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: RULE 11 SANCTIONS

Lourdes F. Materne*
Temporary Justice

Decided: March 4, 2016

*Associate Justice, Palau Supreme Court, Koror, Palau

APPEARANCES:

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HEADNOTES

Civil Procedure – Sanctions

A court retains jurisdiction over a Rule 11 motion for sanctions even though the action has been dismissed. Setik v. Mendiola, 20 FSM R. 320, 322, 328 (Pon. 2016).

Civil Procedure – Sanctions

In determining the appropriateness of meting out Rule 11 sanctions, a two-pronged analysis must be undertaken regarding the conduct of plaintiffs' counsel in bringing the subject cause of action. Under Rule 11, the court must determine whether: 1) the pleading was signed, to the best of this attorney's knowledge, information and belief, formed after reasonable inquiry, well grounded in fact and warranted by law and 2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or to increase the litigation's cost. Setik v. Mendiola, 20 FSM R. 320, 323 (Pon. 2016).

Judgments – Relief from Judgment – Independent Actions

Parties are precluded from seeking relief from a judgment via an independent cause of action, after having previously chosen to utilize a Civil Rule 60(b) motion toward that end. Setik v. Mendiola, 20 FSM R. 320, 323 (Pon. 2016).

Civil Procedure – Sanctions

Counsel's conduct is viewed under an objective standard, as opposed to assessing the attorney's subjective intent. Setik v. Mendiola, 20 FSM R. 320, 324 (Pon. 2016).

Civil Procedure – Sanctions

A signatory's conduct will be examined at the time the relevant document was executed. Setik v. Mendiola, 20 FSM R. 320, 324 (Pon. 2016).

Civil Procedure – Sanctions

When counsel chose to pursue an independent action in the wake of an unsuccessful Rule 60(b) motion for relief from judgment and when counsel had actual knowledge of the existing law prohibiting that, this behavior would belie any semblance of having conducted a "reasonable inquiry" into whether the pleading was "warranted by existing law." Setik v. Mendiola, 20 FSM R. 320, 324 (Pon. 2016).

Civil Procedure – Sanctions

A "reasonable inquiry" implies being conversant with all the circumstances of the case. Setik v. Mendiola, 20 FSM R. 320, 326 (Pon. 2016).

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. 320, 326 (Pon. 2016).

Civil Procedure – Sanctions

A belated independent action predicated on an erroneous factual perception that the December 24, 2013 judgment and ensuing July 1, 2015 order did not exist, refutes any indication that the plaintiffs' counsel undertook the requisite "reasonable inquiry," about whether the independent action's complaint was "well grounded in fact." Setik v. Mendiola, 20 FSM R. 320, 327 (Pon. 2016).

Civil Procedure – Sanctions

When a complaint was brought as an independent action attacking a judgment that had already been unsuccessfully challenged twice, the attorney may be sanctioned for raising matters already decided and offering no new arguments. Setik v. Mendiola, 20 FSM R. 320, 327 (Pon. 2016).

Civil Procedure – Sanctions

The underlying reason for imposing Rule 11 sanctions is to deter baseless and frivolous filings. Setik v. Mendiola, 20 FSM R. 320, 327 (Pon. 2016).

Civil Procedure – Sanctions

When the filing of a seemingly independent action is replete with inaccurate recitations of the parties and contains specious, untimely causes of action that challenge the formulation and enforcement of a defaulted loan on which a judgment had been entered, the conduct exhibited by the plaintiffs' attorney is vexatious under a clear and convincing analysis; thereby tantamount to bad faith. Setik v. Mendiola, 20 FSM R. 320, 327-28 (Pon. 2016).

Civil Procedure – Sanctions

Rule 11 sanctions will be imposed when the court finds that a "reasonable inquiry" into whether the complaint was "well grounded in fact and warranted by existing law" was wanting and when the pleading was "interposed for an improper purpose," namely, to cause unnecessary delay. Setik v. Mendiola, 20 FSM R. 320, 328 (Pon. 2016).

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COURT'S OPINION

LOURDES F. MATERNE, Temporary Justice:

I. Introduction

On September 25, 2015 Defendants filed a Motion for Rule 11 Sanctions Against Plaintiffs and an Opposition thereto was submitted October 30, 2015. The instant motion stems from Plaintiffs' August 3, 2015 Complaint for Injunctive Relief and Others. The Court notes that Defendants filed a Motion to Dismiss the Complaint on September 4, 2015, Plaintiffs' Opposition followed on October 20, 2015 and this Court issued an Order dismissing the Complaint, in its entirety, on November 17, 2015. A Court retains jurisdiction over a Rule 11 motion for sanctions even though the action has been dismissed. Kosrae v. Seventh Kosrae State Legislature, 11 FSM R. 56, 58 (Kos. S. Ct. Tr. 2002).

II. Background

The underlying Complaint, brought as an independent action, constituted the fourth attempt by Plaintiffs herein to stave off FSMDB's efforts to collect on an outstanding loan and third separate endeavor aiming to thwart subsequent enforcement, with respect to the underlying Judgment, entered in Civil Action No. 2007-008, on December 24, 2013.

For quick reference, on October 11, 2013, Plaintiffs' filed a Motion to Dismiss in 2007-008, which was denied on November 15, 2013. The Plaintiffs herein then filed Motions to Set Aside and Stay the Judgment on January 30, 2014, which were ultimately denied on July 1, 2015. In the wake thereof, Plaintiffs proceeded to file a Motion to Set Aside that July 1st Order, which was similarly denied on November 13, 2015.

The instant Complaint, substituting different heirs as Plaintiffs and naming the employees as Defendants, hardly changed the fact, that this purportedly "independent action," constituted nothing more than taking, yet another, errant shot at seeking relief from the Judgment entered on December 24, 2013, along with the Order issued on July 1, 2015.The lone distinction in the Complaint at issue was an attempt to void the underlying promissory note and other loan instruments, via utilization of contract defenses (in the hope that the liens against the property, mortgaged as security for the loan, would be released) and counts leveled against employees of the bank, with regard to formulation of the loan agreement and subsequent enforcement actions.

As set forth in this Court's November 17th Order granting the motion to dismiss in the present action:

> 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. . . .

[Setik v. Mendiola, 20 FSM R. 236, 238-39 (Pon. 2015).]

It is also noteworthy, that Plaintiffs herein brought two appeals, with respect to Civil Action No. 2007-008. P2-2014, challenges the December 23, 2014 Judgment and P4-2015, takes issue with the July 1, 2015 Ruling. Against this backdrop, the merits of imposing Rule 11 Sanctions Against Plaintiffs' [Counsel] will be examined.

III. ANALYSIS

A. *Rule 11 Sanctions*

In determining the appropriateness of meting out Rule 11 Sanctions, a two-pronged analysis must be undertaken, regarding the conduct of Plaintiffs' Counsel in bringing the subject cause of action. Under Rule 11, we must determine whether: 1) the Pleading was signed, to the best of this Attorney's knowledge, information and belief, formed after reasonable inquiry, well grounded in fact and warranted by law and 2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or increase the cost of litigation.

Plaintiffs' dismissed Complaint, which was couched as an independent action seeking injunctive relief, endeavored to deprive the aforementioned Judgments of their respective legal efficacy, by calling into question, *inter alia*, the propriety of the underlying promissory note and attendant security instruments, along with the enforcement efforts of the bank and its various employees.

B. *Reasonable Inquiry*

From a procedural perspective, this Court notes, that Plaintiffs are precluded from seeking relief from a Judgment, via an independent cause of action, after having previously chosen to utilize a Civil Rule 60(b) motion toward that end. Arthur v. Pohnpei, 16 FSM R. 581, 596 (Pon. 2009) held that a movant seeking relief from a Judgment is relegated to choosing either a Rule 60(b) motion or an independent cause of action. In framing this holding in the disjunctive, the Arthur Court sought to curtail parties from bringing redundant actions.

A case in which the same Attorney being scrutinized herein represented Defendants: FSM Development Bank v. Carl, 20 FSM R. 70 (Pon. 2015), followed the lead of Arthur. Defendants therein brought a separate case, in an effort to secure relief from a Judgment in the initial matter and then proceeded to file a 60(b) motion in an attempt to obtain relief from the subject Judgment. In addition

to finding the 60(b) mechanism as untimely, the Carl Court found, that Defendants could not utilize both an independent action and 60(b) motion in their quest to acquire relief from Judgment. *Id.* at 72.

Having also been Counsel of record in that matter, one can safely deduce that this Attorney was well aware of the relevant proscription, yet chose to employ the same tactic in the case at bar. Counsel's conduct is viewed under an objective standard, as opposed to assessing an Attorney's subjective intent. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 372 (App. 2012).

Within the Court's November 17, 2015 Order dismissing Plaintiffs' Complaint, it was also noted this Pleading was deficient, in terms of meeting the requirements for an action sounding in equity which sought injunctive relief from a Judgment. Since the components are prescribed in the conjunctive, if any one of these factors is absent, the Court cannot take equitable jurisdiction of the case. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 659 (App. 2009).

In this vein, the November 17th Order concluded, that this Court had previously found: "the default was a result of their [Plaintiffs herein] own volitional/willful and culpable conduct, [and as a result, a requisite element for the equitable relief sought was lacking]. FSM Dev. Bank v. Setik, 20 FSM R. 85, 89 (Pon. 2015)." [Mendiola, 20 FSM R. at 241.] Accordingly, this Court finds the Decision rendered in both Arthur v. Pohnpei, 16 FSM R. 581 (Pon. 2009) and FSM Dev. Bank v. Carl, 20 FSM R. 70 (Pon. 2015), are controlling and Plaintiffs having already filed an Rule 60(b) motion are therefore precluded from bringing this independent action.

Although, Plaintiffs' Complaint was filed on August 3, 2015 and the November 17, 2015 Order was issued thereafter, the Ruling in Carl predated the aforementioned filing, given its issuance on June 18, 2015. The conduct of a signatory will be examined at the time the relevant document is executed. Amayo v. MJ Co., 14 FSM R. 355, 363 (Pon. 2006). As noted above, Plaintiffs' Counsel was the Attorney of record, appearing on behalf of Defendants in Carl. Consequently, from an "objective" standpoint, knowledge of this prohibition, as far as bringing both an independent action and Rule 60(b) motion, could certainly be imputed to this Attorney.

In sum, Counsel herein chose to pursue this independent action (in the wake of an unsuccessful 60(b) motion). Having actual knowledge of the existing law (the Carl Ruling), this behavior would belie any semblance of having conducted a "reasonable inquiry" into whether the Pleading was "warranted by existing law." FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 223 (Kos. 2010). Succinctly put, this avenue had been previously traversed by Counsel, who was well aware that navigating this path was futile, given the existence of a roadblock that was encountered on an earlier sojourn.

Separate and apart from the bar to seeking relief *de novo* (via this independent action) after having already brought a 60(b) motion, Counsel should have also been familiar with the ramifications of *res judicata*. The November 17, 2015 Order dismissing Plaintiffs' Complaint is instructive, with regard to this doctrine having been triggered and for purposes of examining the merits of imposing Rule 11 Sanctions, the inherent duty of Plaintiffs' Counsel to conduct due diligence, in terms of whether the relevant Pleading was "warranted by existing law."

The November 17th Order set forth:

> 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).

. . . "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).

. . . .

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.'"

[20 FSM R. at 241-43.]

Bottom line: under Rule 11, Plaintiffs' Attorney was expected to conduct a "reasonable inquiry" into whether the independent action at bar ran afoul of the doctrine of *res judicata*, especially since the allegations contained therein could have been previously broached and Plaintiffs' repose implicated such

claim preclusion. Given the procedural background of the case at bar, a "reasonable inquiry" implies being conversant with "all the circumstances of the case." In re Sanction of Berman, 7 FSM R. 654, 656-57 (App. 1996). Accordingly, by virtue of having lodged this independent action, the conduct of Attorney runs counter to having undertaken due diligence relative to the Complaint's viability.

The statute of limitations posed another impediment to the independent action in issue and failure of this Attorney to adhere to the time constraints embodied therein, reflects a continuing absence of "reasonable inquiry," on the part of Plaintiffs' Attorney, before signing the respective Pleading. 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.

"The true test in determining when a claim arose[,] is based upon when the Plaintiff first could have maintained the action." E.M. Chen & Assocs. (FSM) Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 556-57 (Pon. 2000). For quick reference, the promissory note in issue was executed on August 14, 2001 and the accompanying mortgage to backstop this obligation: November 16, 2001. 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.

As further noted in the November 17, 2015 Order that dismissed the underlying Complaint:

> 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.

[20 FSM R. at 243.]

A failure on the part of Plaintiffs' Counsel to adhere to this time constraint, further illustrates nonfeasance, as far as undertaking "reasonable inquiry," with regard to whether the relevant independent action was "warranted by existing law."

Substantively, the Complaint at issue, as framed by Plaintiff's Counsel, is also wanting in terms of this Attorney having conducted a "reasonable inquiry," that it was "well grounded in fact." This Court had foreclosed the ability of Plaintiffs to ascribe culpability to employees of the bank individually, since their actions were undertaken within the scope of employment. Given the fact that the Plaintiffs' independent action was dismissed by this Court's November 17th Order, Counsel's claims leveled against the employees in their respective individual capacities is also sorely deficient.

The November 17, 2015 Order set forth: "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." In a case involving the same Attorney, the conduct of whom is being scrutinized herein: Salomon v. Mendiola, 20 FSM R. 138, 142 (Pon. 2015), a similar Order was issued on August 31, 2015, finding: "[a]ll alleged acts servicing the loan by Anna Mendiola and Sihna Lawrence [the exact same bank employees named individually in the case at bar] were acts they could have only done in their official capacities" and consequently, dismissed them individually.

As the work performed by these employees, with respect to, either structuring the loan or

enforcing the provisions embodied therein, was exclusively performed by these individuals while in the employ of FSMDB, the fact that Plaintiffs' Attorney also named these party Defendants individually is perplexing; in that the actions of these employees were hardly undertaken on a lark of theirs.

Furthermore, Counsel has misidentified the named Plaintiffs, as the all-encompassing term utilized: Heirs of Raymond Setik, would invariably include Vicky Setik Irons, yet this individual, as a daughter of the decedent is represented by a different Attorney and never approved of the relevant Complaint. Conversely, the subject Pleading inaccurately named a party Defendant: Juliet Jimmy, as representing the State of Pohnpei, when in actuality, this person sits on the FSMDB's Board of Directors and represents the FSM National Government.

Moreover, the pervasive tenor of the Complaint in issue, utilizing contractual defenses in relation to the underlying loan, loses sight of the fact that there was a Judgment entered in this matter (coupled with a subsequent Order issued, that denied a motions to set aside and stay same). By bringing this action, the behavior of Counsel demonstrates a last-ditch attempt "to revive a moribund case with theories that have long been dead." Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 52, 58 (Pon. 2011). In sum, this belated independent action is predicated on an erroneous factual perception *to wit*: that the December 24, 2013 Judgment and ensuing July 1, 2015 Order did not exist; thereby refuting any indication that Plaintiffs' Counsel undertook the requisite "reasonable inquiry," concerning whether the Complaint was "well grounded in fact."

C. *Interposed for any Improper Purpose*

At the time Counsel's present Complaint was filed, Civil Action 2008-007 had already been the subject of two unsuccessful challenges to the underlying Judgment. Although, the instant Complaint was brought as an independent action, the law is well settled, that "an [A]ttorney may be sanctioned for raising matters already decided and offering no new arguments." Damarlane v. United States, 7 FSM R. 350, 356-57 (Pon. 1995).

The timing of this particular Pleading is also troubling, since it came on the heels of notice having been issued that a public land sale auction was to be held with regard to the subject property. As adequately set forth above, the same arguments marshaled in prior motions were again introduced under the veil of an independent action, which took issue with the formulation of the underlying loan and subsequent enforcement proceedings." When a claim is asserted by the same [P]laintiff, represented by the same [C]ounsel, in an action involving the same land, repeatedly asserting previously denied theories, the Court will consider that claim frivolous." Nahnken of Nett v. Pohnpei, 7 FSM R. 171, 180 (Pon. 1995).

The underlying reasoning for imposition of Rule 11 Sanctions is to deter baseless and frivolous filings. Ehsa v. Pohnpei Port Auth., 14 FSM R. 234, 246 (App. 2006). In a nutshell, the Complaint filed by Counsel for the Plaintiffs constituted an eleventh hour attempt to forestall the auction of land which had been pledged as collateral for the underlying loan agreement, despite the existence of a final Judgment entered eighteen months prior and implication of two prior attempts to set aside/stay same which had been unsuccessful.

In granting a motion for Rule 11 Sanctions, the Court in Damarlane v. Pohnpei Transportation Authority, 18 FSM R. 52 (Pon. 2011), opined: "[C]ounsel continues to argue the same inapplicable issues and facts. Such disingenuousness and dissemblance undermines the authority of this [C]ourt's [J]udgments and [O]rders . . . ." *Id.* at 58. In addition, the filing of this seemingly independent action is replete with inaccurate recitations of the parties and contains specious, untimely causes of action that challenge the formulation and enforcement of the loan. Accordingly, this Court finds the conduct

exhibited by Plaintiffs' Attorney, to be vexatious under a clear and convincing analysis; thereby tantamount to bad faith. In re Sanction of Woodruff, 10 FSM R. 79, 88 (App. 2001). As such, Counsel's conduct merits the imposition of Rule 11 Sanctions.

As noted above, despite the November 17, 2015 Order dismissing the underlying matter, this Court retains jurisdiction over a Rule 11 motion. Seventh Kosrae State Legislature, 11 FSM R. at 58. Furthermore, an award of attorneys fees "on the work related to the latest attempt to revive a moribund case with theories that have long been dead," Damarlane v. Pohnpei Transp. Auth., 18 FSM R. at 58, is found to be hereby warranted.

IV. Conclusion

The reasoning set forth in the November 17, 2015 Order dismissing Plaintiffs' Complaint is equally appropriate here. In that Order this Court concluded: "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)." [Setik v. Mendiola, 20 FSM R. 236, 244 (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."

For purposes of an analysis of the conduct depicted by Plaintiffs' Counsel, in terms of deciding whether to impose Rule 11 Sanctions, this Court additionally finds, that a "reasonable inquiry" into whether this subject Complaint was "well grounded in fact and warranted by existing law" was wanting

and the Pleading was "interposed for an improper purpose," namely: "to cause unnecessary delay."

Accordingly, the Court hereby GRANTS Defendants' Motion for Rule 11 Sanctions Against Plaintiffs' Counsel. Furthermore, Defense Counsel is entitled to an award of Attorney's fees for the work devoted to its Motion to Dismiss the Complaint.

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FSM SUPREME COURT TRIAL DIVISION

FSM DEVELOPMENT BANK, Plaintiff, vs. LINDA CARL and the ESTATE OF YOSHIRO CARL, Defendants.	)	CIVIL ACTION NO. 1996-060

ORDER

Dennis K. Yamase
Chief Justice

Decided: March 15, 2015

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HEADNOTES

Civil Procedure – Discovery – Protective Order

A party may not ask for an order to protect the rights of another party or witness because a party ordinarily does not have standing to challenge a subpoena issued to a nonparty unless the party claims some personal right or privilege in the information sought by the subpoena. FSM Dev. Bank v. Carl, 20 FSM R. 329, 331 (Pon. 2016).

Civil Procedure – Discovery – Protective Order

Non-parties are not without the court's protection since a non-party under subpoena may move to quash the subpoena directed to him. FSM Dev. Bank v. Carl, 20 FSM R. 329, 332 (Pon. 2016).