

that those grounds exist before any removal is effected.

E. *Issuance of Preliminary Injunction*

Weighing all four factors, the court concludes that a preliminary injunction should issue as requested. Furthermore, no bond will be required because of the lack of monetary harm to the defendants if the preliminary injunction should not have been granted.

IV. CONCLUSION

Accordingly, a preliminary injunction will issue with this order, enjoining the nomination, hiring, or appointment of the head or the Executive Director of the Chuuk Department of Education until further court order.

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CHUUK STATE SUPREME COURT TRIAL DIVISION

| | | |
|---|---|--------------------------------|
| FINEUO SAITO, |) | CSSC CIVIL ACTION NO. 035-2011 |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | |
| |) | |
| MASASINGE SIRO, SONSY SIRO, SAM SIRO, |) | |
| and all heirs and persons claiming interest under |) | |
| Siro Kallen, and Fuko Narruhn, and John Does, |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

Keske Marar
Associate Justice

Hearing: August 6 2014
Decided: January 28, 2015

APPEARANCES:

For the Plaintiff: Johnny Meippen, Esq.
P.O. Box 705
Weno, Chuuk FM 96942

For the Defendants: Jack Fritz, Esq.,
P.O. Box 788
Weno, Chuuk FM 96942

* * * *

HEADNOTES

Civil Procedure – Dismissal – Before Responsive Pleading; Civil Procedure – Res Judicata

Res judicata is listed as an affirmative defense under Rule 8(c), and, as such, it must be pleaded as an affirmative defense in an answer. However, res judicata, like the statute of limitations, is an affirmative defense that may be presented in a motion to dismiss. Saito v. Siro, 19 FSM R. 650, 653 (Chk. S. Ct. Tr. 2015).

Civil Procedure – Dismissal – Before Responsive Pleading; Civil Procedure – Res Judicata

Res judicata can be raised in the context of a Rule 12(b)(6) motion when the prior action's preclusive effect can be determined from the face of the complaint. Saito v. Siro, 19 FSM R. 650, 653 (Chk. S. Ct. Tr. 2015).

Civil Procedure – Res Judicata

For a matter to be considered adjudged so that the doctrine of res judicata is applicable, there must be an existing, final judgment that has been decided on the merits without fraud or collusion by a court or tribunal of competent jurisdiction. If these requirements are met, the doctrine applies and bars any further litigation of the same issues between the same parties or anyone claiming under those parties. Saito v. Siro, 19 FSM R. 650, 653 (Chk. S. Ct. Tr. 2015).

Civil Procedure – Res Judicata

In determining the validity of a plea of res judicata three questions are pertinent: Was the issue decided in the prior adjudication identical with the one presented in the action in question? Was there a final judgment on the merits? Was the party against whom the plea is asserted a party or in privity with a party to the prior adjudication? Saito v. Siro, 19 FSM R. 650, 653 (Chk. S. Ct. Tr. 2015).

Civil Procedure – Res Judicata

When the lawsuit is over ownership to lands adjudicated in three prior cases; when the most recent case was a dismissal with prejudice because the matter had already been litigated in a Trust Territory High Court case; and when the prior action involved the same parties or their privies, the doctrine of res judicata applies and the motion to dismiss will be granted since the prior action's preclusive effect can be determined from the complaint's face. Saito v. Siro, 19 FSM R. 650, 653-54 (Chk. S. Ct. Tr. 2015).

Civil Procedure – Dismissal; Judgments

A dismissal with prejudice constitutes a judgment on the merits. Saito v. Siro, 19 FSM R. 650, 654 (Chk. S. Ct. Tr. 2015).

* * * *

COURT'S OPINION

KESKE MARAR, Associate Justice:

INTRODUCTION

A hearing was held on August 6, 2014, on the motion to dismiss based on the doctrine of res judicata ("Motion") filed by the Defendants Masasinge Siro et al. ("Defendants"). Plaintiff Fineuo Saito ("Plaintiff") filed a response to the Motion on September 13, 2013.

At the hearing, Johnny Meippen, Esq. appeared on behalf of the Plaintiff. Jack Fritz, Esq.

appeared on behalf of the Defendants.

The Court, upon review of the pleadings, arguments of counsel, the applicable authorities, and for the reasons set forth on the record and below, finds as follows.

BACKGROUND

This case involves ownership rights over the Islands of Fenepi, Fononuk, and Fanuenipwin, and certain lands known as Teuesin (located on Fanaan Island) and Neminiu (located on Uman Island) (collectively referred to as the "Properties").

On August 26, 1964, the Trust Territory High Court in the case styled Doris Moses v. Siro and Dolly Albert, Civil Action No. 222, entered a Judgment, which states in part that, "the lands Unlufonu, Neongi and Epinimon on Fenepi Island and the islands of Fononuk and Fanunenipuwin, the land Teuesin on Fannan Island and the land Neminiu on Uman Island are owned by the defendant Siro and the group for whom he acts –his brother Fineo, his sister Fuko and the children of all three of them" Pl.'s Compl. ¶ 8, Ex. A; Defs.' Mot. to Dismiss, Ex. A.

On or about July 18, 1983, in the case styled Mariano Moses v. Siro K. Fiuko N., Civil Action 95-77, the Trust Territory High Court issued an Opinion declaring that the plaintiff, Mariano Moses "shall control one-half of the tideland in the atoll Royalist, specifically, that portion adjacent to his dry land property Fanaik and Ipis, and the defendants herein shall control one-half of the tidelands in the atoll Royalist that is adjacent to their dry land property Fononuk and Fenepi. Pl.'s Compl. ¶ 8, Ex. A.

On May 1, 2000, in the case styled Fuko S. Narruhn v. Fineo Saito and Masasinge Kallen, on Behalf of the Children of Siro, CSSC CA No. 144-99, this Court entered an Order of Dismissal with Prejudice as the claim over the parcels of land at issue had already been litigated and determined by the Trust Territory High Court. Pl.'s Compl. ¶ 9, Ex. A; Defs.' Mot. to Dismiss, Ex. B.

On May 9, 2011, the Plaintiff filed a "Complaint for Quiet Title" ("Complaint") against the Defendants, requesting that the Plaintiff be declared the sole owner of the Properties as he is the "only surviving member from the first line of land owners." Compl. ¶ 8. The Plaintiff maintains that the Defendants are the heirs of Plaintiff's deceased brother, Siro Kallen, and his sister, Fuko Narruhn. Compl. ¶ 9.

In response to the Complaint, the Defendants filed a Motion to Dismiss on August 26, 2013. In their Motion, the Defendants argue that this case should be dismissed based on the doctrine of res judicata. Specifically, the Defendants maintain that the dispute regarding ownership and title over the Properties has already been litigated, and that the court has determined that the Defendants, the Plaintiff and his children, as well as the children of Fuko are the legal owners of the Properties. Defs.' Motion at 3.

On September 13, 2013, the Plaintiff filed a response to the Defendants' Motion to Dismiss. The Plaintiff's main contention in opposition to the Motion is that res judicata is an affirmative defense that cannot be raised by way of a Rule 12(b)(6) motion, without first filing an answer and raising res judicata as an affirmative defense.

On September 16, 2013, the Defendants filed an Answer, wherein they raised res judicata as an affirmative defense.

On July 2, 2014, the Defendants filed a "Motion for Leave to Amend Motion to Dismiss and

Amended Motion to Dismiss based on Rule 12(b)(6) and the Memorandum Filed Supporting Said Motion." In their motion, the Defendants state that they are moving for dismissal under 12(b)(6) based on res judicata grounds.

ISSUES

1. Whether the Defendants may move for dismissal under Rule 12(b)(6) based on an affirmative defense (res judicata).
2. If the Defendants may move for dismissal based on the doctrine of res judicata, whether the motion to dismiss should be granted.

ANALYSIS

Res judicata is listed as an affirmative defense under Rule 8(c). As such, the doctrine of res judicata must be pleaded as an affirmative defense in an answer. However, res judicata, like the statute of limitations, is an affirmative defense that may be presented in a motion to dismiss. See, e.g., Skilling v. Kosrae State Land Comm'n, 13 FSM Intrm. 16, 19 (Kos. S. Ct. Tr. 2004) ("The 'statute of limitations' is an affirmative defense which must be raised in either the answer or in a motion to dismiss."); Kinere v. Kosrae Land Comm'n, 13 FSM Intrm. 78, 80 (Kos. S. Ct. Tr. 2004). Furthermore, res judicata can be raised in the context of a Rule 12(b)(6) motion when the preclusive effect of the prior action can be determined from the face of the complaint. Steinberg v. Alpha Fifth Group, 2008 U.S. Dist. LEXIS 25527, 2008 WL 906270 (S.D. Fla. 2008). Based on the foregoing, the Court finds that the Defendants may move for dismissal based on the doctrine of res judicata.

Next, the Court must determine whether the motion to dismiss should be granted based on the doctrine of res judicata.

The doctrine of res judicata was explained by the Court in Ungeni v. Fredrick, 6 FSM Intrm. 529, 531 (Chk. S. Ct. App. 1994) as follows:

The term res judicata literally means "a matter adjudged" or "settled by judgment." 46 Am. Jur. 2d Judgments § 394, at 558-59 (1969). For a matter to be considered adjudged so that the doctrine of res judicata is applicable, there must be an *existing, final judgment* that has been decided on the merits without fraud or collusion by a court or tribunal of competent jurisdiction. Id. If these requirements are met, the doctrine applies. The doctrine bars any further litigation of the same issues between the same parties or anyone claiming under those parties. Id.

Thus, in determining the validity of a plea of res judicata three questions are pertinent: Was the issue decided in the prior adjudication identical with the one presented in the action in question? Was there a final judgment on the merits? Was the party against whom the plea is asserted a party or in privity with a party to the prior adjudication?

In this case, the Court finds that the doctrine of res judicata applies. First, this suit involves ownership rights over the Islands of Fenepi, Fononuk, and Fanuenipwin, and certain lands known as Teuesin (located on Fanaan Island) and Neminiu (located on Uman Island) – the same issue adjudicated in the following three cases: Doris Moses v. Siro and Dolly Albert, Civil Action No. 222; Mariano Moses v. Siro K. Fiuko N., Civil Action 95-77; and Fuko S. Narruhn v. Fineo Saito and Masasinge Kallen, on Behalf of the Children of Siro, CSSC CA No. 144-99.

Second, in the most recent case, CSSC CA No. 144-99, the Court entered an Order of Dismissal with prejudice, which provides that the claims over the Properties had been already litigated in a prior case before the Trust Territory High Court (Civil Action No. 222). "A dismissal with prejudice constitutes a judgment on the merits." Kitti Mun. Gov't v. Pohnpei 11 FSM Intrm. 622, 628 (App. 2003). Because the dismissal was with prejudice, there was a judgment on the merits.

Third, the prior action involved the same parties or their privies. In fact, the Plaintiff was specifically named as a defendant in the prior action.

Last, the Court believes that preclusive effect of the prior action can be determined from the face of the complaint.

CONCLUSION

Based on the foregoing, the Court finds that the doctrine of res judicata applies because all requirements have been satisfied. Accordingly, the Defendants' Motion to Dismiss is GRANTED.

* * * *

CHUUK STATE SUPREME COURT APPELLATE DIVISION

| | | |
|------------------------------------|---|-------------------------|
| KESIA IRONS, |) | CSSC APPEAL NO. 01-2012 |
| |) | |
| Petitioner, |) | |
| |) | |
| vs. |) | |
| |) | |
| CHUUK STATE SUPREME COURT |) | |
| TRIAL DIVISION, CSSC CA NO. 35-09, |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

ORDER DISMISSING PETITION FOR WRIT OF MANDAMUS WITHOUT PREJUDICE WITH LEAVE TO AMEND

Decided: February 2, 2015

BEFORE:

Hon. Jayson Robert, Associate Justice, Presiding
Hon. Brian Dickson, Temporary Justice*
Hon. Derensio Konman, Temporary Justice**

*Legal Counsel, 13th Chuuk State Legislature

** Directing Attorney, Micronesian Legal Services Corporation, Chuuk Office