

582
FSM v. Akapito
20 FSM R. 579 (Chk. 2016)

years within which to finish paying his restitution. Thus, henceforth, Akapito shall pay a minimum of \$60 biweekly, which is expected to be by allotment from his state government salary. If he receives other stipends or payments, he is encouraged and expected to make additional restitution payments at those times.

If the State Justice Ombudsman certifies that Akapito's restitution has been paid in full before the seven years is up, the probation period will end right then. Until then, Akapito may continue to travel to Pohnpei under the current condition that he report his arrival there to the FSM Justice Ombudsman on Pohnpei. However, since the government has indicated that it will, as a matter of course, not approve any travel requests made by Akapito, Akapito may only travel elsewhere, if the court grants a motion requesting travel permission that he has filed and served on the government.

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FSM SUPREME COURT TRIAL DIVISION

CHUUK STATE,)	CIVIL ACTION NO. 2015-1008
)	
Plaintiff,)	
)	
vs.)	
)	
WENO MUNICIPALITY, THE FEDERATED)	
STATES OF MICRONESIA, and THE ECHEN)	
NAKAMURA LINEAGE of Iras Village, Weno)	
Island, Chuuk,)	
)	
Defendants.)	
)	

ORDER OF DISMISSAL

Dennis K. Yamase
Chief Justice

Decided: August 25, 2016

APPEARANCES:

For the Plaintiff: Sabino S. Asor, Esq.
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For the Defendant: Leonito Bacalando, Jr., Esq.
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For the Defendant: Salomon M. Saimon, Esq.
(Nakamura lineage) Directing Attorney
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P.O. Box 129
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HEADNOTES

Civil Procedure – Motions – Unopposed

When there is no timely opposition filed after proper service of a motion, the adverse party is deemed to have consented to the motion, but even then, the court still needs good grounds before it can grant the motion. Chuuk v. Weno Municipality, 20 FSM R. 582, 584 (Chk. 2016).

Constitutional Law – Interpretation

The general principle is that constitutional adjudication should be avoided unless necessary, so the trial court should first consider any non-constitutional grounds that might resolve the issue. Chuuk v. Weno Municipality, 20 FSM R. 582, 584 (Chk. 2016).

Civil Procedure – Dismissal – Before Responsive Pleading

On a Rule 12(b)(6) motion to dismiss for failure to state a claim, only the well-pled or well-pleaded facts are to be accepted as true. The court will not assume the truth of legal conclusions merely because they are cast in the form of factual allegations since legal allegations masquerading as factual conclusions will not suffice to prevent a motion to dismiss. Chuuk v. Weno Municipality, 20 FSM R. 582, 584 (Chk. 2016).

Property – Public Lands; Transition of Authority

Under a plain reading of Secretarial Order 2969, Trust Territory public lands were transferred to the respective Trust Territory districts, and thus Trust Territory public lands on Weno were earlier transferred to the Truk District government. Although, on July 12, 1979, when the FSM Constitution took effect, any Trust Territory government interest in property was transferred to the FSM for retention or distribution in accordance with the FSM Constitution, public land on Weno was not Trust Territory government property since all Trust Territory public land there had already been transferred to the Truk district government. It would thus have been Truk district government property. Chuuk v. Weno Municipality, 20 FSM R. 582, 584-85 (Chk. 2016).

Civil Procedure – Dismissal – Before Responsive Pleading; Jurisdiction – Exclusive FSM Supreme Court

When the FSM was not a successor-in-interest to the lands in question because, as a matter of law, the Trust Territory government never transferred to the FSM national government any of the Trust Territory's interest in that land; when the only basis, asserted or apparent, for the FSM Supreme Court's jurisdiction is that the FSM national government is a party; and when the FSM was never properly a party because it had no interest in the land, the plaintiff has not stated a claim over which the FSM Supreme Court can exercise jurisdiction or for which it can grant relief and the FSM's motion to dismiss will therefore be granted and the FSM is dismissed and since the court never had jurisdiction over the case, it is dismissed without prejudice to any proceeding in a court of competent jurisdiction. Chuuk v. Weno Municipality, 20 FSM R. 582, 585 (Chk. 2016).

* * * *

COURT'S OPINION

DENNIS K. YAMASE, Chief Justice:

There are two motions to dismiss now before the court. One, from the Echen Nakamura Lineage of Iras Village, challenges subject-matter jurisdiction (and alternatively, moves to disqualify the Chuuk Attorney General's Office from representing the plaintiff, State of Chuuk). The other, from the Federated States of Micronesia, also challenges subject-matter jurisdiction but further asserts that Chuuk's complaint fails to state a claim on which relief can be granted.

Chuuk did not file an opposition to either motion. When there is no timely opposition filed after proper service of a motion, the adverse party is deemed to have consented to the motion. FSM Civ. R. 6(d); FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 103 (Chk. 2015). But even then, the court still needs good grounds before it can grant the motion. Senda v. Mid-Pacific Constr. Co., 6 FSM R. 440, 442 (App. 1994); Lee v. Lee, 13 FSM R. 68, 71 (Chk. 2004).

This lawsuit involves land (Lot Nos. 012-A-26 and 012-A-27 on Weno) that at various times was owned, or claimed to be owned, by the Echen Nakamura Lineage, Moen (later renamed Weno) Municipality, the Trust Territory government, and the Chuuk state government. See Nakamura v. Moen Municipality, 15 FSM R. 213 (Chk. S. Ct. App. 2007); Nakamura v. Moen Municipality, 8 FSM R. 552 (Chk. S. Ct. App. 1998); Nakamura v. Moen Municipality, 7 FSM R. 375 (Chk. S. Ct. Tr. 1996). Chuuk asserts that it has a perpetual right to possess the land, that it has been deprived of that property right, and, through this suit, Chuuk seeks to regain that right or to be indemnified for that loss and any losses stemming from it. Chuuk also alleges that "the defendant Federated States of Micronesia is one of the successors in interest of the Trust Territory Government to the lands in question by virtue of the referenced Secretarial orders above in conjunction with the Transition Provision of its FSM Constitution." Compl. for Declaratory J., Equitable & Injunctive Relief & for Specific Performance at 7 (June 26, 2015).

The two challenges to the court's subject-matter jurisdiction raise issues that would require constitutional interpretation and adjudication. "[T]he general principle [is] that constitutional adjudication should be avoided unless necessary, [so] the trial court should first consider any non-constitutional grounds that might resolve the issue." Pohnpei v. AHPW, Inc., 14 FSM R. 1, 25-26 (App. 2006) (citing Kosrae v. Langu, 9 FSM R. 243, 251 (App. 1999); Jonah v. FSM, 5 FSM R. 308, 314 (App. 1992)). Thus, the court will first consider the FSM's motion to dismiss for the failure to state a claim.

On a Rule 12(b)(6) motion to dismiss for failure to state a claim, only the well-pled or well-pleaded facts are to be accepted as true, and the court will not assume the truth of legal conclusions merely because they are cast in the form of factual allegations since legal allegations masquerading as factual conclusions will not suffice to prevent a motion to dismiss. Arthur v. Pohnpei, 16 FSM R. 581, 593 (Pon. 2009). Chuuk's assertion that the FSM "is one of the successors in interest of the Trust Territory Government to the lands in question" is a legal conclusion cast in the form of a factual allegation.

Under a plain reading of Secretarial Order 2969 (Dec. 28, 1974) (a copy of which was attached to the complaint), the Trust Territory public lands were transferred to the respective Trust Territory districts, and thus Trust Territory public lands on Weno were transferred to the Truk District government. Furthermore, Secretarial Order 2969, Amendment No. 1 (Dec. 20, 1978) (also attached to the complaint) specifically provided that Trust Territory public lands in Chuuk were to be conveyed to the Chartered Truk District Government. Thus, although "[a]n interest in property held by the

appealing the entire matter then). As a general rule in an interlocutory appeal of an injunction, an appellate court will concern itself only with the order from which the appeal is taken, but will review other issues only if they are inextricably bound up with the injunction. Iriarte v. Etscheit, 8 FSM R. 231, 235 (App. 1998).

Accordingly, no stay will issue.

III. WRIT DENIED

Membership in the Mwoalen Wahu Ileile En Pohnpei is limited to the traditional paramount chiefs of Pohnpei. The paramount chiefs are only those persons who hold the title of either Nanmwarki or Nahnken. Justice Anson's father, as Wasahi Sokehs, although next in rank to the Nanmwarki in the Nanmwarki chiefly line, is not a paramount chief (that is, not a Nanmwarki or a Nahnken) and is therefore not a member of the plaintiff Mwoalen Wahu Ileile En Pohnpei. Young Sun states that under Pohnpeian custom and tradition, there is no such thing as the "Mwoalen Wahu Ileile En Pohnpei," that it is a recently minted phrase, that this council is not a part of traditional system, and is not recognized in the Pohnpei Constitution. In the court's view, these points do not buttress Young Sun's position, but instead further support the court's denial of Young Sun's previous petition.

Thus, as "[t]he remaining article XI, section 3 justice(s) of the Federated States of Micronesia Supreme Court, acting as the appellate division," I am "of the opinion that the writ clearly should not be granted," and Young Sun's current petition is therefore denied. FSM App. R. 21(b).

IV. CONCLUSION

Accordingly, Young Sun International Trading Company's motion for a stay and its petition for a writ of prohibition are both denied.

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FSM SUPREME COURT TRIAL DIVISION

FEDERATED STATES OF MICRONESIA,)	CRIMINAL CASE NO. 2016-502
)	
Plaintiff,)	
)	
vs.)	
)	
BUI VAN CUA,)	
)	
Defendant.)	
_____)	

JUDGMENT OF CONVICTION AND SENTENCING ORDER

Dennis K. Yamase
Chief Justice

Hearing: August 26, 2016
Decided: August 26, 2016
Entered: August 29, 2016