

VI. CONCLUSION

Based on the foregoing, it is hereby ORDERED that the Plaintiff's Motion for Costs is DENIED.

* * * *

CHUUK STATE SUPREME COURT TRIAL DIVISION

IN THE MATTER OF THE ESTATE OF)	CSSC PROBATE NOS. 48-97; 50-97; and 4-98
RAYMOND SETIK,)	
)	
Deceased,)	
)	
MARIANNE SETIK,)	
)	
Petitioner.)	
_____)	

ORDER

Repeat R. Samuel
Associate Justice

Decided: September 3, 2014

APPEARANCE:

For the Petitioner: Marstella E. Jack, Esq.
P.O. Box 2210
Kolonias, Pohnpei FM 96941

* * * *

HEADNOTES

Civil Procedure – Injunctions

To obtain a temporary restraining order or a preliminary injunction, a petitioner must show: 1) the possibility of irreparable injury; 2) the balance of possible injuries between the parties; 3) the petitioner's likelihood of success on the merits; and 4) any impact on the public interest. In re Estate of Setik, 19 FSM R. 544, 546 (Chk. S. Ct. Tr. 2014).

Civil Procedure – Injunctions

While a temporary restraining order may issue without notice and expires within 14 days unless extended by the court for good cause or by consent of the restrained party, a preliminary injunction cannot issue without notice and usually remains in effect until a final determination on the merits. In re Estate of Setik, 19 FSM R. 544, 546 (Chk. S. Ct. Tr. 2014).

Civil Procedure – Injunctions – Irreparable Harm

The possibility that the FSM Court will issue an order denying stay motions and/or affirming on appeal the decision to sell the property does not constitute the possibility of irreparable injury required for the issuance of a temporary restraining order. An unwelcome outcome is among the everyday risks

of litigation and does not constitute irreparable injury for purposes of a temporary restraining order. *In re Estate of Setik*, 19 FSM R. 544, 547 (Chk. S. Ct. Tr. 2014).

Civil Procedure – Injunctions – Irreparable Harm

The sale of the property does not create irreparable harm when it can be fully remedied with money damages if the petitioner is ultimately able to prevail on appeal and reverse the sale order. *In re Estate of Setik*, 19 FSM R. 544, 547 (Chk. S. Ct. Tr. 2014).

Civil Procedure – Injunctions – Likelihood of Success

When the petitioner has acknowledged she may not prevail on appeal and has failed to identify a single error of the FSM Court in entering the sale order, the petitioner has failed to show that she has likelihood of success on the merits. *In re Estate of Setik*, 19 FSM R. 544, 548 (Chk. S. Ct. Tr. 2014).

Civil Procedure – Injunctions – Balance of Injuries

With respect to the balance-of-possible-injuries requirement, when any potential harm suffered by the petitioner is minimal considering that she cannot establish a likelihood of success on the merits, the nonmovants would bear the risk. *In re Estate of Setik*, 19 FSM R. 544, 548 (Chk. S. Ct. Tr. 2014).

Civil Procedure – Injunctions – Public Interest

When, based on the petitioner's arguments in her motion, it is unclear how the public interest would be served by entering a temporary restraining order, the court cannot find, based on the petitioner's unsupported allegations (which are not evidence), that a temporary restraining order is warranted. *In re Estate of Setik*, 19 FSM R. 544, 548 (Chk. S. Ct. Tr. 2014).

Civil Procedure – Injunctions

When each of the four factors favors denying a motion for a temporary restraining order, it will be denied. *In re Estate of Setik*, 19 FSM R. 544, 548 (Chk. S. Ct. Tr. 2014).

* * * *

COURT'S OPINION

REPEAT R. SAMUEL, Associate Justice:

On July 24, 2014, Petitioner Marianne Setik ("Petitioner") filed a "Motion for Temporary Restraining Order, and a Preliminary and Permanent Injunction" ("TRO Motion") against "Kasio Mida, Jr., Cherisse Mida, and Vicky Setik Irons, their agents, employees, successors, attorneys, and all persons in active concert and participation with them, from taking any further entry upon the land identified as Parcel No. 007-A-12, Nepon #2, Iras Village" pending a determination of the probate matter. On August 13, 2014, the Petitioner filed a "Motion for an Emergency Hearing" ("Emergency Motion") in connection with the TRO Motion.

For the reasons that follow, the Petitioner's TRO Motion and Emergency Motion are DENIED.

I. BACKGROUND

On February 14, 2014, the FSM Court entered an order in aid of judgment in Civil Action No. 2007-1008, *FSM Development Bank v. Christopher Corporation, Patricia (Peggy) Setik, Marianne B. Setik, the Estate of Manny Setik, Antansio Setik, Vicky Setik Irons, Irene Setik Walter, Marleen Setik, Junior Setik, Eleanor Setik Sos, Joanita Setik Pangelinan, Meriam Setik Sigrah, Christopher James Setik, George Salik, individually and d.b.a. Christopher Store*, ("Civil Action"), which approved the sale of

certain real property known as Parcel No. 007-A-12, Nepon #2, Iras Village, Weno Municipality, to Kasio Mida Jr. and Cherisse Mida for the sum of \$52,250.00, following a 30-day grace period during which time the defendants in the Civil Action were given an opportunity to satisfy the judgment. TRO Mot., Ex. C.

On March 19, 2014, counsel for FSM Development Bank ("FSMDB") filed "Plaintiff's Notice of completion of Sale of Parcel No. 007-A-12, Nepon #2, Iras; Notice to Chuuk Land Commission" ("Notice"). TRO Mot., Ex. C. The Notice provides in relevant part as follows:

FSMDB reports that no payments were made by Defendants during the grace period, that the judgment was not satisfied, and that as of March 17, 2014, the amount of \$1,613,576.49 remains outstanding, including principal and accrued post-judgment interest. Accordingly, on March 17, 2014, FSMDB accepted payment of \$52,260 from the Midas for the purchase of parcel no. 007-A-12 in accordance with the February 14, 2014 order in aid of judgment.

* * * *

FSMDB now provides notice to the Court of the receipt of \$52,250.00 from Kasio Kembo Mida Jr. and Cherisse Mida as payment in full for purchase of parcel no. 007-A-12, and that the full amount of \$52,250.00 has been applied to the outstanding judgment herein.

Also pursuant to the February 14, 2014 order in aid of judgment, this Notice of Completion of Sale serves as notice to the Chuuk State Land Commission that a new certificate of title for parcel no. 007-A-12, Nepon #2, situated in Iras Village, Weno Municipality, with 2,090 square meters, as shown on cadastral plat no. 012-A-00, be issued to Kasio Kembo Mida Jr. and Cherisse Irons Mida. FSMDB now requests that the Chuuk State Land Commission issue the new Certificate of Title for parcel no. 007-A-12 to Kasio Kembo Mida Jr. and Cherisse Irons Mida in accordance with the order in aid of judgment.

The Petitioner states that the defendants in the Civil Action have appealed the order authorizing the sale of Parcel No. 007-A-12, Nepon #2, and filed the appropriate motions to stay that order. TRO Mot. at 4, lines 9-10. However, the FSM Court has yet to rule on the pending motions and appeal.

II. DISCUSSION

A. *Applicable Law*

To obtain a temporary restraining order or preliminary injunction, the Petitioner must show: (1) the possibility of irreparable injury; (2) the balance of possible injuries between the parties; (3) the Petitioner's likelihood of success on the merits; and (4) any impact on the public interest. Ponape Transfer & Storage v. Pohnpei State Public Lands Auth., 2 FSM Intrm. 272, 276-77 (Pon. 1986).

Chuuk State Rule of Civil Procedure 65 addresses procedural issues with respect to temporary restraining orders and preliminary injunctions. While a temporary restraining order may issue without notice and expires within 14 days unless extended by the court for good cause or by consent of the restrained party, a preliminary injunction cannot issue without notice and usually remains in effect until a final determination on the merits. See Chk. Civ. R. 65(b)(2), (a)(1). Furthermore, Rule 65(b) provides in relevant part that:

A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required.

B. *Application of Law to Facts*

1. *Irreparable Injury*

In this case, the Petitioner has failed to demonstrate the possibility of irreparable injury. Petitioner argues that the "loss of title to land is not compensable by money damages based on the cultural value Micronesians attach to their land. Therefore, the taking of real estate property known as Neon #2 and further developing that property without due process constitutes irreparable harm." TRO Mot. at 7, lines 10-14. Petitioner in support of this proposition cites Yang v. Western Sales Trading Co., 11 FM Intrm. 607, 616 (Pon. 2003), where the court held that the loss of good will, the loss of customers and potential customers, lost sales, and similar harms are not readily compensable by money damages. There are at least two problems with the Petitioner's argument.

First, as set forth in Exhibit C of Petitioner's TRO Motion, a judgment in the sum of \$1,613,576.49 was issued against the defendants (including Petitioner) in connection with the Civil Action. Said judgment was not satisfied. "Accordingly, on March 17, 2014, FSMDB accepted payment of \$52,250 from the Midas for the purchase of parcel no. 007-A-12 in accordance with the February 14, 2014 order in aid of judgment." The Petitioner states that the defendants in the Civil Action have appealed the order authorizing the sale of Parcel No. 007-A-12, Nepon #2, and filed the appropriate motions to stay that order. The Court does not believe that the possibility that the FSM Court issues an order denying the stay motions and/or affirming the decision on appeal constitutes the possibility of irreparable injury required for the issuance of a temporary restraining order. *See, e.g., Ambros & Co. v. Board of Trustees*, 12 FSM Intrm. 124, 127 (Pon. 2003) (The possibility that the agency might issue an adverse decision does not constitute the immediate and irreparable injury to the applicant required for the issuance of a restraining order). An unwelcome outcome is among the everyday risks of litigation; it does not constitute irreparable injury for purposes of a temporary restraining order.

Second, while the Court acknowledges that Micronesians place value to real property, the sale of the property at issue does not create irreparable harm because it can be fully remedied with money damages, if the defendants (including Petitioner) are ultimately able to reverse the sale order entered in the Civil Action, and prevail on appeal.

Based on the above, the Court cannot find that the injuries alleged by the Petitioner will give rise to the level of irreparable injury.

2. *Likelihood of Success on the Merits*

In her TRO Motion, the Petitioner (also a defendant in the Civil Action) suggests that the Court should find in her favor even if the Petitioner is "not more likely to prevail" because "sufficient case law has proven that injunctions should still issue so long as the movant's position raised serious, non frivolous issues," citing a string of cases such as Ponape Enterprises Co. v. Bergen, 6 FSM Intrm. 286, 289 (Pon.1993); Palik v. Henry, 9 FSM Intrm. 309, 312 (Kos. S. Ct. Tr. 2000); Seventh Kosrae State

Legislature v. Sigrah, 11 FSM Intrm. 110, 113 (Kos. S. Ct. Tr. 2002); Sigrah v. Kosrae, 12 FSM Intrm. 513, 518 (Kos. S. Ct. Tr. 2004); Benjamin v. Youngstrom, 13 FSM Intrm. 72, 75 (Kos. S. Ct. Tr. 2004). Indeed, it appears that the Petitioner has acknowledged she may not prevail on appeal. Moreover, the Petitioner has failed to identify a single error of the FSM Court in entering the sale order. Given these circumstances, the Court finds that the Petitioner has failed to show that she has likelihood of success on the merits.

3. *Balance of Possible Injuries Between the Parties*

With respect to the balance of possible injuries requirement, the Court finds that the Midas would bear the risk. Any potential harm suffered by the Petitioner is minimal considering that the Petitioner cannot establish a likelihood of success on the merits.

4. *Public Interest*

The next factor asks for a determination of where the public interest lies. Based on the arguments advanced by the Petitioner in her TRO Motion, it is unclear how the public interest will be served by entering a temporary restraining order. Thus, the Court cannot find based on the Petitioner's unsupported allegations (which are not evidence) that a temporary restraining order is warranted in this case.

III. CONCLUSION

Because each of the four factors considered by the Court favors denying the motion for a temporary restraining order,

IT IS HEREBY ORDERED that the petitioner's TRO Motion is DENIED.

IT IS FURTHER ORDERED that the Petitioner's Emergency Motion is DENIED.

* * * *

CHUUK STATE SUPREME COURT TRIAL DIVISION

CHUUK STATE)	CSSC CR. NO. 040-2014
)	
Plaintiff,)	
)	
vs.)	
)	
SANSER KAPWICH,)	
)	
Defendant.)	
_____)	

ORDER DENYING DEFENDANT'S MOTION TO DISMISS

Jayson Robert
Associate Justice

Decided: September 15, 2014