

FSM SUPREME COURT TRIAL DIVISION

FEDERATED STATES OF MICRONESIA,

Plaintiff,

vs.

ERIC FALAN,

Defendant.

CIVIL ACTION NO. 2015-011

ORDER

Beauleen Carl-Worswick
Associate Justice

Hearing: May 7, 2015
Decided: June 15, 2015

APPEARANCES:

For the Plaintiff: Jose R. Gallen, Esq.
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 FSM Department of Justice
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For the Defendants: Salomon M. Saimon, Esq.
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 P.O. Box 129
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HEADNOTES

Property – Deeds

When the deed conveying the land to the national government, only required it to "commence" development within five years, an argument that development of the land was not "completed" within that finite period of time, is without merit. FSM v. Falan, 20 FSM R. 59, 61 (Pon. 2015).

Civil Procedure – Pleadings

The term "at issue" means that whenever the parties come to a point in the pleadings which is affirmed on one side and denied on the other, they are said to be at issue. FSM v. Falan, 20 FSM R. 59, 61 (Pon. 2015).

Property – Land Registration

Courts must attach a presumption of correctness to a Certificate of Title. FSM v. Falan, 20 FSM R. 59, 61 (Pon. 2015).

Jurisdiction – Exclusive FSM Supreme Court

When the defendant has failed to substantiate a legally recognizable possessory interest in the land on which he has settled and for which the FSM has a certificate of title and absent any such indicia that an interest in land is present, the FSM Supreme Court has subject matter jurisdiction. FSM v. Falan, 20 FSM R. 59, 61-62 (Pon. 2015).

Torts – Trespass

Since the alleged defect in the deed, in terms of the concomitant condition to the fee simple that conveyed the subject land to the FSM, is a question that does not relate to the issue in this trespass action, which is one of right of possession because in an action for trespass, the judgment is for the right of possession; in such a case, the issue is who has the superior right to possession, not who has title. FSM v. Falan, 20 FSM R. 59, 62 (Pon. 2015).

Jurisdiction – Exclusive FSM Supreme Court

Subject matter jurisdiction is proper for the FSM Supreme Court when the defendant has not adequately shown a possessory interest, much less an ownership interest, to reflect a case or dispute where an interest in land is at issue as the matter involves the defendant's entry upon land to which the FSM holds a certificate of title and the pending trespass cause of action therefore concerns one for an alleged violation of possession, not for challenge to title. FSM v. Falan, 20 FSM R. 59, 62 (Pon. 2015).

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COURT'S OPINION

BEAULEEN CARL-WORSWICK, Associate Justice:

On May 7, 2015, this Court conducted a Hearing on Defendant's Motion to Dismiss, during which the parties presented argument, concerning whether the nature of the case or controversy came within the purview of the FSM Supreme Court's subject matter jurisdiction. Article XI, Section 6 of the FSM Constitution expressly speaks to the jurisdictional authority conferred upon the FSM Supreme Court.

Section 6(a) provides: "The trial division of the Supreme Court has original and exclusive jurisdiction in cases affecting officials of foreign governments, disputes between states, admiralty or maritime cases and in cases in which the national government is a party except where an interest in land is at issue."

Section 6(b) sets forth:

The national courts, including the trial division of the Supreme Court, have concurrent original jurisdiction in cases arising under this Constitution; national law or treaties and in disputes between a state and citizen of another state, between citizens of different states, and between a state or a citizen thereof, and a foreign state, citizen, or subject.

Defense Counsel maintained that the subject case involves an interest in land and as such, was beyond the jurisdictional authority of the FSM Supreme Court, because the Plaintiff's cause of action, sounding in trespass, asserts a superior possessory right held by the FSM Government *vis a vis* the Defendant, who is a Pohnpeian citizen. Although conceding the Plaintiff's Certificate of Title to the parcel of land at issue demonstrates a superior right of ownership, Defense Counsel proceeded to

question the validity of the transaction, whereby the subject land was conveyed to the National Government.

Defendant claims the subject conveyance consisted of a fee simple with conditions affixed thereto; one of which was not satisfied, to wit: developing the subject land within five (5) years. Consequently, Defense Counsel contends the Pohnpei Board of Trustees is obligated to recognize the homestead of the Defendant, by virtue of this alleged "default" on the part of the Plaintiff. Defense Counsel additionally referenced the Committee Reports from the Constitutional Convention, wherein the framers of the FSM Constitution purportedly limited the jurisdictional authority of the FSM Supreme Court, with respect to cases or controversies involving an interest in land. As a result, the Defendant argues that the present matter lies outside the purview of this Court's subject matter jurisdiction and properly belongs in the State Court.

Counsel for the Plaintiff countered, that assuming the land claim exception of the FSM Constitution, set forth in Section 6(a) is triggered, Section 6(b) provides for concurrent jurisdiction by the FSM Supreme Court, in terms of cases where an interest in land is at issue. Plaintiff's Counsel also maintained, that the concomitant conditions to the fee simple (referenced by Defense Counsel), wherein the subject land was conveyed to the national government, only required the Plaintiff to "commence" development within the enumerated five (5) year time frame. As a result, Defense Counsel's argument, that any development of the land in issue which was not "completed" within that finite period of time constituting a default of the conditions attendant to the fee simple, is without merit.

Plaintiff additionally maintains the deed in question mandates the subject property be utilized for government facilities, residences and officials, therefore it cannot simply be surrendered to members of the public (i.e. Defendant). Plaintiff concludes, that the FSM Supreme Court is the proper forum, *vis a vis* State Court, since the case at bar affects a national claim and the former clearly possesses concurrent subject matter jurisdiction, as per Section 6(b).

At the outset, it is noteworthy, that an Answer has not been filed by the Defendant in the case at hand and therefore technically, an interest in land is not at issue, since a material dispute has not emerged between the parties. The term "at issue" has been defined as "Whenever the parties come to a point in the pleadings which is affirmed on one side and denied on the other, they are said to be at an issue." FSM Dev. Bank v. Mori, 2 FSM Intrm. 242, 244 (Truk 1986).

Nevertheless, this Court is not convinced the case concerns an interest in land, as the instant matter alleges civil trespass to a tract of land which the FSM Government holds Certificate of Title. Courts must attach a presumption of correctness to a Certificate of Title. Anton v. Heirs of Shrew, 12 FSM Intrm. 274, 277 (App. 2003).

The Court is similarly skeptical of the existence of an interest in land, since the Defendant has not adequately demonstrated a possessory, much less ownership interest and the civil trespass action brought by Plaintiff, which possesses a Certificate of Title to the real estate in question, is tantamount to a cause of action sounding in ejectment (i.e. a bare occupier of land and a deed holder, not a challenge to title).

The claim advanced by Defendant, to be present upon the subject property, is that a condition set forth in the fee simple governing the subject conveyance had not been met. Defendant contends, that pursuant to the aforementioned condition, the land at issue needed to be developed within a five (5) year period and because Plaintiff purportedly failed to satisfy same, by "default," members of the general public (i.e. Defendants) were entitled to possession thereof. The Court finds this averment far too tenuous, in terms of demonstrating an interest in land. The Defendant failed to substantiate a

legally recognizable possessory interest in the land upon which they have settled and absent any such indicia that an interest in land is present, the FSM Supreme Court has subject matter jurisdiction.

Defendant's alleged defect, in terms of the concomitant condition to the fee simple that conveyed the subject land to the Plaintiff, is a question that does not relate to the issue in this trespass action, which is one of right of possession. Rosario v. College of Micronesia-FSM, 11 FSM Intrm. 355, 360 (App. 2003). "Our law is clear[,] that in an action for trespass, the judgment is for the right of possession; in such a case, the issue is who has the superior right to possession, not who has title." Ponape Enterprises Co. v. Soumweij, 6 FSM Intrm. 341, 345 (Pon. 1994).

This Court finds that a possessory interest, much less an ownership interest, has not been adequately depicted by the Defendant, to reflect a case or controversy where an interest in land is at issue. The matter before the Court involves the Defendant's entry upon land to which the Plaintiff holds a Certificate of Title and the pending trespass cause of action therefore concerns one for an alleged violation of possession, not for challenge to title.

Accordingly, subject matter jurisdiction is proper for the FSM Supreme Court and Defendant's Motion to Dismiss (predicated upon an alleged lack of subject matter jurisdiction) is hereby DENIED. Furthermore, the Defendant is reminded of the applicable time constraint, *to wit*: that they shall have ten (10) days from the entry of this Order, within which, to file an Answer to the Complaint.

Finally, this Court declines to answer the question as to whether concurrent jurisdiction by the FSM Supreme Court is proper, where land is at issue and the national government is a party, since it determines an interest in land is not present under these facts.

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FSM SUPREME COURT TRIAL DIVISION

ALBERT PANUELO,)	CIVIL ACTION NO. 2014-006
)	
Plaintiff,)	
)	
vs.)	
)	
FEDERATED STATES OF MICRONESIA,)	
)	
Defendant.)	
)	

ORDER ON DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS

Beauleen Carl-Worswick
Associate Justice

Hearing: January 8, 2015
Decided: June 16, 2015