FSM SUPREME COURT TRIAL DIVISION

ROY ROGER CARIUS, MIA P. CARIUS, BRANDON L. CARIUS, KAYLA S. CARIUS, and TROY R. CARIUS, Plaintiffs, vs. CHARLES JOHNSON, Defendant.	CIVIL ACTION NO. 2014-039

ORDER OF ABSTENTION AND DISMISSAL WITHOUT PREJUDICE

Ready E. Johnny
Acting Chief Justice

Decided: August 31, 2015

APPEARANCES:

For the Plaintiffs: Salomon M. Saimon, Esq.
Micronesian Legal Services Corporation
P.O. Box 129
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For the Defendant: Charles Johnson, pro se
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HEADNOTES

Civil Procedure – Motions – For Enlargement

A motion to enlarge time to answer probably should have been granted since it was timely and had shown cause. Carius v. Johnson, 20 FSM R. 143, 145 (Pon. 2015).

Civil Procedure – Parties – Pro Se

As a general rule, a pro se party's filings are construed more liberally because of their lack of legal training. Carius v. Johnson, 20 FSM R. 143, 145 (Pon. 2015).

Civil Procedure – Default and Default Judgments – Entry of Default; Civil Procedure – Parties – Pro Se

The court's long-standing usual practice has been to take any response by a pro se defendant as an answer precluding a default judgment and to require the plaintiff to proceed accordingly. Carius v. Johnson, 20 FSM R. 143, 145 (Pon. 2015).

Courts; Mandamus and Prohibition – Nature and Scope

When a case has languished in the Pohnpei Supreme Court trial division since 1991, any party, instead of filing suit in the FSM Supreme Court, could have sought from the Pohnpei Supreme Court appellate division a writ of mandamus or a writ of procedendo as a remedy for the lower Pohnpei state court's refusal or neglect of justice. Such a writ would order the trial court to make a decision in the case without telling the lower court what its decision should be. Carius v. Johnson, 20 FSM R. 143, 145-46 (Pon. 2015).

Federalism – Abstention

The FSM Supreme Court may and should abstain in a case where land use rights are at issue, where the state is attempting to develop a coherent policy concerning the disposition of public lands, where there is a similar litigation already pending in state court, where the state requests abstention as defendant in an action which may expose it to monetary damages, where Congress has not asserted any national interests that may be affected by the litigation's outcome, and where abstention will not result in delay or injustice to the parties. Carius v. Johnson, 20 FSM R. 143, 146 (Pon. 2015).

Federalism – Abstention

When there is similar litigation involving the same parties and issues already pending in a state court, and a state court decision in that litigation would resolve all disputes between the parties, the risk of costly, duplicative litigation is an important factor for the FSM Supreme Court to consider in determining whether to abstain. Carius v. Johnson, 20 FSM R. 143, 146 (Pon. 2015).

Courts; Jurisdiction

The general rule is that the lawsuit filed first has priority over any other case involving the same parties and issues, even if filed later before a court that could also take jurisdiction. Carius v. Johnson, 20 FSM R. 143, 146 (Pon. 2015).

Federalism – Abstention

When the case involves a leasehold of public land and is between a plaintiff with a recorded lease and an occupier of the lot; when the lessee's children have been added as third-party beneficiaries so this court would have diversity jurisdiction; when the usual third-party beneficiary claim is by a third-party beneficiary to a contract against a defendant who is one of the contracting parties; when the defendant is not a party to any contract of which the lessee's children would be third-party beneficiaries; when there already is a pending case in the Pohnpei Supreme Court over possession of the leasehold lot; and when the parties may have a remedy in the Pohnpei Supreme Court appellate division through mandamus or procedendo for the trial division's neglect or dilatory behavior, the FSM Supreme Court will abstain from the case. Carius v. Johnson, 20 FSM R. 143, 146 (Pon. 2015).

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COURT'S OPINION

READY E. JOHNNY, Acting Chief Justice:

The court, in its June 24, 2015 order, asked the parties to submit their views on whether: 1) the court should deem Charles Johnson's November 10, 2014 filing to also constitute his answer and order the entry of default vacated and the matter proceed from there; and 2) the court should abstain from this case in deference to the earlier-filed state court case. Defendant Charles Johnson submitted his views on July 29, 2015, and the plaintiffs submitted theirs on July 31, 2015. The court's ruling on these questions follow.

I. ENTRY OF DEFAULT VACATED

On November 10, 2014, the defendant, Charles Johnson timely filed, pro se, his Motion for Enlargement of Time to File an Answer. In the motion, which asked for a 30-day enlargement in order to consult with his siblings who were off-island and to obtain counsel, he stated, "Defendant wishes to deny all the allegations put forth in the Plaintiffs[']s Complaint at this time." Motion at 1. The motion was never acted upon.

On November 14, 2014, the plaintiffs asked for an entry of default and for a hearing at which they would "prove up" their case for a default judgment. The clerk entered the defendant's default on January 22, 2015. On January 29, 2015, the presiding judge recused herself. The current judge scheduled a default judgment hearing, and because of what was presented at that hearing, the court issued its June 24th order.

The court notes that the motion to enlarge time to answer probably should have been granted since it was timely and had shown cause. FSM Civ. R. 6(b)(1). However, given that no separate answer was filed in the next two months before the clerk entered Johnson's default, it may not have made a difference. But, it was filed pro se and made it a point to denied the complaint's allegations.

As a general rule, a pro se party's filings are construed more liberally because of their lack of legal training. Andrew v. Heirs of Seymour, 19 FSM R. 331, 339 (App. 2014). The court's long-standing usual practice has been to take any response by a pro se defendant as an answer precluding a default judgment and to require the plaintiff to proceed accordingly. O'Sullivan v. Panuelo, 10 FSM Intrm. 257, 260 (Pon. 2001).

Accordingly, Johnson is deemed to have answered the complaint and his default is vacated.

II. ABSTENTION

This case is over possession of a leasehold lot in Kolonia. The plaintiffs' causes of action are for trespass and nuisance, and for the children plaintiffs, a third-party beneficiary claim. Plaintiff Roy Roger Carius has a properly recorded commercial lease for a public land lot in Kolonia Town on which he wants to build a house and reside there, with his children, and have a fish market once he retires from his job in the United States. Defendant Charles Johnson and his family, at least during the week, resides on that lot. Johnson asserts that he and his family are not trespassing because his dad was given the land before the 2001 lease. The parties acknowledge that a court case over the rights to the lot has languished in the Pohnpei Supreme Court since 1991.

The plaintiffs include Roy Roger Carius's children, who are mostly American citizens but who all assert that they are Pohnpei *pwilidak* as defined by the Pohnpei Constitution. The plaintiffs argue that the presence of these foreign-citizen plaintiffs makes the FSM Supreme Court, with its diversity jurisdiction, the appropriate forum because of the local prejudices against dual citizenship claims and because they are not parties in the Pohnpei Supreme Court case. Unlike their father, the children do not assert that they are the lot's lessee. Whatever the nature of the children's third-party beneficiary claims are, they apparently all arise under their father's claim. Their presence or absence should not affect the litigation's outcome. Whether third-party beneficiary claims are proper in this instance and whether the diverse parties are properly plaintiffs is unresolved.

The plaintiffs also contend that the FSM Supreme Court is the appropriate forum because the Pohnpei Supreme Court matter "remains unsettled" despite "many efforts to move that case along." They do not specify what efforts were made or when or even how recent any of the efforts were. They

also were silent on whether any party had sought relief from the Pohnpei Supreme Court appellate division. The court previously noted that instead of filing suit in the FSM Supreme Court any party to the Pohnpei Supreme Court case could have sought from the Pohnpei Supreme Court appellate division a writ of mandamus or a writ of procedendo as a remedy for the lower Pohnpei state court's refusal or neglect of justice. *See* Mori v. Hasiguchi, 16 FSM R. 382, 385 n.1 (Chk. 2009). Such a writ would order the trial court to make a decision in the case without telling the lower court what its decision should be. *Id.*

The court is reluctant to take on a case merely because the Pohnpei Supreme Court remains unresolved when no party to that case has sought relief from the Pohnpei Supreme Court appellate division through a writ of mandamus or a writ of procedendo.

The court has previously held that the FSM Supreme Court may and should abstain in a case where land use rights are at issue, where the state is attempting to develop a coherent policy concerning the disposition of public lands, where there is a similar litigation already pending in state court, where the state requests abstention as defendant in an action which may expose it to monetary damages, where Congress has not asserted any national interests that may be affected by the litigation's outcome, and where abstention will not result in delay or injustice to the parties. Ponape Transfer & Storage, Inc. v. Federated Shipping Co., 4 FSM R. 37, 39 (Pon. 1989).

The State is not a defendant in this suit and presumably is not subject to monetary damages, but the case involves the right to possession of public land. The FSM Congress has not asserted any national interests that could be affected by the litigation's outcome. Furthermore, when there is similar litigation involving the same parties and issues already pending in a state court, and a state court decision in that litigation would resolve all disputes between the parties, the risk of costly, duplicative litigation is an important factor for the FSM Supreme Court to consider in determining whether to abstain. Ponape Transfer & Storage, 4 FSM R. at 44.

Moreover, the general rule is that the lawsuit filed first has priority over any other case involving the same parties and issues, even if filed later before a court that could also take jurisdiction. Mori v. Hasiguchi, 16 FSM R. 382, 384 (Chk. 2009); Election Comm'r v. Petewon, 6 FSM R. 491, 498 (Chk. S. Ct. App. 1994).

This case involves a leasehold of public land and is between a plaintiff with a recorded lease (Roy Roger Carius) and an occupier of the lot (Charles Johnson) to which the lessee's children have been added as third-party beneficiaries so this court would have diversity jurisdiction. The usual third-party beneficiary claim is by a third-party beneficiary to a contract against a defendant who is one of the contracting parties. *See* Mailo v. Penta Ocean Inc., 8 FSM R. 139, 141-42 (Chk. 1997); *see also* FSM Dev. Bank v. Mudong, 10 FSM R. 67, 75 (Pon. 2001). Johnson is not a party to any contract of which the Carius children would be third-party beneficiaries.

There already is a pending case in the Pohnpei Supreme Court over possession of the leasehold lot, and the parties may have a remedy in the Pohnpei Supreme Court appellate division through mandamus or procedendo for the trial division's neglect or dilatory behavior.

Accordingly, the court abstains from this case. It is hereby dismissed without prejudice to future state court proceedings.

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