

FSM SUPREME COURT TRIAL DIVISION

REDLEY KILLION,) CIVIL ACTION NO. 2014-1007
)
Plaintiff,)
)
vs.)
)
CHUUK STATE GOVERNMENT,)
)
Defendant.)
_____)

ORDER GRANTING PRELIMINARY INJUNCTION

Ready E. Johnny
Associate Justice

Hearing: September 3, 2014
Decided: September 3, 2014

APPEARANCES:

For the Plaintiff: Kasio Mida, Jr., Esq.
Ramp & Mida Law Firm
P.O. Box 1480
Kolonias, Pohnpei FM 96941

For the Defendant: Sabino S. Asor, Esq.
Chuuk Attorney General
Office of the Chuuk Attorney General
P.O. Box 1050
Weno, Chuuk FM 96942

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HEADNOTES

Civil Procedure – Dismissal – Before Responsive Pleading; Civil Procedure – Pleadings

An answer or a Rule 12(b) motion is not untimely and will not be disregarded or stricken when no default has yet been requested and entered. Killion v. Chuuk, 19 FSM R. 539, 540 (Chk. 2014).

Civil Procedure – Injunctions

In exercising its broad discretion in considering whether to grant a preliminary injunction, the court will consider 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 to the parties that would flow from granting or denying the relief, and 4) any impact on the public interest. Killion v. Chuuk, 19 FSM R. 539, 541 (Chk. 2014).

Civil Procedure – Injunctions – Irreparable Harm

The threat of irreparable harm before the litigation’s conclusion is a prerequisite to preliminary

injunctive relief. When money damages or other relief will fully compensate for the threatened interim action, irreparable harm does not exist and a preliminary injunction should be denied. Killion v. Chuuk, 19 FSM R. 539, 541 (Chk. 2014).

Civil Procedure – Injunctions – Irreparable Harm; Property – Tidelands

A plaintiff whose tideland is being dredged by another is threatened with irreparable harm because once a tideland has been dredged its very nature is altered and cannot easily be restored and because, analogously, harm to land is often considered irreparable since land is unique. Killion v. Chuuk, 19 FSM R. 539, 541 (Chk. 2014).

Civil Procedure – Injunctions – Likelihood of Success

A plaintiff's likelihood of success on the merits, while not certain, is great when he has a deed to the tideland and his ownership was not questioned for at least twenty years after his purchase of it although his claim to ownership was open and notorious and when he could also possibly prevail under an adverse possession theory to the tidelands. Killion v. Chuuk, 19 FSM R. 539, 541 (Chk. 2014).

Civil Procedure – Injunctions – Balance of Injuries

The balance-of-injuries factor favors a plaintiff who is faced with irreparable harm by the state dredging his remaining unfilled tideland while the harm to the state is not so great since it must only find and use some other site, including the nearby tideland to dredge the coral it wants to use for road maintenance and sale. Killion v. Chuuk, 19 FSM R. 539, 541 (Chk. 2014).

Civil Procedure – Injunctions – Public Interest

While the public interest might favor the state's continuing road maintenance, that interest is not harmed by enjoining the state from dredging the plaintiff's tideland because of the availability of other coral sources. Killion v. Chuuk, 19 FSM R. 539, 541 (Chk. 2014).

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COURT'S OPINION

READY E. JOHNNY, Associate Justice:

On September 3, 2014, this came before the court to hear the plaintiff's Verified Motion for Preliminary Injunction. The motion is granted as follows.

At the start of the hearing the plaintiff, Redley Killion, objected to the defendant State of Chuuk filing that morning a Rule 12(b) motion to dismiss this case and to any use of the affidavit attached thereto because the motion had been filed more than 20 days after his complaint had been served and the time to answer or otherwise defend had run. Killion's objection must be rejected. An answer or a Rule 12(b) motion is not untimely and will not be disregarded or stricken when no default has yet been requested and entered. O'Sullivan v. Panuelo, 10 FSM R. 257, 260 (Pon. 2001). Killion may file and serve, no later than September 12, 2014, his opposition to the motion to dismiss.

Killion alleges that the state is trespassing on his tideland and that by dredging his tideland the state is taking his property without due process of law. He seeks injunctive relief from this activity. He asserts that he bought the tideland in 1991, for which he has a deed, and that he filled in part of the tideland and constructed the Victoria Gardens Apartments, a laundromat, and some warehouses on the landfill and that since November 2013, the state has been using its heavy equipment to dredge the tideland next to the Victoria Gardens landfill and has been selling the dredged coral.

In exercising its broad discretion in considering whether to grant a preliminary injunction, the court will consider 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 to the parties that would flow from granting or denying the relief, and 4) any impact on the public interest. Mailo v. Chuuk Health Care Plan, 18 FSM R. 501, 505 (Chk. 2013).

The state asserts that Killion's likelihood of success and possible irreparable harm is small because, in its view, the ownership of the tidelands is now disputed because not all members of the lineage that owned it in 1991 had consented to its sale. The state further contends that the boundaries of Killion's tideland are not clear and that he does not own the NAPA tideland as he claims.

The testimony presented and the argument made at the hearing clarified that Killion does not claim to own the nearby NAPA tideland as the state had thought, but that he only owns the tideland "straight out" from the Victoria Gardens Apartments and seeks to enjoin the state from dredging the Victoria Gardens Apartments tideland.

The threat of irreparable harm before the litigation's conclusion is a prerequisite to preliminary injunctive relief and when money damages or other relief will fully compensate for the threatened interim action, irreparable harm does not exist and a preliminary injunction should be denied. Mailo, 18 FSM R. at 506. Killion is threatened with irreparable harm because once a tideland has been dredged its very nature is altered and cannot easily be restored. Analogously, harm to land is often considered irreparable because land is unique. See Sigrah v. Kosrae, 12 FSM R. 513, 520 (Kos. S. Ct. Tr. 2004). The same should be true of tideland.

Killion's likelihood of success on the merits, while not certain, is great because he has a deed to the tideland and his ownership was not questioned for at least twenty years since his purchase of it although his claim to ownership was open and notorious and thus, in his view, he could also prevail under an adverse possession theory to the Victoria Gardens Apartments tidelands.

The balance-of-injuries factor also favors Killion because he is faced with irreparable harm by the state dredging his remaining unfilled tideland while the harm to the state is not so great since it must only find and use some other site, including the nearby NAPA tideland to dredge the coral it wants to use for road maintenance and sale. And while the public interest might favor the state's continuing road maintenance that interest is not harmed because of the availability of other coral sources.

Accordingly, since the requisite factors, when weighed and balanced, favor the preliminary injunction's issuance, NOW THEREFORE IT IS HEREBY ORDERED that Redley Killion's motion is granted and that a preliminary injunction shall issue herewith. The State of Chuuk, its agents, successors, employees, attorneys, assigns, and all persons acting in concert or in cooperation with it or at its direction shall be enjoined from any further dredging in the tidelands immediately adjacent to and straight out from the Victoria Gardens Apartments in Mwan, Weno. This preliminary injunction will not apply to the tidelands adjacent to the NAPA site.

The plaintiff, Redley Killion, shall, within ten days of this order, post a security bond with the court of \$1,000 "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." FSM Civ. R. 65(c). The funds shall be put in an interest-bearing account while held by the court.