the merits of their claim. Our ruling only requires that the appellants be given the opportunity to mount a collateral attack on the Trust Territory High Court judgment. The Heirs of Akinaga's argument that the appellants are bound by the Trust Territory High Court judgment but cannot attack that judgment because they were not parties to that case is nonsense and must be rejected.

The Heirs of Akinaga also contend that the only thing that should be left to do in this case is that the Land Court should issue a certificate of title in their name. This would not be true even if they had completely prevailed in this appeal. This is because even when a previous court case has res judicata effect and status, it is conclusive only between the parties to the case and those claiming under them and no one else. We will not speculate who, but in this or any similar case, there could be persons who were not parties to the court case and who do not claim under those parties but who have their own claim to the land. The Land Court must still go through all of its usual procedures to determine if there are other claimants and, if there are, adjudicate their claims, before it can issue a determination of ownership and, if there is no appeal or if its decision is affirmed on appeal, a certificate of title.

VI.

Accordingly, the petition for rehearing is denied. The mandate shall issue herewith. FSM App. R. 41.

* * * *

FSM SUPREME COURT TRIAL DIVISION

PERDUS I. EHSA AND TIMAKIO I. EHSA, Plaintiffs, vs. FSM DEVELOPMENT BANK, JOSES GALLEN, HON. READY JOHNNY, POHNPEI STATE, and POHNPEI STATE DEPARTMENT OF LAND AND NATURAL RESOURCES, and POHNPEI STATE COURT OF LAND TENURE, Defendants.	)	CIVIL ACTION NO. 2013-030

MEMORANDUM AND ORDER IMPOSING RULE 11 SANCTIONS

Martin G. Yinug
Chief Justice

Decided: April 29, 2014

APPEARANCES:

For the Plaintiffs: Benjamin M. Abrams, Esq.
P.O. Box 141
Hagatna, Guam 96932

For the Defendant: Nora E. Sigrah, Esq.
(FSM Dev. Bank) P.O. Box M
Kolonia, Pohnpei FM 96941

* * * *

HEADNOTES

Civil Procedure – Motions

The certification requirement of FSM Civil Rule 6(d) is not mandatory when it is apparent from the motion's nature that no agreement would ever be considered by or forthcoming from plaintiffs and that any attempt to seek such an agreement would be futile. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 370 (Pon. 2014).

Civil Procedure – Filings; Civil Procedure – Sanctions

If a submission is signed in violation of Rule 11, the Court must impose an appropriate sanction on the person who signed it, a represented party, or both. The decision whether to impose sanctions for violation of Rule 11 on the attorney or the client is at the court's sound discretion. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 371 (Pon. 2014).

Civil Procedure – Filings; Civil Procedure – Sanctions

The purpose of Rule 11 sanctions is to deter baseless or frivolous filings. Both bad faith arguments and frivolous, good faith arguments are sanctionable. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 371 (Pon. 2014).

Civil Procedure – Sanctions

Rule 11 Sanctions can be imposed when 1) a pleading, motion, or other paper is not, to the best of the signer's knowledge, information, and belief formed after reasonable inquiry well grounded in fact and warranted by law or a good faith argument for extension, modification, or reversal of existing law, or 2) when the document is for any improper purpose such as delay or harassment. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 371 (Pon. 2014).

Civil Procedure – Frivolous Actions; Civil Procedure – Sanctions

A legal contention is not warranted by existing law if it is based on legal theories that are plainly foreclosed by well-established legal principles and authoritative precedent, unless the advocate plainly states that he or she is arguing for a reversal or change of law and presents a nonfrivolous argument in support of that position. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 371 (Pon. 2014).

Civil Procedure – Sanctions; Mandamus and Prohibition

Since a writ of prohibition can only issue from a superior court against an inferior court, when, although the plaintiffs' complaint requested injunctive relief rather than specifically requesting a writ of prohibition, it is clear that they in actuality were requesting a writ of prohibition, any possibility of relief is plainly foreclosed. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 371-72 (Pon. 2014).

Civil Procedure – Sanctions

A legal contention that is made in spite of the obvious preclusive effect of a judgment in prior litigation is not warranted by existing law. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 372 n.2 (Pon. 2014).

Civil Procedure – Sanctions

An argument for a change of law is frivolous if no reasonable argument can be advanced for the

change. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 372 (Pon. 2014).

Civil Procedure – Sanctions

The plaintiffs' arguments are all the more frivolous when they fail to advance any argument for a modification of the law, and instead argue for a modification of the law as if it were existing law. Such an approach would not necessarily give rise to Rule 11 sanctions if a reasonable argument for modification of the law could be made, but not when it is impossible to advance a reasonable argument for modification of the appellate precedent. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 372 (Pon. 2014).

Civil Procedure – Frivolous Actions; Civil Procedure – Sanctions

When the plaintiffs' complaints seek the same relief that had previously been denied by both the trial and appellate divisions, their efforts to stop the bank's judgment enforcement actions through this case represent frivolous and vexatious efforts by the same parties that have previously failed in both trial and appellate divisions, and when they were aware at the time of filing that these complaints offered no reasonable chance of relief, the court must infer that the complaints were filed for the improper purposes of causing unnecessary delay of bank's judgment enforcement actions and for causing needless increase in its litigation costs. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 373 (Pon. 2014).

Civil Procedure – Sanctions

FSM Civil Rule 11 directs that the Court shall impose sanctions when a violation of the rule has been shown, leaving the nature and the amount of penalty to the court's discretion. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 373 (Pon. 2014).

Civil Procedure – Sanctions

It is within the court's discretion to apportion the sanction between an attorney and his client, and the court will impose a sanction on the attorney rather than his client when the offending conduct relates to work that lies within the supposed competence of counsel. The decision to seek a writ of prohibition from a court despite binding precedent that speaks to that court's lack of jurisdiction is assuredly work that lies within the supposed competence of counsel. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 373 (Pon. 2014).

Civil Procedure – Sanctions

When it is clear that the complaints were not supported by law and were filed for the purpose of delay or harassment, the court will grant the opposing party's motion for sanctions in the form of costs including reasonable attorney's fees. These sanctions shall be imposed against the plaintiffs' counsel of record. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 373 (Pon. 2014).

* * * *

COURT'S OPINION

MARTIN G. YINUG, Chief Justice:

This matter comes before the Court on the motion of Defendant FSM Development Bank (FSMDB) to impose Rule 11 sanctions against Plaintiffs. FSMDB filed its motion on February 3, 2014 and Plaintiffs filed a motion in opposition on February 10, 2014. For the following reasons the Court grants FSMDB's motion to impose Rule 11 sanctions on Plaintiffs, and orders Plaintiffs' attorney of record, Benjamin Abrams, to compensate Defendant FSMDB for the costs of defending this suit, including reasonable attorney's fees.

I. Background

This matter is the fourth action filed by Plaintiffs seeking to restrain enforcement of a judgment entered in Civil Action No. 2007-035. Plaintiffs have unsuccessfully attempted to vacate the judgment in Civil Action No. 2007-035, and have appealed through Appeal No. P3-2013 the March 13, 2013 order Denying Relief from Judgment. Plaintiffs have declined to post supersedeas bond in that matter, and therefore the Appellate Panel has not granted a stay of the judgment.

Plaintiffs unsuccessfully sought to vacate the October 2, 2013 hearing set in Civil Action No. 2007-035 on FSMDB's judgment enforcement actions. Plaintiffs then sought a writ of prohibition from the Appellate Division, seeking restraint of the Trial Court's judgment enforcement actions in Civil Action No. 2007-035. Docketed as Appeal Case No. P5-2013, Plaintiffs' petition was denied by Order entered September 27, 2013.

Plaintiffs then initiated the instant litigation on October 1, 2013 which requested, inter alia, that a temporary restraining order (TRO) be issued to enjoin a hearing from being held the next day on October 2, 2013 in Civil Action No. 2007-035. Plaintiffs subsequently filed a first amended complaint on October 8, 2013. The first amended complaint requested that this Court rule that the Justice presiding over Civil Action No. 2007-035 was acting in excess of his jurisdiction, and grant injunctive relief by enjoining the presiding Justice in that matter from enforcing the judgment.

On January 22, 2014 this Court dismissed this action in its entirety for lack of subject matter jurisdiction, because one justice of the trial division of the FSM Supreme Court does not have jurisdiction to rule on the validity of the judicial acts of a fellow Justice. [Ehsa v. FSM Dev. Bank, 19 FSM R. 253 (Pon. 2014)] Plaintiffs then filed a motion to reconsider on January 27, 2014, which was denied by this Court on February 10, 2014.

In addition to their efforts in the FSM Supreme Court, the Plaintiffs, on October 2, 2013 also initiated an action in Pohnpei Supreme Court, docketed as PCA No. 248-13,[1] in which they raise much the same issues as in the First Amended Complaint in this case. In PCA No. 248-13 Plaintiffs seek a preliminary and permanent injunction against Pohnpei State restraining it from registering any transfer of title which may be ordered by the FSM Supreme Court in Civil Action No. 2007-035. Although FSMDB is not a named defendant in PCA No. 248-13, it has filed a pending motion to intervene in that matter.

II. Analysis

A. *Rule 6(d) Certification Not Necessary*

FSMDB states that it did not contact Plaintiffs to request their acquiescence to the motion for Rule 11 Sanctions. It correctly argues that the certification requirement of FSM Civil Rule 6(d) is not mandatory in this instance, because it is apparent from the motion's nature that no agreement would ever be considered by or forthcoming from plaintiffs and that any attempt to seek such an agreement would be futile. Fan Kay Man v. Fananu Mun. Gov't, 12 FSM Intrm. 492, 496 n.3 (Chk. 2004) (stating that Rule 6(d) certification is not necessary in the context of a Rule 11 motion for sanctions). As FSMDB is correct in stating that the Rule 6(d) certification requirement is not mandatory in this

[1] PCA No. 248-13 has since been removed to this Court and is docketed as Civil Action No. 2013-032. In that case there are pending motions contesting the removal and also pending motions for consolidation of Civil Action No. 2013-032 with the instant matter.

instance, the Court will exercise its discretion to consider FSMDB's motion for Rule 11 sanctions despite its noncompliance with FSM Civil Rule 6(d). *See* FSM Social Sec. v. Weilbacher, 17 FSM Intrm. 217, 224 (Kos. 2010) (whether to deny a motion for failure to comply with the certification requirement is within the sound discretion of the court).

B. *Standard for Imposing Rule 11 Sanctions*

If a submission is signed in violation of Rule 11, the Court must impose upon the person who signed it, a represented party, or both, an appropriate sanction. Damarlane v. Pohnpei Transp. Auth., 18 FSM Intrm. 52, 57 (Pon. 2011). The decision whether to impose sanctions for violation of Rule 11 on the attorney or the client is at the sound discretion of the Court. Amayo v. MJ Co., 14 FSM Intrm. 355, 362 (Pon. 2006). The purpose of Rule 11 sanctions is to deter baseless or frivolous filings. Berman v. Kolonia Town, 6 FSM Intrm. 433, 436 (App. 1994). Both bad faith arguments and frivolous, good faith arguments are sanctionable. *Id.* at 435.

Rule 11 Sanctions can be imposed when (1) a pleading, motion or other paper is not, to the best of the signer's knowledge, information, and belief formed after reasonable inquiry well grounded in fact and warranted by law or a good faith argument for extension, modification, or reversal of existing law, or (2) when the document is for any improper purpose such as delay or harassment. Adams v. Island Homes Constr., Inc., 10 FSM Intrm. 466, 474 (Pon. 2001); Damarlane v. FSM, 7 FSM Intrm. 383, 384 (Pon. 1996).

C. *Complaint and First Amended Complaint are not Supported by Law*

A legal contention is not warranted by existing law if it is based on legal theories that are plainly foreclosed by well-established legal principles and authoritative precedent, unless the advocate plainly states that he or she is arguing for a reversal or change of law and presents a nonfrivolous argument in support of that position. *See generally* 2 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 11.11[7][a] (3d ed. 1999). All six causes of action of the first amended complaint seek orders to restrain or to set aside actions and orders entered by Honorable Ready Johnny in Civil Action No. 2007-035. These causes of action are plainly foreclosed by the Appellate Division's decision in Berman v. FSM Supreme Court (I), 7 FSM Intrm. 8 (App. 1995). That binding precedent holds that a writ of prohibition can only issue against an inferior court. *Id.* at 10. It is clear that Plaintiffs were aware of this precedent, since it was cited in their unsuccessful petition for a writ of prohibition from the Appellate Division. That petition requested the exact same relief that Plaintiffs requested from this Court. Although Plaintiffs were aware of the Berman (I) decision, they declined to address that precedent in their October 21, 2013 memorandum in favor of upholding this Court's jurisdiction. Indeed, Plaintiffs failed to cite any authority from this jurisdiction in support of their contention that this Court has jurisdiction to issue a writ of prohibition against a fellow Justice of the FSM Supreme Court Trial Division.

Plaintiffs contend that sanctions are not appropriate in this instance because they should not be punished for presenting a creative argument on an issue of first impression. However, as explained *supra*, the question of this Court's jurisdiction in this instance is plainly resolved by binding precedent. The Berman (I) decision held that a writ of prohibition can only issue from a superior court against an inferior court. Although Plaintiffs' First Amended Complaint requested injunctive relief rather than specifically requesting a writ of prohibition, it is clear that Plaintiffs in actuality were requesting a writ of prohibition. *See* BLACK'S LAW DICTIONARY 1212 (6th ed. 1990) (defining a writ of prohibition as "that process by which a superior court prevents an inferior court or tribunal possessing judicial . . . powers from exceeding its jurisdiction in matters over which it has cognizance . . .") The Berman (I) decision

plainly forecloses any possibility of relief in this instance.[2]

Plaintiffs are persuasive in arguing that Rule 11 is not intended to chill an attorney's enthusiasm or creativity in pursuing legal theories. *See* Adv. Comm. Note to Fed. R. Civ. P. 11 (1983); Berman v. Kolonia Town, 6 FSM Intrm. at 436 (where a case of first impression concerns an issue of national importance a court will make allowance for wishful optimism before deeming a position frivolous). Although the Court does not wish to impede zealous or creative advocacy, it is clear that in this instance plaintiffs failed to advance a non-frivolous argument for modification of the law.[3] An argument for a change of law is frivolous if no reasonable argument can be advanced for the change. Eastway Constr. Corp. v. City of New York, 762 F.2d 243, 253-54 (2d Cir. 1985), *modified*, 821 F.2d 121 (2d Cir.), *cert denied*, 484 U.S. 918 (1987) (sanctions appropriate when, after reasonable inquiry, competent attorney could not form reasonable belief that pleading was warranted by good faith argument for change of law). Plaintiffs' arguments are all the more frivolous for failing to advance *any* argument for a modification of the law, and instead arguing for a modification of the law as if it were existing law.

Such an approach would not necessarily give rise to Rule 11 sanctions if a reasonable argument for modification of the law could be made. *See* Golden Eagle Distrib. Corp. v. Borroughs Corp., 801 F.2d 1531, 1539 (9th Cir. 1986) (reversed sanctions imposed on counsel whose arguments were supportable but who argued for extension of the law as if it were existing law). In this instance, however, it is impossible to advance a reasonable argument for modification of the Berman (I) precedent. Indeed, the instant matter illustrates why it is inadvisable to allow one Justice of the Supreme Court Trial Division to issue a writ of prohibition against a fellow Justice. The crux of Plaintiffs' argument is that this Court should issue a writ of prohibition against Hon. Justice Ready Johnny because he is acting in excess of his jurisdiction. Were this Court to accept Plaintiffs' arguments and grant the relief requested by Plaintiffs then, presumably, Defendants could file a complaint before a third Justice of the Supreme Court Trial Division seeking to invalidate this Court's order for acting in excess of jurisdiction. If that third Justice accepted Defendants' argument and invalidated this Court's order then Plaintiffs could proceed to argue before a fourth Justice and so on *ad infinitum*. It is readily apparent that adopting Plaintiffs' position on this Court's jurisdiction would undermine the finality of judgments, encourage duplicative litigation and squander limited judicial resources.

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[2] It is noteworthy that the Appellate Division, which is the only court with jurisdiction to grant the relief requested by Plaintiffs, examined Plaintiffs petition for a writ of prohibition on the merits and decided that a writ of prohibition was not warranted. Thus, even if this Court had jurisdiction to grant the relief requested, the principle of *res judicata* would foreclose any possibility of relief. A legal contention that is made in spite of the obvious preclusive effect of a judgment in prior litigation is not warranted by existing law. 2 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 11.11[7][a] (3d ed. 1999); *see e.g.*, Southern Leasing Partners, Ltd. v. McMullan, 801 F.2d 783, 788 (5th Cir. 1986) (sanctions appropriate where complaint consisted of claims previously asserted by plaintiff and dismissed).

[3] Indeed, Plaintiffs did not address the question of this Court's jurisdiction to issue a writ of prohibition against a fellow Justice of the FSM Supreme Court Trial Division until the Court ordered that a memorandum on the issue be filed with the Court. Since Plaintiffs had cited the Berman (I) decision in previous litigation, it is clear that Plaintiffs were aware that this Court's jurisdiction was tenuous at best. That Plaintiffs failed to raise the issue in the context of an application for a temporary restraining order shows a lack of candor towards this tribunal.

D. *This Case was Imposed for Improper Purpose of Delay or Harassment*

The complaints filed by Plaintiffs seek the same relief that had previously been denied in Civil Action No. 2007-035 and Appeal No. P5-2013. Plaintiffs' efforts to stop FSMDB's judgment enforcement actions through this case represent frivolous and vexatious efforts by the same parties that have previously failed at both Trial and Appellate Divisions. *See* Nahnken of Nett v. Pohnpei, 7 FSM Intrm. 171, 180 (Pon. 1995) (the court strongly disapproves of as frivolous and a waste of the court's resources the same plaintiff, represented by the same counsel, in an action involving the same land, repeatedly asserting previously denied theories).

As explained *supra*, Plaintiffs were aware at the time of filing that the complaints in this case offered no reasonable chance of relief. Based upon the Court's records that all previous efforts of Plaintiffs to stop FSMDB's judgment enforcement actions have failed, and based upon the circumstances described above, the Court must infer that the complaints herein were filed for the improper purposes of causing unnecessary delay of FSMDB's judgment enforcement actions and for causing needless increase in Defendants' litigation costs.

III. CONCLUSION

FSM Civil Rule 11 directs that the Court shall impose sanctions when a violation of the rule has been shown, leaving the nature and the amount of penalty to the court's discretion. Berman v. Kolonia Town, 6 FSM Intrm. 242, 247 (Pon. 1993). It is also within the Court's discretion to apportion the sanction between an attorney and his client. *See* Amayo, 14 FSM Intrm. at 362. The Court will impose a sanction on the attorney rather than his client where the offending conduct relates to work that lies within the supposed competence of counsel. *Id.* The decision to seek a writ of prohibition from this Court despite binding precedent that speaks to this Court's lack of jurisdiction is assuredly work that lies within the supposed competence of counsel. *See id.* (seeking appellate review and a stay may be characterized as work that lies within the supposed competence of counsel).

Defendant FSMDB requests that the Court impose a monetary sanction against Plaintiffs in the form of reasonable attorney's fees for the time expended by FSMDB's counsel in representation of this case. As it is clear that the complaints in this action were not supported by law and were filed for the purpose of delay or harassment, the Court hereby GRANTS FSMDB's motion for sanctions in the form of costs including reasonable attorney's fees. These sanctions shall be imposed against Plaintiffs' counsel of record, Benjamin Abrams.

FSMDB shall submit a detailed statement of its costs including reasonable attorney's fees within 10 days of the service of this order. Benjamin Abrams shall have an additional 10 days to respond to hat statement.

* * * *