Consumer Coop. Ass'n (I), 7 FSM R. 387 (Pon. 1996), is instructive. The Richmond Court held: "For there to be an accord and satisfaction, there must be an offer in full satisfaction of a debt[,] accompanied by acts and declarations that amount to a condition that if the offer is accepted, it is in full satisfaction of the obligation." *Id.* at 389. Accordingly, whether the subject cover letter is scrutinized as an accord and satisfaction; novation or attempt to stave off any subsequent tort litigation, given the numerous representations by Plaintiff's Counsel to the contrary, there was no meeting of the minds and Defendant would be estopped from relying on a claim that such an agreement by and between the parties had been reached.

Moreover, in view of the fact that the insurance carrier's endorsement contained within Defendant's policy limited the applicability of the CNMI Workers' Compensation Program to "the benefits provided under the Workers' Compensation Law of the CNMI," (which would entail the section involving "Determination of Pay" – 4 N. Mar. I. Code § 9310), the exclusive remedy provision found in § 9305 (which sets forth tort immunity) does not apply. Thus, Plaintiff would not be forestalled from also bringing a civil action sounding in negligence.

V. Conclusion:

In sum, after having examined the instant matter under a summary judgment standard, whereby the facts are considered in the light most favorable to Plaintiff, since genuine material factual issues remain concerning the alleged tort liability of Defendant, summary judgment must be denied. Consequently, there exist genuine material facts, with respect to allowing Plaintiff the additional civil redress to restore perceived loss of benefits for the injuries sustained during the course and scope of his employment.

Accordingly, the Court hereby DENIES Defendant's Motion for Summary Judgment.

* * * *

FSM SUPREME COURT APPELLATE DIVISION

CATALINO SAM, WELERINO SAM, and ELTER JOSEPH, Appellants, vs. FSM DEVELOPMENT BANK, Appellee.	APPEAL CASE NO. P8-2014

OPINION

Argued: May 6, 2016
Decided: May 25, 2016

BEFORE:

Hon. Camillo Noket, Specially Assigned Justice, FSM Supreme Court*
Hon. Aliksa B. Aliksa, Specially Assigned Justice, FSM Supreme Court**
Hon. Benjamin F. Rodriguez, Specially Assigned Justice, FSM Supreme Court***

*Chief Justice, Chuuk State Supreme Court, Weno, Chuuk
**Chief Justice, Kosrae State Court, Lelu, Kosrae
***Chief Justice, Pohnpei Supreme Court, Kolonia, Pohnpei

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* * * *

HEADNOTES

Appellate Review – Briefs, Record, and Oral Argument

Upon the appellee's motion, certain documents in the appellants' appendix were stricken when a search did not reveal those documents in the certified record. Sam v. FSM Dev. Bank, 20 FSM R. 409, 414-15 (App. 2016).

Appellate Review – Standard – Civil Cases – De Novo; Civil Procedure – Summary Judgment

In reviewing a summary judgment, an appellate court uses the same standard that the trial court initially used under Rule 56(c) when it determined the summary judgment motion – the appellate court determines de novo whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Sam v. FSM Dev. Bank, 20 FSM R. 409, 415 (App. 2016).

Appellate Review – Standard – Civil Cases – De Novo

An appellate court reviews issues of law de novo. Sam v. FSM Dev. Bank, 20 FSM R. 409, 415 (App. 2016).

Appellate Review – Decisions Reviewable

An appellate court will first consider an assignment of error that is a potentially dispositive threshold issue going to the court's subject-matter jurisdiction because if the appellants prevail on the issue any opinion given on other issues would merely be advisory and the court does not sit to render advisory opinions since it lacks the authority to do so. Sam v. FSM Dev. Bank, 20 FSM R. 409, 416 (App. 2016).

Jurisdiction

A state statute that vests exclusive jurisdiction over certain cases in a state court (such as the Pohnpei statute requiring all judicial actions for a mortgage foreclosure to be brought in the Pohnpei

Supreme Court trial division), cannot deprive the FSM Supreme Court of jurisdiction or have any effect on its jurisdiction. Sam v. FSM Dev. Bank, 20 FSM R. 409, 416 (App. 2016).

Jurisdiction – Exclusive FSM Supreme Court; Property – Mortgages

A mortgage foreclosure generally does not constitute an interest in land being at issue because in a mortgage foreclosure the interests in land are not in dispute – the parties all agree who owns the land and who holds the mortgage. The mortgagee just seeks to foreclose the mortgage which a mortgagor has pledged as security for a debt and which the mortgagor earlier agreed, when he signed the mortgage, could be sold if the debt remained unpaid. Thus, the Exception Clause does not preclude jurisdiction. Sam v. FSM Dev. Bank, 20 FSM R. 409, 416 (App. 2016).

Appellate Review – Standard – Civil Cases – Abuse of Discretion; Federalism – Certification to State Court

When no motion to certify was ever made, the trial court could not abuse its discretion by not certifying a question to the state court. Sam v. FSM Dev. Bank, 20 FSM R. 409, 417 (App. 2016).

Contracts – Consideration; Contracts – Guaranty

If a guaranty is made as part of a transaction or arrangement which created the guaranteed debt or obligation, it is not essential to a recovery on the promise of guaranty that the promise was supported by a consideration other than that of the principal debt. Sam v. FSM Dev. Bank, 20 FSM R. 409, 417 (App. 2016).

Contracts – Consideration; Contracts – Guaranty; Property – Mortgages

When security, such as a guaranty, is given as part of the same transaction that created the debt to the bank, no further or independent consideration is needed. The loan itself is sufficient consideration. This principle holds true when a mortgage is the security given for a loan to a third party. Sam v. FSM Dev. Bank, 20 FSM R. 409, 417 (App. 2016).

Contracts – Consideration; Property – Mortgages

The consideration for a mortgage may consist of a loan to a third person. Sam v. FSM Dev. Bank, 20 FSM R. 409, 417 (App. 2016).

Contracts – Consideration; Property – Mortgages

It is not essential to a mortgage's validity that the mortgagor should have received the consideration. It is sufficient that the mortgagee parted with consideration. The consideration need not go directly from the mortgagee to the mortgagor. Sam v. FSM Dev. Bank, 20 FSM R. 409, 417 (App. 2016).

Statutes of Limitation – Tolling

A contention that if a creditor, which was receiving partial payments, had wanted to recover the entire debt it would have to sue on each of the missed installment payments before the installment was six years old, makes no sense. Sam v. FSM Dev. Bank, 20 FSM R. 409, 418 (App. 2016).

Statutes of Limitation – Tolling

Under the partial payment rule – that partial payment on the whole debt will toll the running of the statute of limitations – an acknowledgment or promise to perform a previously defaulted contract obligation is effectual, whether oral or in writing, at least in certain types of cases, to start the statute of limitations running anew. Sam v. FSM Dev. Bank, 20 FSM R. 409, 418 (App. 2016).

Statutes of Limitation – Tolling

Whether a partial payment constitutes unequivocal acknowledgment of the whole debt from

which an unconditional promise to pay can be implied thereby tolling the statute of limitations is a question for the trier of fact. Sam v. FSM Dev. Bank, 20 FSM R. 409, 418 (App. 2016).

Appellate Review – Standard – Civil Cases – De Novo; Contracts – Interpretation

Questions of contract interpretation are matters of law to be determined by the court. Sam v. FSM Dev. Bank, 20 FSM R. 409, 418 (App. 2016).

Contracts – Interpretation; Statutes of Limitation – Tolling

When a letter signed by both parties clearly states that the partial payments were a "repayment plan for the outstanding balance of the loan," it cannot be interpreted in any way other than as an acknowledgment of the whole debt and that the agreed $100 payments were partial payments on the whole debt. Sam v. FSM Dev. Bank, 20 FSM R. 409, 418 (App. 2016).

Statutes of Limitation – Accrual of Action

The applicable statute provides that in an action brought upon a cause of action on which partial payments have been made, the cause of action is considered to have accrued at the time of the last item proved in the account. Sam v. FSM Dev. Bank, 20 FSM R. 409, 418 (App. 2016).

Appellate Review – Standard – Civil Cases

An appellate court may affirm a trial court decision on a different theory or on different grounds when the record contains adequate and independent support for that basis. Sam v. FSM Dev. Bank, 20 FSM R. 409, 418 n.2 (App. 2016).

Appellate Review – Standard – Civil Cases

An appellate court cannot ignore applicable, controlling law, even if the parties have. Sam v. FSM Dev. Bank, 20 FSM R. 409, 418-19 (App. 2016).

Statutes of Limitation – Tolling

When a debtor had made partial payments within the limitations period, under both the common law and statutory law (Pohnpei statutory law taking precedence), the statute of limitations will not bar the creditor from proceeding against the debtor for the entire outstanding balance. Sam v. FSM Dev. Bank, 20 FSM R. 409, 419 (App. 2016).

Contracts – Guaranty; Statutes of Limitation – Tolling

There is substantial authority for the proposition that partial payments by a principal debtor do not toll the statute of limitations as to the note's guarantors. The rationale behind this general rule is that a guarantor's consent to the debtor's future conduct may not be presumed merely on the basis of the original guarantee. Sam v. FSM Dev. Bank, 20 FSM R. 409, 419 (App. 2016).

Contracts – Guaranty; Statutes of Limitation – Tolling

The general rule is that a payment by the principal before the action is time-barred, operates as a renewal as to the principal, and to a surety, but not to a guarantor. Sam v. FSM Dev. Bank, 20 FSM R. 409, 419 (App. 2016).

Contracts – Guaranty; Statutes of Limitation – Tolling

A payment by the principal debtor will not operate to toll the statute of limitations as to a guarantor of the debt, even though it might do so as to a surety. Sam v. FSM Dev. Bank, 20 FSM R. 409, 419 (App. 2016).

Appellate Review – Standard – Civil Cases; Contracts – Guaranty; Statutes of Limitation – Tolling

When the trial court correctly decided that the statute of limitations was tolled by the debtor's

partial payments, but did not separately determine whether those partial payments also tolled the statute of limitations with respect to the guarantor mortgagors, the appellate court will vacate the trial court judgment against the mortgagors and remand the matter for the trial court to conduct further proceedings to make that determination since that determination may need factual findings about whether the mortgagors were aware that the debtor was making partial payments and whether they acquiesced to the acknowledgment of the debt, and the trial court is the place to address those factual issues. Sam v. FSM Dev. Bank, 20 FSM R. 409, 419 (App. 2016).

* * * *

COURT'S OPINION

CAMILLO NOKET, Specially Assigned Justice, presiding:

This appeal is from a trial court decision granting summary judgment foreclosing real property mortgages executed by Catalino Sam, Walerino Sam, and Elter Joseph as security for a business loan made by the FSM Development Bank to Ponape Coconut Products, Inc. We affirm the trial court holdings on subject-matter jurisdiction, consideration, that the entire debt was due, and that partial payments tolled the statute of limitations against the borrower, but vacate the mortgage foreclosures and remand the matter to the trial court for further proceedings. Our reasons follow.

I. BACKGROUND

In 1991, Ponape Coconut Products, Inc. borrowed $430,000 from the FSM Development Bank. Catalino Sam, Elter Joseph, and Mayoriko Victor signed the promissory note on the corporation's behalf. In order to secure the loan, Catalino Sam, Walerino Sam, Elter Joseph, Priminte E. Pelep, and Mayoriko Victor, signed, at the same time, a document mortgaging land they owned. The mortgage was registered with the Pohnpei Land Commission and endorsed on the back of the relevant certificates of title. The bank has had possession of the mortgagors' duplicate certificates of title since then.

Ponape Coconut Products ceased making the monthly payments required by the promissory note. On March 11, 2003, which was shortly before the promissory note's maturity date, Ponape Coconut Products General Manager, Peterson Sam, Catalino Sam's son, met with Ana Mendiola, the bank's President, and agreed to monthly payments of at least $100 as the new "repayment plan for the outstanding balance of the loan." This was memorialized in a March 11, 2003 letter from Ana Mendiola to Peterson Sam, which Peterson Sam signed on March 12, 2003, to acknowledge the agreement.

These $100 monthly payments continued through January 2008. After that, there were no more payments on the debt. On October 4, 2010, the bank registered a notice of default with the Pohnpei Registrar and filed it with the Pohnpei Supreme Court, and, shortly thereafter, served notices of the default on the mortgagors, giving them notice that the bank intended to pursue collection of the Ponape Coconut Products debt through mortgage foreclosure.

On February 1, 2011, the bank filed suit against the corporation, Ponape Coconut Products, Inc., for the unpaid debt and against three mortgagors, Catalino Sam, Elter Joseph, and Mayoriko Victor, to foreclose on properties that they had mortgaged to secure the corporation's debt. Ponape Coconut Products did not file an answer or otherwise defend. A default judgment for $616,357.21 was entered against it on January 31, 2013.

The mortgagors moved to dismiss for lack of subject-matter jurisdiction. That was denied. The mortgagors then answered. They admitted that there was a Ponape Coconut Products debt because

some payments had been missed; that the promissory note was mature and a balance due; that they had signed and delivered mortgages to secure the debt; and that those mortgages were registered. The mortgagors asserted as affirmative defenses: the statute of limitations, that the debt was a corporate debt and not their personal debt, and res judicata because a judgment had been entered against the corporate debtor.

The bank then moved for summary judgment. The mortgagors opposed, arguing the statute of limitations; lack of consideration for the mortgages because the loan was a corporate debt; and res judicata. They also filed a cross-motion for summary judgment, renewing their claim that the court lacked jurisdiction.

The trial court concluded that Ponape Coconut Products' partial payment of its antecedent debt represented its implied promise to repay the entire debt; that the partial payments tolled the running of the statute of limitations, which started running anew after the last partial payment on January 31, 2008; and that the lawsuit was thus filed within the six-year limitations period. Order Granting Summary Judgment and Denying Cross-Motion for Summary Judgment at 5-8 (Pon. Feb. 14, 2014). The trial court denied the mortgagors' cross-motion, concluding that a Pohnpei statute could not divest the court of jurisdiction and that res judicata did not apply because the Ponape Coconut Products judgment was part of the same case and the mortgage foreclosures were independent causes of action against parties other than Ponape Coconut Products. *Id.* at 9-10.

The mortgagors moved for reconsideration on the ground that summary judgment was improper since a triable issue of fact existed about whether the partial payments were meant to be for the whole debt or were just partial payments on the last installment with the statute of limitations barring the rest of the installment payments. The trial court denied the motion, pointing to the March 11, 2003 letter, held that it was "clear and unambiguous in reference to the outstanding debt as a whole, and not on the latest installment payment." Order Denying Reconsideration at 2 (Mar. 24, 2014). On April 17, 2014, the mortgagors appealed.

II. Preliminary Matter

On February 26, 2015, the bank moved to strike pages 3, 4, 9-12, and 13-17 from the appellants' appendix because those documents were not part of the trial court record. The bank also complained that the mortgagors, in violation of Appellate Rule 30(b), failed to consult with it about the appendix's contents and did not serve on the bank their designation of the record within ten days of the clerk's record ready notice and therefore the bank had no notice that the mortgagors intended to include in the appendix documents that were not part of the certified trial court record. The bank further argues that these documents should be stricken because they relate to the mortgagors' argument about novation, an issue never presented to or ruled upon by the trial court and therefore an issue the mortgagors cannot raise for the first time on appeal.

The mortgagors contend that the documents found on those appendix pages are necessary to prevent a manifest injustice and that the documents were provided by the bank's counsel "in her filings" presumably in response to their discovery requests. The mortgagors argue that these documents were before the trial court when it made its decision and can thus be considered on appeal.

We heard the parties on these points before we entertained oral argument on the merits. If the documents were part of the bank's filings in response to discovery, they would have been in the file before the trial court when it ruled on summary judgment and thus should be part of the record before us.

However, our search of the certified record did not reveal these documents. They were not part of the bank's discovery responses filed with the court. Accordingly, we granted the bank's motion from the bench and ordered those pages stricken from the appellants' appendix. We then turned to the appeal's merits.

III. Issues Presented

The mortgagors contend that the trial court erred by granting the Development Bank summary judgment because: 1) triable issues exist on whether the debt was accelerated; 2) triable issues exist on the legal status of the Peterson Sam letter; 3) triable issues exist on the statute of limitations; and 4) triable issues exist on whether there was consideration for the mortgages. The mortgagors further contend that the trial court erred when 5) it did not grant them summary judgment on their cross-motion because, in their view, Pohnpei state mortgage law precludes FSM Supreme Court subject-matter jurisdiction over foreclosures or, alternatively, erred when it did not certify the question to the Pohnpei Supreme Court appellate division.

The bank disagrees with the mortgagors' description of the issues and frames them as: 1) whether the trial court had subject-matter jurisdiction over the mortgage foreclosure actions; 2) whether the trial court erred in ruling that the March 11, 2003 Peterson Sam letter and the subsequent $100 monthly payments to the bank tolled the statute of limitations; 3) whether the trial court erred in ruling that sufficient consideration existed for the appellants' mortgages; and 4) whether the parties had submitted any genuine issues of material fact so that the trial court's grant of summary judgment was in error.

IV. Standards of Review

In reviewing a grant of summary judgment, we use the same standard that the trial court initially used under Rule 56(c) when it determined the summary judgment motion – we determine *de novo* whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Esiel v. FSM Dep't of Fin., 19 FSM R. 590, 593 (App. 2014); Allen v. Allen, 17 FSM R. 35, 39 (App. 2010); Berman v. College of Micronesia-FSM, 15 FSM R. 582, 590 (App. 2008); Albert v. George, 15 FSM R. 574, 579 (App. 2008); Allen v. Kosrae, 15 FSM R. 18, 21 (App. 2007). We review issues of law *de novo*. *E.g.*, Esiel, 19 FSM R. at 593; Simina v. Kimeuo, 16 FSM R. 616, 619 (App. 2009).

V. Analysis and Suggestions

A. *Subject-Matter Jurisdiction*

The mortgagors contend that the trial court lacked subject-matter jurisdiction over the mortgage foreclosure actions against them because the Pohnpei mortgage statute requires that "[a]ll judicial actions for the foreclosure of a mortgage shall be brought in the Trial Division of the Pohnpei Supreme Court or its successor in state law." 41 Pon. C. § 6-125(1). The mortgagors further contend that the FSM Supreme Court lacks jurisdiction over the mortgage foreclosure causes of action because the FSM Development Bank is an instrumentality of the national government and while constitutionally the court generally has exclusive jurisdiction whenever a party is a national government instrumentality, it lacks jurisdiction over the case when an interest in land is at issue and thus lacks it over this mortgage foreclosure case. The mortgagors contend that the trial court should have granted them summary judgment and dismissed the foreclosure actions and required the FSM Development Bank to proceed against them in the Pohnpei Supreme Court or, at a minimum certify the issue to that court.

We consider this assignment of error first since it is a potentially dispositive threshold issue going to the court's subject-matter jurisdiction. *See* FSM v. Udot Municipality, 12 FSM R. 29, 39 (App. 2003); Kallop v. Pohnpei, 18 FSM R. 130, 133 (Pon. 2011); Sipos v. Crabtree, 13 FSM R. 355, 362 (Pon. 2005); Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 496 (Kos. 2003). If the mortgagors prevail on this issue, any opinion we give on other issues would be merely advisory and we do not sit to render advisory opinions since we lack the authority to do so. *See* Fritz v. National Election Dir., 11 FSM R. 442, 444 (App. 2003).

A state statute, such as the one the mortgagors rely on, that vests exclusive jurisdiction over certain cases in a state court, cannot deprive the FSM Supreme Court of jurisdiction. Gimnang v. Yap, 5 FSM R. 13, 23 (App. 1991) (state law attempting to place "original and exclusive jurisdiction" in the Yap State Court cannot divest a national court of responsibilities placed upon it by the national constitution, which is the supreme law of the FSM); FSM Dev. Bank v. Setik, 19 FSM R. 233, 235 (Pon. 2013) (state laws vesting state courts with exclusive jurisdiction cannot divest the FSM Supreme Court of its constitutional responsibilities); FSM Dev. Bank v. Jonah, 17 FSM R. 318, 325 (Kos. 2011) (Kosrae statute that requires a foreclosure action to be filed in Kosrae State Court cannot divest the FSM Supreme Court of its constitutionally mandated jurisdiction under the FSM Constitution); Faw v. FSM, 6 FSM R. 33, 36-37 (Yap 1993) (state law can never divest the FSM Supreme Court of exclusive jurisdiction in cases arising under FSM Constitution article XI, § 6(a)). The Pohnpei state statute thus can have no effect on the FSM Supreme Court's jurisdiction.

The mortgagors also contend that the FSM Supreme Court lacks jurisdiction because of the "Exception Clause" in Article XI, section 6(a) of the Constitution. That provision states that "[t]he trial division of the Supreme Court has original and exclusive jurisdiction . . . in cases in which the national government is a party except where an interest in land is at issue." FSM Const. art. XI, § 6(a). The FSM Development Bank is a national government instrumentality, and, as such, falls under this provision. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 433 (App. 2014); Helgenberger v. FSM Dev. Bank, 18 FSM R. 498, 500 (App. 2013); Berman v. College of Micronesia-FSM, 15 FSM R. 582, 596 (App. 2008); FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 617 (Pon. 2013); FSM Dev. Bank v. Ayin, 18 FSM R. 90, 93 (Yap 2011).

A mortgage foreclosure generally does not constitute an interest in land being at issue because in a mortgage foreclosure the interests in land are not in dispute – the parties all agree who owns the land and who holds the mortgage. Estate of Edmond, 19 FSM R. at 432; FSM Dev. Bank v. Kansou, 17 FSM R. 605, 608 (Chk. 2011); FSM Dev. Bank v. Ifraim, 10 FSM R. 1, 4 (Chk. 2001). The mortgagee just seeks to foreclose the mortgage which a mortgagor has pledged as security for a debt and which the mortgagor earlier agreed, when he signed the mortgage, could be sold if the debt remained unpaid. Thus, the Exception Clause does not preclude jurisdiction either. The trial court correctly denied the mortgagors' cross-motion.[1]

Finally, the mortgagors' suggestion that the question should have been certified to the Pohnpei Supreme Court appellate division is without any merit. First, they did not file any motion to certify a

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[1] The bank also contends that jurisdiction over any case in which it is a party may be exercised as a case "arising under . . . national law," FSM Const. art. XI, § 6(b), since it is an entity created by a statute enacted by Congress and that statute confers upon it the power to sue or be sued in its own name. The bank cites extensive United States federal case law that follows this reasoning and holds that, in such cases, the United States federal courts have jurisdiction under their "arising under the law of the United States" jurisdiction. Since it is fairly clear that, based on FSM Development Bank v. Estate of Edmond, 19 FSM R. 425 (App. 2014), there is jurisdiction under Article XI, § 6(a), we leave this issue to another day.

question to the Pohnpei Supreme Court. Since no motion to certify was ever made, the trial court could not abuse its discretion by not certifying the question to the state court. Kitti Mun. Gov't v. Pohnpei, 13 FSM R. 503, 507 (App. 2005). Second, and more importantly, it is not a question that could ever be certified to a state court. The national court can never certify a question of national law to a state court for decision unless the particular claim can be resolved entirely through the application of state law since certification to a state court is only proper for questions of state or local law. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 67A, 67C (Pon. 1991); *see also* Edwards v. Pohnpei, 3 FSM R. 350, 354 (Pon. 1988). Whether the FSM Supreme Court has jurisdiction over a case is always a question of national law, not state law, and thus beyond the competence of a state court to make a binding determination. The FSM Supreme Court appellate division is the final arbiter of what the national law is and therefore of what the FSM Supreme Court's jurisdiction is.

B. *Consideration for Mortgages*

The mortgagors contend that they did not receive any consideration for their mortgages, and therefore the mortgages are void since all contracts, including mortgage contracts, must have consideration in order to be valid and enforceable. The mortgagors claim that the trial court ruled that there was consideration because the mortgagors were Ponape Coconut Products employees and benefited from their employee pay. They argue that this is not sufficient consideration for the mortgages to be valid. The mortgagors further argue that no evidence was introduced about their relationship to Ponape Coconut Products or showing that they received any benefit from, or showing any assignment of any property interest of theirs to, Ponape Coconut Products.

The mortgagors' description of the trial court's reasoning is inaccurate. Besides its mention of employee pay, the trial court also relied on the Arthur v. FSM Dev. Bank, 14 FSM R. 390, 397 (App. 2006), in which we held that "if a guaranty is made 'as part of a transaction or arrangement which created the guaranteed debt or obligation, it is not essential to a recovery on the promise of guaranty that the promise shall have been supported by a consideration other than that of the principal debt.'"

When security, such as a guaranty, is given as part of the same transaction that created the debt to the bank, no further or independent consideration is needed. The loan itself is sufficient consideration. This principle holds true when a mortgage is the security given for a loan to a third party. "[T]he consideration for a mortgage may consist of a loan to a third person." 54A AM. JUR. 2D *Mortgages* § 30, at 617 (1996). "It is not essential to the validity of a mortgage that the mortgagor should have received the consideration. It is sufficient that the mortgagee parted with consideration. The consideration need not go directly from the mortgagee to the mortgagor." 59 C.J.S. *Mortgages* § 88, at 133 (1949) (footnotes omitted).

Here, the consideration for the appellants' mortgages to the bank was the bank's loan to a third person, the Ponape Coconut Products, Inc. The bank parted with $430,000. No triable issue exists here. We therefore reject this assignment of error and affirm the trial court on this point.

C. *Tolling the Statute of Limitations*

1. *For Actions Against Ponape Coconut Products, Inc.*

The mortgagors contend that the loan was an installment contract and, as such, when the bank filed suit on February 1, 2011, the statute of limitations barred the bank from recovering any monthly loan installment payment that was originally due more than six years before that date – that is, before February 1, 2005. They also contend that triable issues of fact exist about the legal effect of the Peterson Sam letter and about whether the entire debt was accelerated when that letter was signed.

The statute of limitations is six years. 58 Pon. C. § 3-107. The mortgagors contend that time ran out before this suit was filed on February 1, 2011, because, in their view, the partial payments by Ponape Coconut Products from 2003 until January 2008, were not partial payments on the whole debt but just some payments on the oldest installment due and that therefore, since in their view, the debt was, and remained, an installment contract, the bank could only sue on the installment payments that were due within six years of the February 1, 2011 filing date. The mortgagors assert that the Peterson Sam letter is ambiguous about whether the partial payments were going to the whole debt, a genuine issue of material fact precluding summary judgment. They contend that the debt had not been accelerated and since it had not, if the bank had wanted to recover the rest of the debt it would have had to sue on each of those installment payments before they were six years old.

The mortgagors' proposed procedure makes no sense. They contend that the bank should have had to sue on each monthly installment payment before the six-year period for that installment has run out while at the same time expecting to receive monthly partial payments from a debtor who supposedly would remain cooperative toward the bank and continue to make payments to it even though it is being repeatedly sued by the bank.

The mortgagors acknowledge the partial payment rule – that partial payment on the whole debt will toll the running of the statute of limitations. "At common law, an acknowledgment or promise to perform a previously defaulted contract obligation was effectual, whether oral or in writing, at least in certain types of cases, to start the Statute of Limitations running anew . . . ." Lew Morris Demolition Co. v. Board of Educ., 355 N.E.2d 369, 371, 10 A.L.R.4th 925, 929 (N.Y. 1976). They contend, however, that it does not apply here. They contend that, even with the partial payments, it was a triable factual issue whether the Ponape Coconut Products debt remained an installment contract since Ponape Coconut Products never acknowledged that it was paying the whole debt.

"Whether partial payment constitutes unequivocal acknowledgment of the whole debt from which an unconditional promise to pay can be implied thereby tolling the statute of limitations is a question for the trier of fact." Zatakia v. Ecoair Corp., 18 A.3d 604, 609 (Conn. App. Ct. 2011). The letter signed by both the bank and Peterson Sam was contractual in nature. Questions of contract interpretation are matters of law to be determined by the court. Smith v. Nimea, 19 FSM R. 163, 169 (App. 2013); Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 143 (App. 2013) (appellate courts review de novo the interpretation of contract provisions); Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 621 (App. 1996); Nanpei v. Kihara, 7 FSM R. 319, 323 (App. 1995).

The letter clearly states that the partial payments were a "repayment plan for the outstanding balance of the loan." This cannot be interpreted in any way other than as an acknowledgment of the whole debt and that the $100 payments were partial payments on the whole debt. There is no triable genuine issue of fact here.

But more importantly, the applicable Pohnpei statute (there is an identical FSM statute, 6 F.S.M.C. 807) provides that, "[i]n an action brought . . . upon a cause of action upon which partial payments have been made, the cause of action shall be considered to have accrued at the time of the last item proved in the account." 58 Pon. C. § 3-108(3) (the omitted part is about open accounts). Here, the bank had a cause of action against Ponape Coconut Products and its last partial payment was January 31, 2008. This statutory basis was not mentioned by the trial court,[2] but we cannot ignore

[2] We may affirm a trial court decision on a different theory or on different grounds when the record contains adequate and independent support for that basis. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 121 (App. 2011); FSM Dev. Bank v. Adams, 14 FSM R. 234, 249 (App. 2006); Nahnken of Nett

applicable, controlling law, even if the parties have. Keota Mills & Elevator v. Gamble, 243 P.3d 1156, 1158 (Okla. 2010). Thus, under both the common law and statutory law (Pohnpei statutory law taking precedence), the statute of limitations did not bar the bank from proceeding against Ponape Coconut Products for the entire outstanding balance.

The trial court's conclusion that the statute of limitations had not run on Ponape Coconut Products's debt to the bank because Ponape Coconut Products's partial payments had tolled the statute, is correct. Thus far, we affirm the trial court ruling. But the analysis cannot end here.

2. *For Actions Against Guarantor Mortgagors*

The mortgagors granted the bank mortgages that were in the nature of a guaranty of the Ponape Coconut Products promissory note to repay the money that the bank lent Ponape Coconut Products. The Ponape Coconut Products partial payments tolled the statute of limitations for an action against Ponape Coconut Products. Neither the trial court nor any of the parties addressed whether those partial payments, by themselves, also tolled the statute of limitations' running for actions against persons standing in the place of guarantors, in particular, the mortgagors.

"There is substantial authority for the proposition that partial payments by a principal debtor do not toll the statute [of limitations] as to the note's guarantors." United States v. Rollinson, 866 F.2d 1463, 1468 (D.C. Cir. 1989), *cert. denied*, 493 U.S. 818 (1989). "The rationale behind the general rule is that '[a] guarantor's consent to the debtor's future conduct may not be presumed merely on the basis of the original guarantee.'" Federal Deposit Ins. Corp. v. Associated Nursery Sys., Inc., 948 F.2d 233, 238 (6th Cir. 1991) (quoting Rollinson, 866 F.2d at 1469). Rollinson and Associated Nursery discuss the various situations when the statute of limitations might be tolled and not run against guarantors and when it may not. The general rule is that a payment by the principal before the action is time-barred, operates as a renewal as to the principal, and to a surety, but not to a guarantor. Wachovia Bank & Trust Co. v. Clifton, 166 S.E. 334, 335, 84 A.L.R. 725, 728 (N.C. 1932). "In most jurisdictions in which the point has arisen, it has been held that a payment by the principal debtor will not operate to toll the Statute of Limitations as to a guarantor of the debt, even though it might do so as to a surety." Annotation, *Acknowledgment, New Promise, or Payment by Principal as Tolling Statute of Limitations as Against Guarantor*, 84 A.L.R. 729, 729 (1933).

While the trial court's decision is correct, as far as it goes, it does not address (and the parties did not either) whether, conceding that the statute of limitations was tolled by the corporation's partial payments, those partial payments also tolled the statute of limitations with respect to the mortgagors. We therefore vacate the trial court judgment against the mortgagors and remand the matter to the trial court for it to conduct further proceedings to make that determination. That determination may need factual findings, such as whether the mortgagors were aware that Ponape Coconut Products was making partial payments and did they thus acquiesce to the acknowledgment of the debt, or it may be resolved wholly as a legal matter. Since Catalino Sam, the majority shareholder, was the father of Peterson Sam, it might be that his consent can be shown, but not necessarily that of the other mortgagors. Some facts may not be disputed, but others may be. The trial court is the place to address those factual issues.

VI. Conclusion

Accordingly, we affirm the trial court on the issues of subject-matter jurisdiction, that there was

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v. United States, 7 FSM R. 581, 589 (App. 1996).

sufficient consideration for the mortgages, and that Ponape Coconut Products's partial payments were on the whole debt and tolled the running of the limitations period against Ponape Coconut Products. We, however, vacate the mortgage foreclosures and remand the matter to the trial court for it to determine whether this is a case where the statute of limitations was also tolled for actions against the mortgagors, who seem to be in the nature of guarantors, as well as for the action against the principal, Ponape Coconut Products, Inc.

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FSM SUPREME COURT APPELLATE DIVISION

OCCIDENTAL LIFE INSURANCE CO. and NET CARE LIFE AND HEALTH INSURANCE CO., Appellants, vs. KARLYNN JOHNNY, Appellee.	APPEAL CASE NO. P9-2014 Civil Action No. 2013-002

OPINION

Argued: May 5, 2016
Decided: May 25, 2016

BEFORE:

Hon. Aliksa B. Aliksa, Specially Assigned Justice, FSM Supreme Court*
Hon. Camillo Noket, Specially Assigned Justice, FSM Supreme Court**
Hon. Benjamin F. Rodriguez, Specially Assigned Justice, FSM Supreme Court***

*Chief Justice, Kosrae State Court, Lelu, Kosrae
**Chief Justice, Chuuk State Supreme Court, Weno, Chuuk
***Chief Justice, Pohnpei Supreme Court, Kolonia, Pohnpei

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