CHUUK STATE SUPREME COURT APPELLATE DIVISION

HARUO ARITOS, Appellant, vs. DOLORES MULLER, ROSE EMANUEL, and MAKRI SOTAM, on behalf of the lineage of the Wito Clan of Enin, Tonoas, Appellees.	)	CIVIL APPEAL NO. 06-2006

DENIAL OF SECOND REHEARING PETITION

Decided: November 4, 2014

BEFORE:

Hon. Repeat R. Samuel, Associate Justice, Presiding
Hon. Benjamin Rodriguez, Temporary Justice*
Hon. Brian Dickson, Temporary Justice**

*Chief Justice, Pohnpei Supreme Court, Kolonia, Pohnpei
**Attorney at Law, Weno, Chuuk

APPEARANCE:

For the Appellees: Jack Fritz, Esq.
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HEADNOTES

Appellate Review – Rehearing

A motion for reconsideration of a denial of a petition for rehearing must be considered as a second petition for rehearing, and as such it cannot be granted it unless the court has overlooked or misapprehended points of law or fact. Aritos v. Muller, 19 FSM R. 612, 613 (Chk. S. Ct. App. 2014).

Courts; Property – Land Commission

The Chuuk Land Commission is not a court as that word is used in the Chuuk Constitution. It is an administrative agency that functions as a quasi-judicial tribunal. Aritos v. Muller, 19 FSM R. 612, 613 (Chk. S. Ct. App. 2014).

Courts; Property – Land Commission

The Chuuk Legislature, by statute, has determined that a land case in a declared land registration area must first go through the Land Commission procedure before it can become a land case in the

Chuuk State Supreme Court trial division. Aritos v. Muller, 19 FSM R. 612, 613 (Chk. S. Ct. App. 2014).

Courts; Property – Land Commission

The constitutional grant of original court jurisdiction does not prevent the Legislature from prescribing by statute that certain land cases must first go to an administrative agency, the Chuuk Land Commission, before the trial court can exercise its original jurisdiction over them. Aritos v. Muller, 19 FSM R. 612, 613 (Chk. S. Ct. App. 2014).

Appellate Review – Rehearing

Even if the court has overlooked or misapprehended points of law or fact, a petition for rehearing will not be granted when it will not change the result. Aritos v. Muller, 19 FSM R. 612, 614 (Chk. S. Ct. App. 2014).

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COURT'S OPINION

REPEAT R. SAMUEL, Associate Justice, Presiding:

On October 13, 2014, the appellees filed a paper entitled Appellees' Motion for Reconsideration of Order Denying Rehearing Petition [Rule 40] and to Modify its Mandate. This can only be considered a second petition for rehearing. A motion for reconsideration of a denial of a petition for rehearing must be considered a second petition for rehearing, and as such it cannot be granted it unless the court has overlooked or misapprehended points of law or fact. Nena v. Kosrae (III), 6 FSM R. 564, 567 (App. 1994).

The appellees seek reconsideration of our earlier denial of their petition for rehearing. They also seek a recall of our mandate. They contend that, in denying their first rehearing petition, we misapprehended the law when we concluded that the statute requiring that the title to land in declared land registration areas be determined by the Chuuk Land Commission was not superseded or made unconstitutional because the Chuuk Constitution provides that "the trial division of the State Supreme Court has concurrent original jurisdiction with other courts to try all civil, criminal, probate, juvenile, traffic, and land cases . . . ." Chk. Const. art. VII, § 3(b). They contend that we misapprehended the law by considering the Chuuk Land Commission the equivalent of another court with concurrent jurisdiction to try land cases.

The petitioners are correct that the Chuuk Land Commission is not a court as that word is used in the Chuuk Constitution. It is, as we noted when we denied the petitioners' first petition for rehearing, an administrative agency. That administrative agency functions as a quasi-judicial tribunal. The result is the same. The Chuuk Legislature, by statute (67 TTC 105 at the time of trial now superseded by Chk. S.L. No. 7-04-06, § 7), has determined that land cases in declared land registration areas must first go through the Land Commission procedure before it can become a land case in the Chuuk State Supreme Court trial division. We see no basis for the petitioners' contention that the constitutional grant of original court jurisdiction prevents the Legislature from prescribing by statute that certain land cases must first go to an administrative agency, the Chuuk Land Commission, before the trial court can exercise its original jurisdiction over them (or, for that matter, that other types of civil cases, state employee grievances, for instance, must first be determined by an administrative agency before that agency decision may be appealed to the trial division for it to exercise its original court jurisdiction).

Even if the court has overlooked or misapprehended points of law or fact, a petition for rehearing will not be granted when it will not change the result. Rosokow v. Bob, 11 FSM R. 454, 456 (Chk. S. Ct. App. 2003); Berman v. Pohnpei, 17 FSM R. 464, 465 (App. 2011); Goya v. Ramp, 14 FSM R. 305, 307 (App. 2006). Accordingly, this second petition for rehearing is denied. The mandate will not be recalled.

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FSM SUPREME COURT TRIAL DIVISION

POHNPEI TRANSFER & STORAGE, INC., d/b/a POHNPEI TRAVEL, Plaintiff, vs. PERCY SHONIBER, Defendant.	CIVIL ACTION NO. 2011-011

ORDER GRANTING DEFENDANT'S MOTION TO SET ASIDE ENTRY OF DEFAULT

Beauleen Carl-Worswick
Associate Justice

Hearing: October 23, 2014
Decided: November 5, 2014

APPEARANCES:

For the Plaintiff: Fredrick L. Ramp, Esq.
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HEADNOTES

Civil Procedure – Defaults and Default Judgments – Entry of Default – Setting Aside; Judgments from Judgment – Default Judgments

The standard for setting aside an entry of default under Rule 55(c) is the liberal and less rigorous "good cause" standard rather than the more restrictive standard of excusable neglect for setting