

the litigation machinery," E.M. Chen & Assocs. (FSM) Inc., 10 FSM R. at 407, coupled with the fact that PII laments the financial cost attendant to the aforementioned negotiations, it simultaneously seeks to compel the Government to participate in further arbitration efforts. In short, the parties have earnestly undertaken steps in this vein, however the conditions set forth in their ensuing provisional settlement agreement were not triggered and as such, the "litigation machinery" continues to churn. Although the Court is hopeful that continuing negotiations by and between the parties bear fruit, it is not prone to directing the Government to resume alternative dispute resolution, if in fact, it is not predisposed to do so.

As a result, the Plaintiff's Motion to Compel [Continuing] Arbitration is hereby DENIED. In addition, this Court's March 4, 2015 Order to Stay Litigation Pending Mediation is hereby set aside and therefore Defendant is Ordered to file an Answer or otherwise respond to the instant Complaint within twenty (20) days from the entry of this Order, as per Rule 12(a) of the FSM Rules of Civil Procedure.

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FSM SUPREME COURT TRIAL DIVISION

FSM DEVELOPMENT BANK,	)	CIVIL ACTION NO. 2007-1008
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
CHRISTOPHER CORPORATION, PATRICIA	)	
(PEGGY) SETIK, MARIANNE B. SETIK, THE	)	
ESTATE OF MANNEY SETIK, ATANASIO SETIK,	)	
VICKY SETIK IRONS, IRENE SETIK WALTER,	)	
MARLEEN SETIK, JUNIOR SETIK, ELEANOR	)	
SETIK SOS, JOANITA SETIK PANGELINAN,	)	
MERIAM SETIK SIGRAH, CHRISTOPHER JAMES	)	
SETIK, GEORGE SETIK, individually and d.b.a.	)	
CHRISTOPHER STORE,	)	
	)	
Defendants.	)	
	)	

ORDER

Lourdes F. Materne\*  
Temporary Justice

Decided: October 15, 2015

\*Associate Justice, Palau Supreme Court, Koror, Palau

APPEARANCES:

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#### HEADNOTES

##### Civil Procedure – Motions – For Reconsideration; Judgments – Relief from Judgment

When almost a month has elapsed from the July 17th entry of an order and the August 14th filing of a motion to set it aside, coupled with the redress sought therein, the court will characterize it as a motion under FSM Civil Rule 60(b) seeking relief from an order. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 225, 227 (Chk. 2015).

##### Courts – Judges

Since the Chief Justice is statutorily required to give notice to the President and the Congress upon the appointment of any temporary justice, the absence of an "order of assignment" is not improper when a missive from the Acting Chief Justice was duly dispatched to Congress, apprizing that body of his designation of a judge to preside over the matter because Congress has provided the Chief Justice with the statutory authority to appoint temporary justices and Congress acted under its Constitutional authority to provide this statutory authority to the judiciary, the court need not exercise its concurrent rule-making authority; and because there is no pertinent rule which mandates issuance of a separate "order of assignment." FSM Dev. Bank v. Christopher Corp., 20 FSM R. 225, 227-28 (Chk. 2015).

##### Courts – Judges; Signatures

In the absence of any provision in the FSM Code, Rules of Civil Procedure, or General Court Order, mandating a handwritten signature on an order issued by a justice, an argument that a judge's signature is deficient because it appears to be "rubber-stamped," is devoid of merit. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 225, 228 (Chk. 2015).

##### Judgments – Relief from Judgment

A movant, as a precondition to rule 60(b) relief, must give the court reason to believe that vacating the judgment will not be a futile gesture or an empty exercise; in other words, there must exist a meritorious defense. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 225, 228 (Chk. 2015).

##### Courts – Recusal – Procedure

A motion for a justice's disqualification must be supported by affidavit(s) establishing a factual basis for the motion. Mere argument by counsel, be it oral or set forth in a brief, is not the basis on which motions to disqualify are determined. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 225, 228 (Chk. 2015).

##### Courts – Recusal – Procedure

A motion to disqualify a judge that is not supported by an affidavit explaining the factual basis for the motion, is insufficient and will be denied. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 225, 228 (Chk. 2015).

##### Courts – Recusal – Procedure

For the purpose of a recusal motion, a temporary justice is considered an FSM justice, to whom 4 F.S.M.C. 124 applies. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 225, 228 (Chk. 2015).

Courts – Recusal – Bias or Partiality

The fact that the same judge hears different cases involving the same party or parties or related issues, does not automatically result in an appearance of partiality under 4 F.S.M.C. 124(1). FSM Dev. Bank v. Christopher Corp., 20 FSM R. 225, 229 (Chk. 2015).

Courts – Recusal

The mere fact that a presiding justice happens to be a "Palau Justice," ruling on a matter in the FSM, is inconsequential, and an unsupported allegation that the jurist may not be privy to supposed peculiar nuances of FSM law, constitutes rank speculation and is insufficient to support the justice's disqualification. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 225, 229 (Chk. 2015).

Courts – Recusal

When the movants have not shown a factual basis for an appearance of impropriety, in terms of the judge overseeing two separate cases involving the same party or shown a lack of competency to rule on FSM matters and as a result, the motion to disqualify the judge will be denied. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 225, 229 (Chk. 2015).

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## COURT'S OPINION

LOURDES F. MATERNE, Temporary Justice:

On July 17, 2015, this Court issued an Order addressing several post-judgment motions which had been filed in the present case. [FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98 (Chk. 2015).] On August 14, 2015, Defendants' filed a Motion to Set Aside [the] Order Filed [on] July 17, 2015, along with [a] Motion to Disqualify and for Expedite[d] Processing.

*Motion to Set Aside*

Given the time which has elapsed from the entry of the July 17th Order and the filing date of Defendants' Motion to Set Aside, coupled with the redress sought therein, this Court will characterize same as a Motion Seeking Relief from an Order, under FSM Civil Rule 60(b). Berman v. College of Micronesia-FSM, 15 FSM Intrm. 582, 588 (App. 2008). As such, the Court must find that the movant has depicted a meritorious defense to warrant the relief coveted. FSM Dev. Bank v. Arthur, 15 FSM Intrm. 625, 635 (Pon. 2008).

In support of the respective motion, the movant claims the appointment of the undersigned, Lourdes F. Materne, Associate Justice of the Supreme Court of the Republic of Palau, to oversee the relevant post-judgment motions, as a Temporary Justice of the FSM Supreme Court, was improper, given the absence of an "order of assignment."

Article XI, §9 of the FSM Constitution, sets forth, in pertinent part: "The Chief Justice . . . by rule[,] may . . . (b) assign judges among the divisions of a court and give special assignments to retired Supreme Court justices and judges of state and other courts." Furthermore, 4 F.S.M.C. 104 provides: "The Chief Justice may give special assignments[,] pursuant to article XI, section 9(b) of the Constitution. In the case of temporary Justices appointed pursuant to this authority . . . (3) The Chief Justice shall give notice to the President and the Congress upon the appointment of any temporary Justice."

On June 18, 2015, a missive from Acting Chief Justice Ready E. Johnny was dutifully

FSM Dev. Bank v. Christopher Corp.  
20 FSM R. 225 (Chk. 2015)

dispatched to Congress, apprizing that august body of an intention to designate the undersigned, Associate Justice Lourdes F. Materne to preside over the instant matter. In addition, Jano v. King, 5 FSM Intrm. 326, 331 (App. 1992), found that Congress has provided the Chief Justice with the statutory authority to appoint temporary Justices and where Congress has acted pursuant to its Constitutional authority to provide this statutory authority to the Judiciary, the Court need not exercise its concurrent rule-making authority. As there is no pertinent rule which mandates issuance of a separate "order of assignment," with respect to the designation of a temporary Justice to preside over a case, Defendants' affirmation to the contrary is misplaced.

An ancillary claim raised by Defendants is predicated on a characterization, that the signature affixed to the July 17, 2015 Order, is deficient, since it resembles a "rubber-stamped" adaptation *vis a vis* a handwritten version from this presiding Justice. Defense Counsel has neglected to support this challenge concerning authenticity, with an affidavit, much less cite to any legal authority and consequently, this argument is defective from both a procedural and substantive perspective. In the absence of any provision delineated within the FSM Code, Rules of Civil Procedure or General Court Order, mandating a handwritten signature on an Order issued by a Presiding Justice, this averment is devoid of merit.

As noted above, there exists an additional sentry guarding the door to Rule 60(b) relief. A movant, as a precondition to Rule 60(b) relief, must give the Court reason to believe that vacating the Judgment will not be a futile gesture or an empty exercise; in other words, there must exist a meritorious defense. Arthur, 15 FSM Intrm. at 635. In the case at hand, a myriad of post-judgments motions previously filed by Defendants have been denied and the instant attempt by the movant to seek relief from this Court's Judgment similarly fails. Given the absence of a viable defense, the subject effort to have the July 17, 2015 Order set aside, is equally futile.

As a result, Defendants' Motion to Set Aside the Order filed [on] July 17, 2015 is hereby DENIED.

*Motion to Disqualify*

Another bone of contention posited by Defendants, is that this temporary Justice was simultaneously assigned to a separate case involving the same Complainant (FSM Dev. Bank v. Setik et al., Civil Action No. 2010-006), thereby intimating such appointment was improper. Defense Counsel also takes issue with "a non-local resident Court Justice" having been assigned to oversee this matter, given an alleged lack of familiarity with the "dynamics and layers of issues [attendant] to FSMDB cases against borrowers." Given the aggregate effect of these two concerns, Defendants move to disqualify this presiding Justice. The Court finds, that from both a procedural and substantive standpoint, the movants' "bare-bones" entreaty is sorely wanting.

A motion for disqualification of a Justice must be supported by affidavit(s) establishing a factual basis for the motion. Nakamura v. Shariyy, 15 FSM Intrm. 409, 412 (Chk. S. Ct. Tr. 2007). Mere argument by Counsel, be it oral or set forth in a brief, is not the basis on which motions to disqualify are determined. Kupenes v. Ungeni, 12 FSM Intrm. 252, 259 (Chk. S. Ct. Tr. 2003). A motion to disqualify a Judge that is not supported by an affidavit explaining the factual basis for the motion, is insufficient and will be denied. Allen v. Kosrae, 13 FSM Intrm. 55, 59 (Kos. S. Ct. Tr. 2004).

Aside, from having been remiss, in terms of affixing the requisite affidavit to its filing, the movant fails to reference any reasonable facsimile of a justification to trigger 4 F.S.M.C. 124, which governs the coveted disqualification of a Supreme Court Justice. This Court also notes that for the purpose of a recusal motion, a temporary Justice is considered a FSM Justice, to whom 4 F.S.M.C. 124 applies. Goya v. Ramp, 14 FSM Intrm. 303, 304 (App. 2006).

FSM Dev. Bank v. Christopher Corp.  
20 FSM R. 225 (Chk. 2015)

The fact that the same Judge hears different cases involving the same party/parties or related issues, does not automatically result in an appearance of partiality under 4 F.S.M.C. 124(1). FSM v. Wainit, 11 Intrm. 424, 432 (Chk. 2003); Hartman v. Bank of Guam, 10 FSM Intrm. 89, 97 (App. 2001).

Furthermore, the mere fact that this presiding Justice happens to be a "Palau Justice," ruling on a matter in the FSM, is inconsequential, as a movants' unsupported allegation that the Jurist may not be privy to supposed peculiar nuances of FSM law concerning repayment of loans to banking institutions, constitutes rank speculation and is insufficient to support the Justice's disqualification. Damarlane v. Pohnpei Legislature, 14 FSM Intrm. 582, 585 (App. 2007).

This Court therefore concludes, that Defendants have not depicted a factual basis to depict an appearance of impropriety, in terms of overseeing two separate cases involving the same party or a lack of competency, with respect to ruling on FSM matters and as a result, this argument fails.

Accordingly, this Court finds no basis upon which to grant the motion to disqualify and hereby DENIES Defendants' Motion to Disqualify.

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FSM SUPREME COURT APPELLATE DIVISION

FOOK CHIANG LEE,	)	APPEAL CASE NO. K7-2014
	)	(KSC Criminal Case No. 73-2014)
Appellant,	)	
	)	
vs.	)	
	)	
STATE OF KOSRAE,	)	
	)	
Appellee.	)	
_____	)	

ORDER DENYING PETITION FOR REHEARING

Decided: October 20, 2015

BEFORE:

Hon. Ready E. Johnny, Associate Justice, FSM Supreme Court  
Hon. Bealeen Carl-Worswick, Associate Justice, FSM Supreme Court  
Hon. Camillo Noket, Specially Assigned Justice, FSM Supreme Court\*

\*Chief Justice, Chuuk State Supreme Court, Weno, Chuuk

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