneously issue both a preliminary injunction and a temporary restraining order. Nena v. Saimon, 19 FSM R. 317, 325-26 n.2 (App. 2014).

Civil Procedure – Injunctions; Constitutional Law – Due Process – Notice and Hearing

When the notice of the hearing did not mention that the subject of the hearing was the plaintiffs' request for a temporary restraining order and a preliminary injunction, the defendant's opportunity to be heard at the hearing was rather meaningless, especially when shortly into the hearing the trial judge stated that he had enough in the file to issue a temporary restraining order preventing the defendant from entering the land. Since the defendant had inadequate notice of the hearing and its subject matter, he did not have an adequate opportunity to be heard before the decision to grant a temporary restraining order was announced during the hearing or before the preliminary injunction entered the next day. Nena v. Saimon, 19 FSM R. 317, 326 (App. 2014).

Civil Procedure – Injunctions

A court, in exercising its discretion in considering whether to grant a preliminary injunction, must weigh four factors: 1) the likelihood of success on the merits of the party seeking injunctive relief, 2) the possibility of irreparable injury to the movant, 3) the balance of possible injuries or inconvenience between the parties that would flow from granting or denying the relief, and 4) any impact on the public interest. A preliminary injunction's object is to preserve the status quo pending litigation on the merits. Nena v. Saimon, 19 FSM R. 317, 326 (App. 2014).

Property – Land Registration

Certificates of title that state that the owners are the heirs of a person, who died three years before the certificates were issued and who has now been dead for twenty-eight years, have remained for too long in what should only be a very temporary designation because the Kosrae Land Court, like the Land Commission before it, has the power to make orders and decisions which determine any claim of heirship to a deceased person's title or interest in lands. Nena v. Saimon, 19 FSM R. 317, 327 (App. 2014).

Property – Land Registration

Certificates of title naming the heirs of someone as the owners do not conform to the statutory

requirement that a certificate of title must set forth the names of all persons holding an interest in the land. None of the co-owners' names are set forth on the certificates of title, although all of their names should be set forth on the certificates, when the only name on the certificate is that of a person who does not hold an interest in the land since he is deceased. For those persons who are the deceased's true and only heirs, their names, only their names, should be on the certificates of title. Nena v. Saimon, 19 FSM R. 317, 327 (App. 2014).

Property – Land Registration

One of the purposes of a Torrens land registration system, such as Kosrae's, is that one document – the certificate of title – names every person who has an interest in the parcel covered by that certificate and describes the extent of that interest without the need to consult other sources to determine who the owners and the interest holders are and the interests they hold. That purpose is defeated if the ownership interests are listed as held by unnamed persons whose identity can only be determined by consulting birth and death records or the decedent's will, if there was one. Nena v. Saimon, 19 FSM R. 317, 327 (App. 2014).

Property – Land Registration

The issuance of certificates of title to "the Heirs of" should be done only sparingly, if at all, and the Land Court should determine who the heirs are and name them and the interest they hold on any certificates of title it issues. A certificate that designates "the Heirs of" as the owners does not set forth the name of any person, let alone the names of all persons, holding an interest in the land and that phrase does not name an "entity." It just designates a group of unnamed persons whose identities and interests will presumably be identified at some later time. Nena v. Saimon, 19 FSM R. 317, 327 (App. 2014).

Civil Procedure – Injunctions – Likelihood of Success; Property – Land Registration

The presence of others on the land for over 60 years who had never been notified of the land registration proceedings would lessen the plaintiffs' likelihood of success on the merits of a trespass action because persons who have been openly residing on land for a long time are persons who must be given notice of any land registration proceedings for that land, otherwise the determination of ownership (and any subsequent certificate of title) is not valid – when a person has a claim to the land and was not given notice of the registration proceedings as required by law, the determination of ownership and the certificate of title for that land is not conclusive as upon him. Nena v. Saimon, 19 FSM R. 317, 328 (App. 2014).

Property – Land Registration

The argument that someone who had occupied or used the land for a long did not have to be given notice because they did not own the land must be rejected because the determination of who the land owners are is made at the end of the land registration process, not before it has started. Their long-term presence on the land entitled them to notice of the land registration proceeding for the land. Nena v. Saimon, 19 FSM R. 317, 328 (App. 2014).

Property – Land Registration

The land registration process is, with certain exceptions, supposed to determine all interests in the land, not just ownership interests. Thus, even if someone does not own the land, they may hold some other interest, such as a use interest exceeding one year, that has to be determined and included in the certificate of title. Nena v. Saimon, 19 FSM R. 317, 328 (App. 2014).

Civil Procedure – Injunctions – Likelihood of Success

Since certificates of title are prima facie evidence of ownership against all persons who did not have notice of the registration proceedings, any certificates of title for the land may mean that the

likelihood-of-success factor would weigh in the plaintiffs' favor since in an action for trespass, a plaintiff with a certificate of title for the parcel usually has a greater possessory interest to the disputed property, but the likelihood-of-success factor may be strongly outweighed by the irreparable-harm and the balance-of-the-injuries factors. Nena v. Saimon, 19 FSM R. 317, 328 (App. 2014).

Civil Procedure – Injunctions – Irreparable Harm

The party seeking a preliminary injunction must be faced with irreparable harm before the litigation's conclusion and there must be a clear showing that immediate and irreparable injury or loss or damages would otherwise occur, and there must be no adequate alternative remedy. When money damages or other relief will fully compensate for the threatened interim action, a preliminary injunction should be denied. Nena v. Saimon, 19 FSM R. 317, 328-29 (App. 2014).

Civil Procedure – Injunctions – Irreparable Harm

When the trial court did not make any findings that would support the idea that the plaintiffs would suffer irreparable harm if the preliminary injunction did not issue and when it probably could not find that the plaintiffs faced irreparable harm when the plaintiffs did not specify how they intended to develop the land and how the defendant's presence would thwart that development, and since the threat of irreparable harm before the litigation's conclusion is a prerequisite to preliminary injunctive relief, the preliminary injunction should not have been issued because the plaintiffs did not face irreparable harm. Nena v. Saimon, 19 FSM R. 317, 329 (App. 2014).

Civil Procedure – Injunctions – Balance of Injuries

Since the balance-of-the-injuries factor is about the balance of possible injuries, the trial court was, in addition to considering the harm to the plaintiffs, required to also consider the possible injuries to the defendant. Nena v. Saimon, 19 FSM R. 317, 329 (App. 2014).

Civil Procedure – Injunctions – Balance of Injuries

Removal of someone from land that person has used or occupied for over 60 years is, on balance, a much greater harm than the plaintiffs having to wait a relatively short time before the litigation is over to fulfill their desire to now develop the land that they have not tried to develop for the last 60 years. Nena v. Saimon, 19 FSM R. 317, 329 (App. 2014).

Appellate Review – Standard – Civil Cases – Abuse of Discretion; Civil Procedure – Injunctions – Balance of Injuries

A trial court abuses its discretion by misunderstanding the balance-of-injuries factor and by considering only the speculative injury to the plaintiffs and completely failing to consider the actual injuries to the defendant. Nena v. Saimon, 19 FSM R. 317, 329 (App. 2014).

Civil Procedure – Injunctions

A weighing of all four factors would result in the denial of a temporary restraining order or of a preliminary when the plaintiffs are not threatened with irreparable harm, the most important factor and a prerequisite, and when the balance-of-injuries factor weighs heavily in the defendant's favor. Nena v. Saimon, 19 FSM R. 317, 329-30 (App. 2014).

Civil Procedure – Injunctions

Since the preservation of the status quo is a preliminary injunction's primary purpose, when the defendant's previous entry, use, and occupancy was the status quo, a preliminary injunction would have only enjoined the defendant from building any new structures on the land instead of ordering the defendant not to enter land he had been entering, using, and allegedly occupying for over a half century. Nena v. Saimon, 19 FSM R. 317, 330 (App. 2014).

Appellate Review – Standard – Civil Cases – Abuse of Discretion; Civil Procedure – Injunctions – Bond

When the trial court never considered requiring a bond and especially since its preliminary injunction was not aimed at preserving the status quo, the failure to require a bond is a further ground to hold the preliminary injunction invalid and its issuance an abuse of the trial court's discretion. Nena v. Saimon, 19 FSM R. 317, 330 (App. 2014).

Appellate Review – Standard – Civil Cases – Abuse of Discretion; Civil Procedure – Injunctions

A trial court abuses its discretion by issuing a preliminary injunction without proper notice and an opportunity to be heard; by issuing a preliminary injunction when there was no irreparable injury to the movants and the balance of harms strongly favored the non-movant; and by issuing a preliminary injunction without requiring or considering a bond. That preliminary injunction will be reversed. Nena v. Saimon, 19 FSM R. 317, 330 (App. 2014).

* * * *

COURT'S OPINION

READY E. JOHNNY, Associate Justice:

This appeal arises from the Kosrae State Court's July 12, 2013 order in Saimon v. Nena, Civil Action No. 39-13, in which it granted a preliminary injunction barring Ginn P. Nena from entering land in Utwe Municipality designated as Parcels 004U002 and 004U04, and commonly called Inwalul. We reverse. Our reasons follow.

I. BACKGROUND

Appellant Ginn P. Nena asserts that he is the youngest son of Palikkun Nena and that Palikkun Nena owned Inwalul and built his home on Inwalul over 68 years ago and that he was born there and has resided there for 57 years. The three appellees, Hamlin Saimon, Joshaia Saimon, and Lenora Sigrah, assert that Thomas Waguk was the original owner of Inwalul and that at some point Waguk's son and heir, Hosia Saimon, orally gave his first cousin, Palikkun Nena, permission to temporarily live on Inwalul but not to build permanent structures there.

The Kosrae State Land Commission issued, in Hosia Saimon's name, Determinations of Ownership for Parcels 00-U-04 and 004-U-02, on March 12, 1982, and on November 29, 1982, respectively. Hosia Saimon died on January 3, 1986, and Palikkun Nena died on February 23, 1991. Nena asserts that neither he nor his father had ever been given notice of or were ever aware of the Land Commission proceedings about the Inwalul parcels. On June 8, 1989, the Kosrae Land Commission issued certificates of title for both parcels to the "Heirs of Hosia Saimon also spelled as Hosia Simon."

On April 5, 2013, the three appellees sent Ginn P. Nena a notice to vacate Inwalul in which they asserted that they were withdrawing their permission for Nena to temporarily live on and use Inwalul and that he and his immediate family had 30 days to vacate Inwalul.

On June 4, 2013, the three appellees, averring that they were the Heirs of Hosia Saimon, filed suit against Ginn P. Nena and "his immediate family" alleging that Nena was, without their permission, building a permanent structure on Inwalul and asking that he be enjoined from any construction on and any further presence in Inwalul, and that unspecified damages be awarded. A police officer tried to serve the complaint and summons on Ginn P. Nena but when Nena refused to accept the papers the officer left, taking the complaint and summons with him.

On July 2, 2013, the Kosrae State Court issued a notice of hearing, which, on July 9, 2013, Ginn P. Nena received from another family member who had been given a copy. The notice did not state what the hearing would be about. Nena consulted counsel that night and his counsel reviewed the court file the next day.

Nena's counsel appeared, over the objection of the plaintiffs' counsel, at the July 11, 2013 hearing. No witnesses testified and no evidence was introduced or presented. The trial judge stated that he had enough in the file to issue a temporary restraining order preventing Nena from entering Inwalul, Tr. at 5, 9, based on the certificates of title, *id.* at 10, and indicated that Nena could file his answer and the court would set further hearings on the other issues in the case, *id.* at 9-10. The trial judge then orally granted a temporary restraining order, stating:

> So, today it's proper based on what reflected in the file, for this Court to grant TRO, temporary restraining order upon Ginn from entering this property. Ginn including his immediate family. I'm talking about his immediate family because it stated in the complaint. I'm not including extended family, just to be clear. Today, I make this order granting the temporary restraining order on Ginn P. Nena and his immediate family from entering the Parcel No. 004-U-02 and 004-U-04 also known as Inwalul section of Utwe Municipality in Kosrae, Federated States of Micronesia. Basically this Court issue this order on the existing certificate of titles available. Based on those facts, I tend to think that if there is a prima facie evidence of – in support of a TRO at this point. Now, whatever argument in retrospect from Mr. George and Ginn, you can file your answers to the complaint and then further proceeding regarding the, regarding other issues will be treated then. Clear?

Tr. at 9-10 (July 11, 2013).

On July 12, 2013, the Kosrae State Court entered a written preliminary injunction and, in making its findings of fact, stated:

> Based upon the pleadings, evidence received at the hearing and the record, I make the following findings. Plaintiffs are the named owners of Parcels 004U02 and 004U04, located in Utwe Municipality, State of Kosrae, issued by Certificate of Titles on June 8, 1989.
>
> Defendants have relied upon use of the parcels for more than sixty years. Plaintiffs now seek restraining order and preliminary injunction to prohibit defendant and his immediately [sic] from any further activity on the subject parcels.

Order Granting Motion for Temporary Restraining Order; Preliminary Injunction ("Prelim. Inj.") at 1 (July 12, 2013). The Kosrae State Court then discussed the four criteria for determining whether to grant a preliminary injunction and concluded that all four factors weighed in the plaintiffs' favor. It therefore enjoined Nena "from taking any action, cause, instruct or consent to any action to plan[t] crops, construct improvements, conducts any activity upon Parcels 004U002 and 004U04 located in Utwe Municipality, State of Kosrae." Prelim. Inj. at 3 (July 12, 2013). Nena filed his answer on July 22, 2013.

Nena filed his notice of appeal of the preliminary injunction with the Kosrae State Court on July 22, 2013, and with the FSM Supreme Court on August 11, 2013.

II. Issues Presented

Nena contends that the Kosrae State Court erred because 1) its grant of a preliminary injunction was inconsistent with substantial justice, and 2) its findings of fact used to grant the preliminary injunction were clearly erroneous.

III. Jurisdiction and Standard of Review

This appeal is from an interlocutory order granting a preliminary injunction and not from a final order or judgment. A party in the Kosrae State Court may appeal to the appellate court (currently the FSM Supreme Court appellate division), "[f]rom an interlocutory order granting, continuing, modifying, refusing, or dissolving injunctions, or refusing to dissolve or modify an injunction." Kos. S.C. § 6.404(2). We thus have jurisdiction over this appeal of the July 12, 2013 preliminary injunction.

The issue of whether a trial court erred in issuing an injunction we review using the abuse of discretion standard. FSM v. Udot Municipality, 12 FSM Intrm. 29, 52 (App. 2003). A trial court abuses its discretion when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence upon which the court could rationally have based its decision. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM Intrm. 621, 626 (App. 2011); Simina v. Kimeuo, 16 FSM Intrm. 616, 619-20 (App. 2009); Jano v. King, 5 FSM Intrm. 326, 330 (App. 1992).

We review de novo any conclusions of law, Iriarte v. Individual Assurance Co., 18 FSM Intrm. 340, 351 (App. 2012), and, since a trial court's findings are presumptively correct, we review any challenged findings of fact using the clearly erroneous standard. George v. George, 17 FSM Intrm. 8, 9-10 (App. 2010).

IV. Analysis

A. *Due Process*

Nena contends that his due process rights were violated when there was no opportunity to be heard at the July 11, 2013 hearing; when there was no competent evidence introduced; when the Kosrae State Court did not have personal jurisdiction over him due to the lack of adequate service of process; and when there was no notice of what would be the subject of the July 11, 2013 hearing.

1. *Service of Process*

Nena contends that since he was not properly served process (the police officer did not leave the complaint and summons with Nena but took it with him when he left), the Kosrae State Court did not have personal jurisdiction over him when it held the July 11, 2013 hearing and issued the July 12, 2013 preliminary injunction. The appellees contend that Ginn P. Nena was not only served with process but he was also given an opportunity to be heard at the July 11, 2013 hearing.

A court obtains personal jurisdiction over a defendant when service of process – service of the complaint and summons – is properly made on that defendant. Lee v. Lee, 13 FSM Intrm. 252, 256 (Chk. 2005); Berman v. Santos, 6 FSM Intrm. 532, 534 (Pon. 1994). A court must have personal jurisdiction over a party before its orders can bind that party. Lee, 13 FSM Intrm. at 256.

For personal service of a complaint and summons to be effective when a defendant refuses to accept the papers, the complaint and summons must be left with the defendant or where they might

reasonably be found and the process server must make an attempt to describe generally the meaning of the papers in a language the defendant can understand. Rodale's Scuba Diving Magazine v. Billimon, 8 FSM Intrm. 18, 19 (Chk. 1997). Nena refused to accept the complaint and summons and the papers were not left with him. Nena was thus not properly served with the complaint and summons. The Kosrae State Court therefore did not acquire personal jurisdiction over him before the July 11, 2013 hearing and since his counsel objected to the lack of good service at the hearing and asked for a continuance, Tr. at 4, it also did not have the personal jurisdiction over Nena when it issued the preliminary injunction on July 12, 2013.

Since the Kosrae State Court did not have personal jurisdiction over Nena when it held the July 11, 2013 temporary injunction hearing and when it issued the July 12, 2013 preliminary injunction, the preliminary injunction can be vacated on that ground alone.[1] But even if Nena had waived his lack of personal jurisdiction defense by appearing and at the July 11, 2013 hearing and, through counsel, opposing the plaintiffs' motion, there are other grounds on which to vacate the preliminary injunction.

2. *Notice and Opportunity and the July 11, 2013 Hearing*

The text of the Kosrae State Court's July 2, 2013 notice stated in its entirety, in both English and Kosraean, "You are hereby notified that the hearing in this case will be held on the date and time listed below." Below the caption's title of "Notice of Hearing" were five boxes with the labels: "Motion," "Pre Trial Conference," "Trial," "Oral Argument," and "Other (Status Conf)." There was a check mark in the box labeled "other" but with the "(Status Conf)" part crossed out. This notice of hearing was inadequate to inform Nena that the plaintiffs' motion (which the plaintiffs called a petition) for a temporary restraining order and an injunction would be the subject of the July 11, 2013 hearing.

The Kosrae State Court conducted the hearing as if it were only considering and would only issue a temporary restraining order but it instead issued a preliminary injunction. Under Kosrae Civil Procedure Rule 65(b), a temporary restraining order cannot last for more than fourteen days and can be renewed only once for another fourteen days. If a temporary restraining order is issued and a preliminary injunction hearing is not held, the temporary restraining order expires. If the parties stipulate to its extension for a longer time, they have actually consented to a preliminary injunction. But even if no temporary restraining order is issued, the court can still set a hearing on a preliminary injunction and either grant or deny it.

What happened was that the Kosrae State Court said during the hearing that it was holding a temporary restraining order hearing, which would mean that if the temporary restraining order was issued, Nena would have a second chance within fourteen days when the application for a preliminary injunction was heard. Before Nena left the July 11, 2013 hearing the Kosrae State Court orally indicated that it was issuing a temporary restraining order, which meant that Nena would have an opportunity in the next fourteen days to oppose the injunctive relief in an evidentiary hearing on the plaintiffs' application for a preliminary injunction otherwise the temporary restraining order would expire. Instead, the Kosrae State Court, the next day, issued a preliminary injunction[2] and Nena never had that

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[1] The Kosrae State Court later acquired personal jurisdiction over Ginn P. Nena because Ginn P. Nena filed an answer in which he did not challenge personal jurisdiction over him although he did challenge the court's personal jurisdiction over "his immediate family" since none of them had been named or served. Answer at 4-5, ¶¶ 40-48 (July 22, 2013).

[2] The Kosrae State Court did not issue and could not have issued both a preliminary injunction and a temporary restraining order. The July 12, 2013 order specifically said it was a preliminary injunction. Issuing

opportunity.

Since the notice of the July 11, 2013 hearing did not mention that the subject of the hearing was the plaintiffs' request for a temporary restraining order and a preliminary injunction, Nena's opportunity to be heard at the July 11, 2013 hearing was rather meaningless, especially when shortly into the hearing the trial judge stated that he had enough in the file to issue a temporary restraining order preventing Nena from entering Inwalul, Tr. at 5.

Nena further contends that the Kosrae State Court's findings supporting the preliminary injunction were clearly erroneous because no evidence was introduced during the hearing and because the plaintiffs were not required to produce any documents at the hearing thus depriving Nena of the opportunity to cross-examine the plaintiffs or to challenge their affidavits. The appellees contend that the Kosrae State Court properly followed Rule 65(b).

It is unlikely that the July 11, 2013 hearing would, under most circumstances, qualify as the evidentiary hearing contemplated as the basis for a preliminary injunction since no witnesses testified and no evidence was introduced. The Kosrae State Court merely stated that it was relying on the contents of the file. Tr. at 10. The file contained the 1989 certificates of title for Inwalul. Nena's counsel orally challenged the validity of the certificates of title because neither Nena nor his father had known of the land registration proceedings and thus, Nena claimed, the certificates were not good against him, Tr. at 7, but he had no opportunity to present evidence or legal authority on this point.

We conclude that Nena had inadequate notice of the July 11, 2013 hearing and its subject matter and thus did not have an adequate opportunity to be heard before the decision to grant a temporary restraining order was announced during the hearing or before the preliminary injunction entered the next day.

B. *Merits of the Order Granting a Preliminary Injunction*

A court, in exercising its discretion in considering whether to grant a preliminary injunction, must weigh four factors: 1) the likelihood of success on the merits of the party seeking injunctive relief, 2) the possibility of irreparable injury to the movant, 3) the balance of possible injuries or inconvenience between the parties that would flow from granting or denying the relief, and 4) any impact on the public interest. Perman v. Ehsa, 18 FSM Intrm. 432, 438 (Pon. 2012); Benjamin v. Youngstrom, 13 FSM Intrm. 72, 75 (Kos. S. Ct. Tr. 2004); Sigrah v. Kosrae, 12 FSM Intrm. 513, 518 (Kos. S. Ct. Tr. 2004); Seventh Kosrae State Legislature v. Sigrah, 11 FSM Intrm. 110, 113 (Kos. S. Ct. Tr. 2002); Palik v. Henry, 9 FSM Intrm. 309, 312 (Kos. S. Ct. Tr. 2000); Wakuk v. Kosrae Island Credit Union, 7 FSM Intrm. 195, 196-97 (Kos. S. Ct. Tr. 1995). A preliminary injunction's object is to preserve the status quo pending litigation on the merits. Marsolo v. Esa, 17 FSM Intrm. 377, 381 (Chk. 2011); Sigrah, 12 FSM Intrm. at 518; Seventh Kosrae State Legislature, 11 FSM Intrm. at 113; Palik, 9 FSM Intrm. at 312. The Kosrae State Court found that all four factors favored the plaintiffs.

1. *Likelihood of Success on the Merits*

a. *The Plaintiffs' Certificates of Title*

The appellees claim that their likelihood of success on the merits is virtually certain because they

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both a preliminary injunction and a temporary restraining order at the same time would make no sense. A temporary restraining order is issued before a preliminary injunction is issued, not with one.

possess certificates of title for Inwalul and courts must attach a presumption of correctness to certificates of title. The appellees, however, do not possess certificates of title for Inwalul in their own names. The certificates state that the owners are the heirs of a person who died three years before they were issued and who has now been dead for twenty-eight years. That is too long for certificates to remain in what should only be a very temporary designation because the Land Court, like the Land Commission before it, Kos. S.C. § 11.617(11) (repealed 2000), "has the power to . . . [m]ake orders and decisions which determine any claim of heirship to a deceased person's title or interest in lands," Kos. S.C. § 11.605(1)(e). *See also* Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM Intrm. 535, 536 (Kos. S. Ct. Tr. 2009) (matter remanded to Land Court to determine the identity of Allen Mackwelung's heirs).

"The certificate of title must set forth the names of all persons holding an interest in the land pursuant to the Land Court's determination, either as originally made or as modified by the Kosrae State Court on appeal." Kos. S.C. § 11.615(2); *see also* Kos. S.C. § 11.605(1)(f) (Land Court has the power to "[i]ssue certificates of title which setting forth the names of all persons or entities holding [an] interest in parcels of land"). The former Kosrae Land Commission was subject to the same requirement for the certificate to set forth "the names of each person holding an interest in the parcel." Kos. S.C. § 616(1) (repealed 2000).

The certificates of title proffered by the plaintiffs and relied upon by the Kosrae State Court do not conform to the statutory requirement that a certificate of title "must set forth the names of all persons holding an interest in the land." None of the plaintiffs' names are set forth on the certificates of title although if they are co-owners of Inwalul, all of their names should be set forth on the certificates. The only name on the Inwalul certificates is that of a person who does not hold an interest in Inwalul since he is deceased.

If the plaintiffs are Hosia Simon's true and only heirs, their names, and only their names, should be on the certificates of title for Inwalul. One of the purposes of a Torrens land registration system, such as Kosrae's, is that one document – the certificate of title – names every person who has an interest in the parcel covered by that certificate and describes the extent of that interest without the need to consult other sources to determine the interest holders' identities and the interests they hold without the need to consult other sources to determine who the owners are. *See* In re Engichy, 12 FSM Intrm. 58, 69 (Chk. 2003) (certificate of title will show at a glance the ownership of, and the encumbrances on, the land; the title searcher need then only read and evaluate the documents referred to by the current endorsements; no further historical search of the title is necessary or relevant). That purpose is defeated if the ownership interests are listed as held by unnamed persons whose identity can only be determined by consulting birth and death records or the decedent's will, if there was one.

The issuance of certificates of title to "the Heirs of" should be curtailed and done only sparingly, if at all, and the Land Court should determine who the heirs are and name them and the interest they hold on any certificates of title it issues. A certificate that designates "the Heirs of" as the owners does not set forth the name of any person, let alone the names of all persons, holding an interest in the land and that phrase does not name an "entity." It just designates a group of unnamed persons whose identities and interests will presumably be identified at some later time.

b. *Lack of Notice to Nena or His Father*

The presence of others on the land Inwalul for over 60 years who had never been notified of the land registration proceedings would lessen the plaintiffs' likelihood of success on the merits. As we have recently noted, persons who have been openly residing on land for a long time are persons who must be given notice of any land registration proceedings for that land, otherwise the determination of

ownership (and any subsequent certificate of title) is not valid. Setik v. Ruben, 17 FSM Intrm. 465, 473-74 (App. 2011) (relying on Kosrae case law) (in failing to make a reasonable inquiry as to the Setiks' occupation of the land, in failing to provide notice to the Setiks of the determination of ownership hearing, and in issuing the determination of ownership to another without an application by her, the Land Commission deprived the Setiks of due process; determination of ownership was thus invalid, and the matter must be remanded to the Land Commission for a new determination). When a person has asserted a claim to the land and was not given notice of the registration proceedings as required by law, the Determination of Ownership and the Certificate of Title for that land is not conclusive as upon him. Andon v. Shrew, 15 FSM Intrm. 315, 321 (Kos. S. Ct. Tr. 2007); Nena v. Heirs of Nena, 9 FSM Intrm. 528, 530 (Kos. S. Ct. Tr. 2000); Sigrah v. Kosrae State Land Comm'n, 9 FSM Intrm. 89, 93 (Kos. S. Ct. Tr. 1999); *see also* Albert v. Jim, 11 FSM Intrm. 487, 490 (Kos. S. Ct. Tr. 2003); Sigrah v. Kosrae State Land Comm'n, 11 FSM Intrm. 246, 248 (Kos. S. Ct. Tr. 2002).

The appellees acknowledge that neither Nena nor his father were given notice of the registration proceeding. The appellees contend that even though Nena and his father had occupied or used Inwalul for a long time, neither Nena nor his father had to be given notice because they did not own Inwalul. That argument must be rejected. The determination of who the owners are is made at the end of the land registration process, not before it has started. The long-term presence of Nena and his father on Inwalul entitled them to notice of the land registration proceeding for Inwalul. *See* Setik, 17 FSM Intrm. at 473-74. Furthermore, the land registration process is, with certain exceptions, supposed to determine all interests in the land, not just ownership interests. Thus, even if Nena or his father did not own Inwalul, they may have held some other interest, such as a use interest exceeding one year, that had to be determined and included in the certificate of title. *See* Kos. S.C. § 11.615(3)(b) (stating that use interests and leases for terms not exceeding one year do not have to be included on the certificate of title in order to be valid).

c. *Summary*

We do not determine who will ultimately prevail. We do note that, even if the plaintiffs-appellees are more likely to succeed on the merits than Nena, their likelihood of success on the merits is, because of the contents of the Inwalul certificates of title and how they were obtained without notice, nowhere near the certainty that the trial court assumed it was. Since certificates of title are prima facie evidence of ownership against all persons who did not have notice of the registration proceedings, Kos. S.C. § 11.615(3), the current certificates of title for Inwalul may mean that the likelihood-of-success factor would weigh in the plaintiffs' favor. In an action for trespass, a plaintiff with a certificate of title for the parcel usually has a greater possessory interest to the disputed property. Shrew v. Killin, 10 FSM Intrm. 672, 674 (Kos. S. Ct. Tr. 2002). But, in light of our analysis below, the likelihood-of-success factor is strongly outweighed by the irreparable-harm and the balance-of-the-injuries factors, which do not favor the preliminary injunction's issuance.

2. *Irreparable Harm*

The party seeking a preliminary injunction must be faced with irreparable harm before the litigation's conclusion and there must be a clear showing that immediate and irreparable injury or loss or damages would otherwise occur, and there must be no adequate alternative remedy. Norita v. Tilfas, 13 FSM Intrm. 321, 324 (Kos. S. Ct. Tr. 2005). When money damages or other relief will fully compensate for the threatened interim action, a preliminary injunction should be denied. Perman v. Ehsa, 18 FSM Intrm. 432, 439 (Pon. 2012) (irreparable harm is harm that cannot be fully compensated by money damages); FSM v. GMP Hawaii, Inc., 17 FSM Intrm. 555, 593 (Pon. 2011); GE Seaco Servs., Ltd. v. Federated Shipping Co., 14 FSM Intrm. 159, 162 (Pon. 2006); Carlos Etscheit Soap Co. v. Epina, 8 FSM Intrm. 155, 161 (Pon. 1997); Ponape Transfer & Storage v. Pohnpei State Public

Lands Auth., 2 FSM Intrm. 272, 276 (Pon. 1986).

During the July 11, 2013 hearing, the trial judge suggested that the plaintiffs' certificates of title showed that there was irreparable harm. Tr. at 7. In its preliminary injunction order the Kosrae State Court found irreparable harm as: "Plaintiffs want to develop the parcels but could not because defendant is occupying the land refusing to leave." Prelim. Inj. at 2. There was no explanation of why this would constitute irreparable harm – why this harm could not be fully compensated by money damages.

The Kosrae State Court did not make any findings that would support the idea that the plaintiffs would suffer irreparable harm if the preliminary injunction did not issue. It did not find that a money judgment would be inadequate compensation for the plaintiffs' inability to develop Inwalul until the litigation has concluded. Furthermore, it probably could not find that the plaintiffs faced irreparable harm when the plaintiffs did not specify how they intended to develop Inwalul and how Nena's presence would thwart that development.

Since the threat of irreparable harm before the litigation's conclusion is a prerequisite to preliminary injunctive relief, GMP Hawaii, Inc., 17 FSM Intrm. at 593; Ponape Transfer & Storage, 2 FSM Intrm. at 276, the preliminary injunction should not have been issued because the plaintiffs did not face irreparable harm. The Kosrae State Court thus abused its discretion by failing to understand the nature of irreparable injury. If it had understood the nature of irreparable injury, it could not have found that the plaintiffs were threatened with irreparable injury.

3. *Balance of Injuries*

In considering the balance-of-the-injuries factor, the Kosrae State Court ruled that, "[i]f injunctive relief is denied, Plaintiff will continue to experience interference with development of the parcels, as defendant is continuing to return to the parcels." Prelim. Inj. at 2. Since this factor is about the balance of possible injuries, the Kosrae State Court was, in addition to considering the harm to the plaintiffs, required to also consider the possible injuries to Nena. It completely failed to do so, even though it earlier found that the "[d]efendants have relied upon use of the parcels for more than sixty years." Prelim. Inj. at 1. Removal of someone from land that person has used or occupied for over 60 years is, on balance, a much greater harm than the plaintiffs having to wait a relatively short time before the litigation is over to fulfill their desire to now develop the land that they have not tried to develop for the last 60 years.

The Kosrae State Court abused its discretion by misunderstanding the balance-of-injuries factor and by considering only the speculative injury to the plaintiffs and completely failing to consider the actual injuries to Nena. This factor clearly favors Nena and does not favor the issuance of a preliminary injunction.

4. *Other Factors*

Assuming that, as the Kosrae State Court found, the public interest factor favors the plaintiffs and that their likelihood of success is greater than Nena's, a weighing of all four factors would nevertheless result in the denial of a temporary restraining order or of a preliminary injunction. This is especially true since the plaintiffs are not threatened with irreparable harm, the most important factor and a prerequisite, and since the balance-of-injuries factor weighs heavily in Nena's favor.

Furthermore, the July 12, 2013 preliminary injunction does not preserve the status quo pending the litigation's conclusion. If it did, it would have only enjoined Nena from building any new structures

on Inwalul. Instead it ordered Nena not to enter land he had been entering, using, and allegedly occupying for over a half century. Nena's previous entry, use, and occupancy was the status quo, and the preservation of the status quo is a preliminary injunction's primary purpose. Marsolo, 17 FSM Intrm. at 381; Sigrah, 12 FSM Intrm. at 518; Seventh Kosrae State Legislature, 11 FSM Intrm. at 113; Palik, 9 FSM Intrm. at 312.

C. *Bond*

The Kosrae State Court did not require that the plaintiffs post a bond when it issued its preliminary injunction, nor was the subject even raised during the temporary restraining order hearing. Kosrae Civil Procedure Rule 65(c) provides that:

> No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum, if any, as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

Kos. Civ. R. 65(c).

Since the Kosrae State Court never considered requiring a bond and especially since the Kosrae State Court's preliminary injunction was not aimed at preserving the status quo (otherwise the Kosrae State Court would have only enjoined Nena from building new structures on Inwalul), this is a further ground to hold the July 12, 2013 preliminary injunction invalid and its issuance an abuse of the trial court's discretion.

V. Conclusion

The Kosrae State Court abused its discretion by issuing a preliminary injunction without proper notice and an opportunity to be heard; by issuing a preliminary injunction when there was no irreparable injury to the movants and the balance of harms strongly favored the non-movant; and by issuing a preliminary injunction without requiring or considering a bond. Accordingly, we reverse the July 12, 2013 preliminary injunction. The trial court may proceed to a determination of the case on its merits.

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