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termination of benefits to Hadley dated April 6, 2015.

Hadley was given an opportunity to solicit witnesses in her favor and cross examine adverse witnesses and submit documentary proof in support of her position. The court finds that the evidence submitted on record, taken in its entirety, is competent, material, and substantial to support the findings of the Board in denying benefits to Hadley based on remarriage pursuant to 53 F.S.M.C. 802(2). Accordingly, the decision of the Board is upheld.

IV. CONCLUSION

In viewing the facts and inferences in the light most favorable to the non-moving party, the defendant's Motion for Summary Judgment is HEREBY GRANTED. This matter is HEREBY DISMISSED. The Clerk of Court is instructed to enter judgment in favor of the defendant. Accordingly, because judgment is being entered, the hearing in this matter set for October 8, 2015 is HEREBY VACATED.

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FSM SUPREME COURT TRIAL DIVISION

MARK MAILO, individually and as President of  
the Chuuk State Legislature House of Senate,

Petitioner,

vs.

SIHNA LAWRENCE, Secretary of the Department  
of Finance, Government of the Federated States of  
Micronesia, and successors, agents, and assigns,

Respondent.

CIVIL ACTION NO. 2015-1013

ORDER DENYING PRELIMINARY INJUNCTION AND DISSOLVING RESTRAINING ORDER

Ready E. Johnny  
Associate Justice

Hearing: September 30, 2015  
Decided: October 8, 2015

APPEARANCES:

For the Petitioner: Michael B. Watson, Esq.  
Legislative Counsel  
Chuuk State Legislature  
P.O. Box 377  
Weno, Chuuk FM 96942

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For the Respondent: Joses R. Gallen, Esq.  
Attorney General  
FSM Department of Justice  
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HEADNOTES

Civil Procedure – Injunctions

In exercising its broad discretion in deciding whether to grant a preliminary injunction, the court must consider four factors: 1) the likelihood of success on the merits of the party seeking injunctive relief, 2) the possibility of irreparable injury to the movant, 3) the balance of possible injuries or inconvenience to the parties that would flow from granting or denying the relief, and 4) any impact on the public interest. Mailo v. Lawrence, 20 FSM R. 201, 203 (Chk. 2015).

Civil Procedure – Injunctions – Likelihood of Success

When the respondent is the FSM Secretary of Finance who is not in the position to address the interplay between the Chuuk executive and Chuuk legislative branches under the Chuuk Constitution, this impacts the legislature's likelihood of success on the merits in the FSM Supreme Court. Mailo v. Lawrence, 20 FSM R. 201, 204 (Chk. 2015).

Civil Procedure – Injunctions – Likelihood of Success; Constitutional Law; Constitutional Law – Chuuk; Jurisdiction – Arising under National Law

The FSM Constitution's Article VII, section 2 provides no basis for a party to seek relief in the FSM Supreme Court and no basis on which the party is likely to prevail when the party does not argue that the Chuuk has an undemocratic constitution but instead contends that the Chuuk executive branch is expending Chuuk state funds (albeit originally appropriated by Congress) without an appropriation of those funds by the Chuuk Legislature and that this is a violation of Chuuk's democratic constitution. Mailo v. Lawrence, 20 FSM R. 201, 204 (Chk. 2015).

Civil Procedure – Injunctions – Public Interest

The public interest favors the resolution of a dispute between the Chuuk state government's two political branches in the forum of the judicial branch of the Chuuk state government, not the FSM Supreme Court. Mailo v. Lawrence, 20 FSM R. 201, 204 (Chk. 2015).

Civil Procedure – Pleadings – Affirmative Defenses

The FSM Secretary of Finance cannot raise any defenses the Chuuk Governor, who is not a party to the litigation, may have; she can only defend by saying that when the proper paperwork is presented, Finance is obligated to pay – that FSM Finance is only the money's custodian. Mailo v. Lawrence, 20 FSM R. 201, 204 (Chk. 2015).

Civil Procedure – Injunctions Balance of Injuries

A defendant is harmed by having to defend a lawsuit in which it has no real interest and while the plaintiff's harm may be considerable, it is one of its own making when it chooses the FSM Supreme Court as the forum and the FSM Secretary of Finance as the party from which to seek relief. Mailo v. Lawrence, 20 FSM R. 201, 204 (Chk. 2015).

Civil Procedure – Injunctions – Irreparable Harm

The harm to the petitioner may not be irreparable when there is an adequate remedy, both legal

and equitable, in a different forum. Mailo v. Lawrence, 20 FSM R. 201, 204 (Chk. 2015).

Civil Procedure – Injunctions

When, weighing the four factors, the court does not find enough in the movant's favor to grant a preliminary injunction, the request for a preliminary injunction will be denied and the current temporary restraining order dissolved. Mailo v. Lawrence, 20 FSM R. 201, 205 (Chk. 2015).

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COURT'S OPINION

READY E. JOHNNY, Associate Justice:

On September 24, 2015, the court, after an *ex parte* hearing, granted the plaintiff's request for a temporary restraining order and set a date to hear the plaintiff's request for a preliminary injunction. The petitioner's motion for a preliminary injunction was heard on September 30, 2015. The motion is denied.

The petitioner, Chuuk House of Senate President Mark Mailo, contends that funds from an FSM Congress general appropriation to the State of Chuuk have been and are being expended by a Chuuk government allottee (the Governor or the Chuuk executive branch) without being appropriated by the Chuuk Legislature. Those funds (\$4.25 million) were appropriated by the FSM Congress in Public Law No. 18-102, § 4(14)(i) for "Chuuk State Priority Infrastructure Projects," with no other description of their use.

Mailo contends when Congress makes a general appropriation of funds by the FSM Congress to the State of Chuuk without earmarking it for a specific project or purpose, these are Chuuk state funds that must be appropriated by the Chuuk Legislature, as the policy-making body for the expenditure of Chuuk state funds, before they can be spent. Mailo argues that since these funds have been and are being expended by a Chuuk government allottee without the required appropriation by the Chuuk Legislature, their disbursement from FSM Finance must be enjoined.

In exercising its broad discretion in considering whether to grant a preliminary injunction, the court must consider four factors: 1) the likelihood of success on the merits of the party seeking injunctive relief, 2) the possibility of irreparable injury to the movant, 3) the balance of possible injuries or inconvenience to the parties that would flow from granting or denying the relief, and 4) any impact on the public interest. Nena v. Saimon, 19 FSM R. 317, 326 (App. 2014); Killion v. Chuuk, 19 FSM R. 539, 541 (Chk. 2014).

Congress amended Public Law No. 18-102 on several occasions. Before this lawsuit was filed, the appropriation was amended, on August 31, 2015, by Public Law No. 19-27. The relevant part of that law, FSM Pub. L. No. 19-27, § 3(14)(i), 19th Cong., 2nd Spec. Sess. (2015), now appropriated the \$4.25 million for "Chuuk State Priority Infrastructure Projects, including land acquisition and heavy equipment purchase." It further apportioned those funds with \$92,000 of that sum for "Monitoring and Administration costs," *id.* § 3(14)(i)(i), and with the \$4,158,000 for "Other priority infrastructure projects," *id.* § 3(14)(i)(ii). After this case was filed but before the preliminary injunction hearing concluded, Public Law No. 18-102 was again amended. This amended law set the appropriation for "Chuuk State Priority Infrastructure Projects, including land acquisition and heavy equipment purchase" at \$368,331. FSM Pub. L. No. 19-31, § 2(14)(i), 19th Cong., 2nd Reg. Sess. (Sept. 30, 2015). During the hearing, the FSM Attorney General represented that the rest of the original \$4.25 million had been reappropriated or otherwise expended.

Mailo contends that the Chuuk Legislature will be irreparably harmed if the FSM Secretary of Finance is not enjoined from disbursing these funds when requested by the Chuuk allottee, who apparently is the Governor. Mailo's view is that once Congress appropriated for the general purpose of Chuuk state priority infrastructure projects, those funds became state property, although as somewhat restricted state funds, and as state funds the Chuuk Legislature had to appropriate them and make policy decisions of how those funds should be spent within the broad restrictions Congress had put on their expenditure. Only then, in Mailo's view, can the Chuuk executive spend these funds on specific infrastructure projects.

Respondent Secretary of Finance Sihna Lawrence is not in the position to address this interplay between the Chuuk executive and Chuuk legislative branches under the Chuuk Constitution. This impacts Mailo's likelihood of success on the merits in this court. Mailo, based on the persuasive authority of Anderson v. Regan, 425 N.E.2d 792 (N.Y. 1981) and Shapp v. Sloan, 391 A.2d 595 (Pa. 1978), may have a meritorious cause of action seeking declaratory (and possibly injunctive) relief against the Chuuk executive branch in the Chuuk State Supreme Court. The cases Mailo cites are U.S. state court cases with state government officials as parties. Success in this court against the FSM Secretary of Finance is much less likely. FSM Finance is obligated to pay money from appropriations when the proper paperwork required by FSM national law is presented to her office. It is doubtful whether, in the posture of this case, that FSM Finance can be required to go behind that paperwork to further determine whether that paperwork was also in compliance with Chuuk state (in this case, constitutional) law.

The court agrees that this is an important constitutional question. But it is an important Chuuk constitutional question. Mailo argues that this is a matter of national concern because of Article VII, section 2 of the FSM Constitution. That section, in its entirety, provides that "[a] state shall have a democratic constitution." FSM Const. art. VII, § 2. But Mailo does not argue that the Chuuk has an undemocratic constitution. He contends that the Chuuk executive branch is expending Chuuk state funds (albeit originally appropriated by Congress) without an appropriation of those funds by the Chuuk Legislature and that this is a violation of Chuuk's democratic constitution. Thus, the FSM Constitution's Article VII, section 2 provides no basis for Mailo to seek relief in this court or on which he is likely to prevail.

The public interest would favor the resolution of this dispute between the Chuuk state government's two political branches in the forum of the judicial branch of the Chuuk state government. The Chuuk Governor is not a party to this litigation, and any defenses he might have Lawrence cannot raise. Sipos v. Crabtree, 13 FSM R. 355, 365 (Pon. 2005) (party cannot raise rights or claims of third persons; party may only raise own legal rights and interests); cf. FSM v. Kansou, 12 FSM R. 637, 642 (Chk. 2004). Lawrence can only defend by saying that when the proper paperwork is presented, Finance is obligated to pay – that FSM Finance is only the money's custodian.

Lawrence is thus harmed by having to defend a lawsuit in which she has no real interest. The Secretary's sole interest is that the money appropriated by Congress is disbursed in the manner intended by Congress and in compliance with all the applicable FSM laws and regulations. The harm to the Chuuk Legislature in not being able to have its say in how Chuuk's priority infrastructure project funds are spent, while considerable, is partly one of its own making in choosing this forum and this defendant from which to seek relief.

The harm to the petitioner may not be irreparable since there is an adequate remedy, both legal and equitable, in a different forum. Furthermore, the situation is capable of repetition – future Congressional appropriations of a similar nature are likely to raise the same issues.

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Weighing the four factors, the court does not find enough in the movant's favor to grant a preliminary injunction. Accordingly, the petitioner's request for a preliminary injunction is denied. The current temporary restraining order, to the extent that it has not expired on its own, FSM Civ. R. 65(b) (temporary restraining orders automatically expire after 14 days), is hereby dissolved.

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FSM SUPREME COURT TRIAL DIVISION

THE PEOPLE OF THE MUNICIPALITY OF EAURIPK, )  
YAP, by and through SANTUS SARONGELFEG, )  
JOHN HAGLELGAM, and MOSES MOGLIG, as )  
assignees of MARIN MARAWA, LTD.'s causes of )  
action, )

Plaintiffs, )

vs. )

OSPREY UNDERWRITING AGENCY, LTD., TANYA )  
ROSE, CHRISTIAN KELLY, LEVENT ATAY OSMAN, )  
and GUY RICHARD JOHN PIERPOINT, )

Defendants. )

CIVIL ACTION NO. 2014-3002

ORDER GRANTING MOTION TO DISMISS OSPREY UNDERWRITING AGENCY

Ready E. Johnny  
Associate Justice

Decided: October 9, 2015

APPEARANCES:

For the Plaintiffs:

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% Civile & Tang, PLLC  
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Hagatna, Guam 96910

For the Defendants:

Seth Forman, Esq. (motion)  
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