FSM SUPREME COURT TRIAL DIVISION

MARIANNE B. SETIK, individually and as Administratrix of the Estate of Raymond Setik; and HEIRS OF RAYMOND SETIK, Plaintiffs, vs. ANNA MENDIOLA, individually and in her capacity as the President and Chief Executive Officer of FSM Development Bank; SIHNA LAWRENCE, Chief Financial Officer of FSM Development Bank; JOHN SOHL, in his official capacity, as Chairman of FSM Development Bank Board of Directors; JULIET JIMMY, in her official capacity, as the Board Director representing Pohnpei State; NORA SIGRAH, individually and in her capacity as Legal Counsel for FSM Development Bank, and FSM DEVELOPMENT BANK, Defendants.	CIVIL ACTION NO. 2015-031

ORDER RE DEFENDANTS' MOTION TO DISMISS

Lourdes F. Materne*
Temporary Justice

Decided: November 17, 2015

*Associate Justice, Palau Supreme Court, Koror, Palau

APPEARANCES:

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HEADNOTES

Judgments – Relief from Judgment – Independent Actions

When the plaintiffs have already opted to seek the same relief via a Rule 60(b) motion, the present complaint is therefore an independent cause of action, and since a party seeking relief from a

judgment is constrained to choosing, either a Rule 60(b) motion or an independent cause of action, the plaintiffs are thereby precluded from bringing the ostensibly redundant cause of action at hand. Setik v. Mendiola, 20 FSM R. 236, 241 (Pon. 2015).

Judgments – Relief from Judgment – Independent Actions

An independent action seeking equitable relief, must satisfy five essential elements: 1) a judgment which ought not, in equity and good conscience, be enforced; 2) a good defense to the alleged cause of action on which the judgment is founded; 3) fraud, accident, or mistake, which prevented the defendant in the judgment from obtaining the benefit of his defense; 4) the absence of fault or negligence on the defendant's part and 5) the absence of any adequate remedy at law. Since the components are prescribed in the conjunctive, if any one of these factors are absent, the court cannot take equitable jurisdiction of the case. Setik v. Mendiola, 20 FSM R. 236, 241 (Pon. 2015).

Civil Procedure – Defaults and Default Judgments; Civil Procedure – Res Judicata

The res judicata doctrine stands for the proposition that a judgment entered in a cause of action conclusively settles that cause of action as to all matters which were or might have been litigated and adjudged therein, and a default judgment constitutes a final judgment with res judicata and claim preclusion effect. Setik v. Mendiola, 20 FSM R. 236, 241 (Pon. 2015).

Civil Procedure – Res Judicata; Judgments – Relief from Judgment – Independent Actions

An independent action cannot be made a vehicle for relitigation of issues. A party is precluded by res judicata from relitigation in the independent equitable action that were open to litigation in the former action, when he had a fair opportunity to make his claim or defense in that action. Setik v. Mendiola, 20 FSM R. 236, 242 (Pon. 2015).

Civil Procedure – Collateral Estoppel

A party who has litigated an action in his personal capacity, cannot escape the application of collateral estoppel and relitigate the action, simply by claiming to act in a different capacity. Setik v. Mendiola, 20 FSM R. 236, 242 (Pon. 2015).

Civil Procedure – Collateral Estoppel; Civil Procedure – Res Judicata

An administratrix cannot choose to file certain claims in the initial case and given an adverse outcome, then proceed to pursue a second matter on behalf of remaining heirs; especially since the additional issues were hardly novel, but instead were readily available and capable of having been raised in the first instance. Even if a party is not collaterally estopped from relitigating a different issue between parties to a prior judgment, res judicata will still bar relitigation of those claims that might have been raised and adjudicated in the first action. Setik v. Mendiola, 20 FSM R. 236, 242 (Pon. 2015).

Civil Procedure – Res Judicata

A litigant may not sit idly by during the course of litigation and then seek to present additional defenses in the event of an adverse outcome. Setik v. Mendiola, 20 FSM R. 236, 242 (Pon. 2015).

Civil Procedure – Res Judicata; Judgments – Relief from Judgment – Independent Actions

Allegations in an independent action, which could have been previously broached consequently run counter to the doctrine of res judicata. Setik v. Mendiola, 20 FSM R. 236, 243 (Pon. 2015).

Statutes of Limitation – Accrual of Action

The true test in determining when a claim arose, is based upon when the plaintiff first could have maintained the action. Setik v. Mendiola, 20 FSM R. 236, 243 (Pon. 2015).

Statutes of Limitation – Accrual of Action

For purposes of determining when the statute of limitations ran, it is well established, that the plaintiffs' claim for payment arose at the time the relevant payment became due. Setik v. Mendiola, 20 FSM R. 236, 243 (Pon. 2015).

Statutes of Limitation – Accrual of Action

A cause of action accrues when the right to bring suit is complete. This is established at the time when the plaintiff could have first maintained the action to a successful conclusion. Setik v. Mendiola, 20 FSM R. 236, 243 (Pon. 2015).

Agency

A principal is bound by and liable for the acts of its agent if done within the scope of this agent's employment. Setik v. Mendiola, 20 FSM R. 236, 243 (Pon. 2015).

Agency; Civil Procedure – Dismissal – Before Responsive Pleading

When, assuming the allegations in the complaint about the defendants named individually, along with the inferences drawn therefrom, are true; when the plaintiffs are precluded from bringing the present cause of action against the individuals' employer on several grounds; and when, given the individual defendants were all acting on their employer's behalf and within the scope of their employment, vicarious liability is not available and the claims leveled against the individual defendants must also fall. Setik v. Mendiola, 20 FSM R. 236, 244 (Pon. 2015).

Judgments – Relief from Judgment

Having already utilized a Rule 60(b) motion for relief from judgment, the plaintiffs are not entitled to pursue a later independent cause of action to obtain relief because a party is limited to employing only one of these strategies. Setik v. Mendiola, 20 FSM R. 236, 244 (Pon. 2015).

Civil Procedure – Collateral Estoppel

Given the adverse outcome in the first action, the plaintiffs cannot escape the application of collateral estoppel, by simply claiming to act on behalf of different heirs or complainants in the subsequent cause of action. Setik v. Mendiola, 20 FSM R. 236, 244 (Pon. 2015).

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COURT'S OPINION

LOURDES F. MATERNE, Temporary Justice:

On August 3, 2015, Marianne B. Setik et al., through Attorney Yoslyn G. Sigrah, filed a Complaint for Injunctive Relief and Others, naming Anna Mendiola et al. as Defendants. On September 4, 2015, Defendants, through Nora E. Sigrah, after having dutifully requested an enlargement, filed a Motion to Dismiss the Complaint. On September 14, 2015, Plaintiffs' Counsel filed a Motion to Enlarge Time to File [an] Opposition to Defendants' Motion to Dismiss, which was granted on October 15, 2015, allowing an extension until October 20, 2015. On October 20, 2015, Plaintiffs' Opposition to Defendants' Motion to Dismiss was ultimately filed.

I. FACTUAL AND PROCEDURAL BACKGROUND

At the outset, it is incumbent to recount the elongated procedural history of the subject cause and controversy as a backdrop, since such a depiction will invariably reveal, that many of the arguments raised in the case at hand, constitute a mere regurgitation of issues which were previously broached

and denied by this Court. In other words, although instant Complaint seeks injunctive relief, framing it as such, does little to mask the fact, that, once again, a stay of the relevant Judgments is coveted, thereby mirroring claims which were raised and ruled upon in FSM Development Bank v. Setik, 20 FSM R. 85 (Pon. 2015). Absent a new twist employed by the Plaintiffs, whereby both formulation and subsequent enforcement of the underlying loan agreement is now attacked, coupled with naming the President/CEO, along with Counsel for the FSMDB, individually, as well as in their employment capacity; alleging "gross negligence, vicarious liability and *respondeat superior*," (Count VI), the sum and substance of the present claims parrot those which were previously denied by this Court.

The genesis of the case at hand was a promissory note entered into by Manny Setik with the FSM Development Bank (FSMDB) on August 14, 2001 (in the amount of $658,000, with interest accruing at a rate of 9%). The underlying purpose for securing this loan was to underwrite expenses attendant to construction/renovation efforts at the promisor's business enterprise: C-Star Apartelle.

Two parcels of land were pledged as security for the subject loan agreement; having been executed by both Manny Setik and his sister, Marianne B. Setik (the Plaintiff herein) on November 16, 2001. Parcel No. 025-A-158, the C-Star Apartelle, constituted one of these mortgaged properties and this instrument clearly set forth, that "both the mortgagor and mortgagee agreed . . .and have made an earnest and good faith effort to establish a fair estimated value of the land[,] including the appurtenances thereon[,] which are used as security for the loan. . . ." Although the original Certificate of Title to these parcels was held by the late family patriarch: Raymond Setik, a Special Power of Attorney was granted to Manny Setik, authorizing him to act on behalf of the immediate family of the deceased Raymond Setik, with respect to this property. The real property mortgage and related Power of Attorney were registered on November 21, 2001. These documents reflect the fact that all heirs of the titled owner (Raymond Setik) of the two parcels, consented to the mortgage of the subject properties to the FSMDB, as security for the underlying loan.

Since there was a default on the relevant note, the FSMDB filed Civil Action 2007-008 on January 30, 2007, which sought to collect the outstanding balance and foreclose on the mortgage. As Manny Setik had passed away on December 7, 2004, the co-signor of the mortgage, Marianne B. Setik, was named as a Defendant, along with a number of family members, individually and as d.b.a. C-Star Apartelle. Given the fact no Answer was filed by Defendants, a Request for Entry of Default was filed and on February 1, 2008, a Default Judgment issued in favor of the FSMDB against Defendants Marianne B. Setik and Irene Setik in the principal amount of $856,016.07, plus interest. On January 25, 2010, a similar Default Judgment (in the exact same figure) was entered against the other named Defendants.

In a subsequent related case (predicated on the same set of facts surrounding the loan in issue), Civil Action 2010-006, Judgment was entered on March 22, 2011, in favor of the FSMDB against the remaining Defendants (in the same amount enumerated within 2007-008). On August 19, 2013, a motion to *inter alia*, consolidate the 2007-008 case with 2010-006 and for an Order in Aid of Judgment was filed. Since both cases involved the same set of operative facts and were in a post-judgment posture, the Court issued an Order granting consolidation, as well as an Order in Aid of Judgment on December 24, 2013.

This Order directed the foreclosure of the mortgage, that had been pledged as security for the subject loan form the FSMDB and provided for the sale of the two parcels in issue. This Order also noted that the outstanding Judgment against Defendants totaled $1,133,283.46; which included the principal, along with accrued post-judgment interest. This sum also reflected a credit of $83,333.26 to the Judgment principal, as a result of a payout from the Credit Life Insurance policy for the late Manny Setik.

On January 30, 2014, Defendants filed a Motion to Stay Pending Rule 60(b), as well as a separate Motion to Set Aside the Judgment, to which respective Oppositions were filed by Plaintiffs; precipitating a Reply and corresponding Sur-Reply. On July 1, 2015, a Ruling was issued by this Court, denying the coveted relief. [FSM Dev. Bank v. Setik, 20 FSM R. 85 (Pon. 2015).] The July 1st Order found, that Defendants failed to satisfy the requirements of both Rules 55(c) and 60(b), to have the Default Judgment set aside, since the averments were made more than a year after the subject Judgment was entered and as such, fell outside the time prescribed in Rule 60(b). The Court further noted, that the default was a direct result of Defendants' willful conduct and there had been no meritorious defense or extraordinary circumstance(s) depicted to justify the relief sought. In sum, the Decision denied the movants' coveted relief, not only on the ground that the motion was untimely, but given the merits were found to be wanting.

The Motion to Stay Pending Rule 60(b) was also denied, as the July 1st Order found Defendants had not denied the underlying debt, as per the promissory note; failed to denote they were likely to prevail on the accompanying Rule 60(b) motion; there had been an inadequate showing that irreparable harm would befall them without a stay; no attempt had been no attempt to meet their obligation, despite the executed mortgage having been pledged as security and issuance of a stay would further stymie the FSMDB's ability to recoup monies due and owing, since the Judgment had been languishing for an elongated length of time, coupled with the continuing deterioration of the buildings on the parcels. The Court also found, that a denial of the coveted stay, would hardly result in a deleterious effect on public policy; as quite the opposite impact might be conveyed, if a stay were granted, *to wit:* sending a troubling message to similar debtors, in terms of allowing other to stave off satisfaction of a final Judgments even though an underlying justification for suspension of the proceedings had not been adequately demonstrated. Setik, 20 FSM R. at 89.

On July 29, 2015, Defendants filed a Motion to Set Aside [the] Order Filed [on] July 1, 2015, along with [a] Motion for [an] Expedited Hearing or Processing. In response thereto, Plaintiffs, on August 7, 2015, filed an Opposition to Defendants' Motion to Set Aside [the] Order of July 1, 2015. Finally, on November 9, 2015, Defendants' Reply to Plaintiffs' Opposition was filed.

An Order denying the Motion to Set Aside [the] Order Filed [on] July 1, 2015, was issued by the Court on November 13, 2015. This Court found that no meritorious defense had been depicted and the appointment of the presiding Justice was proper, along with the authenticity of an electronic signature affixed to the subject Order.

The Complaint filed by the Plaintiffs herein on August 3, 2015, seeks injunctive relief from the above-mentioned Orders issued on December 23, 2014, that provided for the sale of a couple parcels which had been mortgaged to the FSMDB, as security for the subject loan, as well as the July 1, 2015 Order denying motions to vacate the Judgment, set aside the default and stay the proceedings. Plaintiff's instant Complaint essentially seeks to deprive the aforementioned Judgments of their respective legal efficacy, by calling into question the propriety of the underlying promissory note and attendant security instruments.

II. ANALYSIS

A. *Rule 60(b) or an Independent Cause of Action*

At the expense of repetition, the instant Complaint endeavors to abrogate the Orders entered in Civil Action 2007-008 (on December 24, 2013 and July 1, 2015); seeking *inter alia*, to have the underlying promissory note, along with the attendant security instrument, deemed null and void. As adequately depicted above, Plaintiffs previously sought, albeit unsuccessfully, to nullify those same

Rulings, having filed the above-mentioned motions to vacate the Judgment, set aside the default and stay the proceedings. Absent the utilization of a slight variation in the filing at issue, *to wit*: attacking the propriety of the underlying loan agreement, along with joining the FSMDB President/CEO and Counsel as party Defendants individually, with regard to their efforts to execute the subject Judgments, the gravamen of the present Complaint mirrors the above-mentioned prior motions.

In light of the fact, the Plaintiffs have already opted to seek, essentially the same relief, via a Rule 60(b) motion, the present Complaint is therefore tantamount to an independent cause of action. From a procedural standpoint however, Arthur v. Pohnpei, 16 FSM R. 581, 596 (Pon. 2009), has held that a movant seeking relief from a Judgment is constrained to choosing, either a Rule 60(b) motion or an independent cause of action. In light of this Ruling taking pains to frame these two avenues in the disjunctive, Plaintiffs are thereby precluded from bringing the ostensibly redundant cause of action at hand.

Furthermore, FSM Dev. Bank v. Carl, 20 FSM R. 70 (Pon. 2015), has followed the lead of Arthur. In Carl, the Defendant filed a separate matter, in an effort to secure relief in the initial case and thereafter proceeded to file a 60(b) motion, in a similar attempt to obtain relief from the subject Judgment. In addition to finding the 60(b) mechanism as untimely, the Carl Court found, that the movant could not employ both an independent action and a Rule 60(b) in its endeavor to acquire relief from Judgment. *Id.* at 72.

In light of this Court's prior denial, predicated on the merits of the aforementioned motions, Plaintiffs are barred from seeking the relief *de novo*, with respect to the instant Complaint naming FSMDB employees as party Defendants. The claims set forth within the Complaint at bar, which name the employees of FSMDB individually, will be addressed separately; in due course.

Separate and apart from being procedurally barred from bringing an independent action, the instant cause of action, seeking equitable relief, must satisfy five (5) essential elements: 1) a Judgment which ought not, in equity and good conscience, be enforced; 2) a good defense to the alleged cause of action, on which the Judgment is founded; 3) fraud, accident or mistake, which prevented the Defendant in the Judgment from obtaining the benefit of his defense; 4) the absence of fault or negligence on the part of the Defendant and 5) the absence of any adequate remedy at law. Since the components are prescribed in the conjunctive, if any one of these factors are absent, the Court cannot take equitable jurisdiction of the case. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 659 (App. 2009).

In light thereof, it is noteworthy that in the first action: FSM Dev. Bank v. Setik, 20 FSM R. 85 (Pon. 2015), the Court found: "the default was a result of their own volitional/willful and culpable conduct." *Id.* at 89. Accordingly, this Court finds the Decisions rendered in both Arthur v. Pohnpei, 16 FSM R. 581 (Pon. 2009) and Carl, 20 FSM R. 70 (Pon. 2015) are controlling and Plaintiffs, having already filed a Rule 60(b) motion, are therefore precluded from bringing this independent action.

B. *Res Judicata and Collateral Estoppel*

The doctrine of *res judicata* stands for the proposition, that a Judgment entered in a cause of action conclusively settles that cause of action, as to all matters which were or might have been litigated and adjudged therein. Sorech v. FSM Dev. Bank, 18 FSM R. 151, 156 (Pon. 2012). Furthermore, a default Judgment constitutes a final Judgment with *res judicata* and claim preclusion effect. Mori v. Hasiguchi, 17 FSM R. 630, 644 (Chk. 2011).

As was adequately set forth above, the same operative facts are involved in the cause of action at hand, absent claims involving the underlying loan agreement; specifically questioning its

appropriateness, as well as subsequent enforcement efforts that were undertaken. "An independent action cannot be made a vehicle for relitigation of issues. . . . [A] party is precluded by res judicata from relitigation in the independent equitable action that were open to litigation in the former action[,] where he had a fair opportunity to make his claim or defense in that action." Arthur v. Pohnpei, 16 FSM R. 581, 599-600 (Pon. 2009).

In addition, with the exception of FSMDB employees named herein as party Defendants, the parties essentially remain the same as those in Setik. Plaintiffs maintain that the complainants in present case: Marianne B. Setik, individually and as Administratrix of the Estate of Raymond Setik and Heirs of Raymond Setik differ from those in Setik (claiming several of the heirs of Raymond Setik, were not involved in the 60(b) motion) and as such, *res judicata* should not control. It has been long established, that a party who has litigated an action in his personal capacity, cannot escape the application of *collateral estoppel* and relitigate the action, simply by claiming to act in a different capacity. Nahnken of Nett v. United States (III), 6 FSM R. 508, 521 (Pon. 1994).

Applying this rationale to the instant matter, the Administratrix cannot choose to file certain claims in the initial case and given an adverse outcome, then proceed to pursue a second matter on behalf of remaining heirs; especially since the additional issues, were hardly novel, but instead, readily available and capable of having been raised in the first instance. Even if a party is not collaterally estopped from relitigating a different issue between parties to a prior Judgment, *res judicata* will still bar relitigation of those claims that might have been raised and adjudicated in the first action. Nahnken of Nett v. United States, 7 FSM R. 581, 587 (App. 1996).

Furthermore, this tenuous distinction, with respect to differing complainants, also ignores the sequence of events which belie any averment by Plaintiffs, that they labored under the impression the parcels of property were tied up in probate. As previously noted, the original Certificate of Title to the parcels of property in issue was held by the late Raymond Setik. With the passing of this family patriarch on August 23, 1997, a Special Power of Attorney, along with the real property mortgage, was granted to Manny Setik and dutifully registered in 2001. This documentation corroborates the fact, that the heirs of the titled owner, Raymond Setik, consented to Manny Setik managing the affairs of the estate. The subject promissory note with the FSMDB was executed on August 14, 2001 and the parcels in issue were pledged as security for the underlying loan. It bears noting, that the two signatories on this mortgage instrument, executed on November 16, 2001, were Manny Setik and Marianne B. Setik (Plaintiff herein).

In contradistinction to the Plaintiffs' averment that they operated under the premise the property was tied up in probate, the heirs of Raymond Setik exercised little compunction, in terms of securing the loan at issue in 2001 or executing the aforementioned mortgage; to which the Administratrix was a signatory. Accordingly, Plaintiffs are effectively estopped from bringing an action sounding in conversion.

In sum, the present attempt to couch the present matter as an independent cause of action, with divergent complainants, in order to challenge the propriety of the loan agreement, along with the concomitant mortgage and/or the enforcement of same, is precluded, since these issues and claims could have been addressed in the former action by the Administratrix. "A litigant may not sit idly by during the course of litigation and then seek to present additional defenses in the event of an adverse outcome." Arthur, 16 FSM R. at 599.

Finally, the language utilized in Arthur v. FSM Development Bank, 16 FSM R. 653, 660-61 (App. 2009), is especially instructive: "We concur in the appellate court's opinion in the first appeal of this matter [as well as], the trial court's rationale in dismissing the guarantor's independent action in equity

. . . [i]n essence, this appeal is an appeal of a final appellate court determination of the guarantors' liability to the Bank[,] based on a defense the guarantors could have raised[,] but waived in the trial court. It is yet another attempt, as the trial court aptly put it, 'to have a second bite of the appellate apple.'" In sum, the allegations set forth in the independent action at bar, which, *inter alia,* challenge the propriety of the loan agreement, as well as subsequent efforts of the FSMDB to enforce same, could have been previously broached and consequently, Plaintiffs' repose runs counter to the Doctrine of *Res Judicata.*

C. *Statute of Limitations*

The statute of limitations constitutes, yet another impediment for the Plaintiffs herein. The present Complaint seeking damages for alleged injuries incurred, as well as injunctive relief, comes within the ambit of 6 F.S.M.C. 803(4), which prescribes an action shall be commenced within two (2) years after the cause of action accrues.

Despite Plaintiff's affirmation, that the present cause of action did not ripen until 2014, "the true test in determining when a claim arose[,] is based upon when the plaintiff first could have maintained the action." E.M. Chen & Assoc. (FSM) Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 556-57 (Pon. 2000). The allegations set forth in Counts II through VII are predicated upon the behavior of the FSMDB, in terms of the loan agreement's formulation and ensuing enforcement, coupled with the FSMDB's failure, in terms of applying the proceeds of a Credit Life Insurance Policy held by the late Manny Setik, to the outstanding balance of the loan in a timely manner.

This Court notes, that the less than punctual payout on a life insurance policy, has already been addressed in FSM Development Bank v. Setik, 20 FSM R. 85 (Pon. 2015). There the Court found: "The argument concerning a belated issuance of proceeds from a Credit Life Insurance (policy) taken out by the late Manny Setik affecting the amount due and owing, has been rectified, as the Plaintiff (FSMDB) subsequently credited these subject monies ($83,333.26) to the outstanding Judgment principal." *Id.* at 88. Furthermore, for purposes of determining when the statute of limitations ran, within this context, it is well established, that Plaintiffs' claim for payment arose at the time the relevant payment became due. E.M. Chen & Assocs. (FSM) Inc. v. Pohnpei Port Auth., 10 FSM R. 400, 405 (Pon. 2001).

For quick reference, the promissory note in issue was executed on August 14, 2001; the accompanying mortgage on November 16, 2001 and Manny Setik passed away on December 7, 2004. Based upon the allegations in the present Complaint, along with the underlying Court Record from Setik, the causes of action accrued some fourteen (14) and eleven (11) years ago, respectively. It has also long been held, that: "A cause of action accrues when the right to bring suit is complete. This is established at the time when the Plaintiff could have first maintained the action to a successful conclusion." Kosrae v. Skilling, 11 FSM R. 311, 315 (App. 2003). As a result, all of the Counts in the Complaint are well outside the two (2) year time constraint enumerated within 6 F.S.M.C. 803(4) and therefore barred by the applicable statute of limitations.

D. *Defendants Named Individually*

This Court finds that the claims brought by Plaintiffs against the Defendants named individually, within the employ of the FSMDB, all stem from duties and responsibilities attendant to their respective positions. It has long been held, that an agency relationship is based upon consent by one person, concerning the ability of another to act in his behalf; subject to the former's control. A principal is bound by and liable for the acts of its agent if done within the scope of this agent's employment. Sigrah v. Timothy, 9 FSM R. 48, 52 (Kos. S. Ct. Tr. 1999)

Assuming the allegations in the present Complaint pertaining to these Defendants named individually, along with the inferences drawn therefrom are true, as adequately set forth above, Plaintiffs are precluded from bringing the present cause of action against the FSMDB on several grounds. Accordingly, given the Defendants named individually were all acting on behalf of the Bank and within the scope of their employment; against this backdrop, vicarious liability is similarly not available and the claims leveled against these Defendants named individually must also fall.

III. CONCLUSION

Plaintiffs herein previously sought to nullify the Orders issued in Civil Action 2007-008, by virtue of having brought motions to vacate the Judgment, set aside the default and stay the proceeding; albeit unsuccessfully. FSM Dev. Bank v. Setik, 20 FSM R. 85 (Pon. 2015). Having already utilized a Rule 60(b) motion in the aforementioned endeavor, Plaintiffs are not entitled to pursue the independent cause of action at bar. Both Arthur v. Pohnpei, 16 FSM R. 581, 596 (Pon. 2009) and FSM Development Bank v. Carl, 20 FSM R. 70 (Pon. 2015) have made it crystal clear, that a party is limited to employing only one of these strategies. By phrasing their respective Rulings in the disjunctive, Arthur and Carl constitute controlling precedent; thereby precluding Plaintiffs from instituting this seemingly redundant independent cause of action.

The Doctrine of *Res Judicata* poses another obstacle that Plaintiffs cannot overcome. The underlying default Judgment constitutes a final Judgment with *res judicata* and claim preclusion effect, given the same set of operative facts involved, coupled with primarily similar parties. Notwithstanding the divergent theory advanced in the present Complaint, *to wit*: challenging the propriety of the subject loan agreement *per se*, along with the efforts undertaken to enforce same, the claims and issues broached herein were open to litigation in the former action, yet not pursued at that juncture. As a result, Plaintiffs are barred from relitigating the action. In that same vein, given the adverse outcome in the first action, Plaintiffs cannot escape the application of *collateral estoppel*, by simply claiming to act on behalf of different heirs/complainants in the present cause of action. Bottom line: both the maxim of *collateral estoppel* and doctrine of *res judicata* bar relitigation of claims that might have been raised and adjudged in Setik.

Separate and apart from the above-mentioned impediments, the statute of limitations is tantamount to a sentry at the door, which prohibits entry by Plaintiffs. Based upon the allegations contained within the Complaint at hand, couple with the Court Record, the causes of action accrued well outside the applicable two (2) year statute of limitations and as a result, forestall this independent action.

Finally, this Court finds that the genesis for claims leveled against the sundry Defendants named individually, came within the purview of their respective employment duties. The complained of acts were not undertaken on a lark of their own; quite the contrary, all took place in the scope of their employ, as agents of the FSMDB. As such, the aggregate effect of the failings of the instant action listed above, also stymie any allegation sounding in vicarious liability, much less individual exposure.

Accordingly, the Court hereby GRANTS Defendants' Motion to Dismiss the Complaint in its entirety.

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