

Government of the Trust Territory [wa]s transferred to the Federated States of Micronesia for retention or distribution in accordance with th[e FSM] Constitution," FSM Const. art. XV, § 3, any public land on Weno was not Trust Territory government property on July 12, 1979, when the FSM Constitution took effect 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. The Chuuk state government is the legal successor to the Truk district government. The FSM is therefore not a successor-in-interest to the lands in question.

There is thus no basis, even taking the complaint's well-pleaded factual allegations as true, for the FSM to be a party to this lawsuit since, as a matter of law, the Trust Territory government never transferred to the FSM national government any of the Trust Territory's interest in the land in question.

The FSM's motion to dismiss for the failure to state a claim against the FSM is therefore granted and the FSM is dismissed. Since the only basis, asserted or apparent, for the court's jurisdiction is that the FSM national government is a party, and since the FSM was never properly a party, Chuuk has not stated a claim over which the FSM Supreme Court can exercise jurisdiction or for which the court can grant relief. Since the court never had jurisdiction over this case, it is dismissed without prejudice to any proceeding in a court of competent jurisdiction.

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FSM SUPREME COURT APPELLATE DIVISION

YOUNG SUN INTERNATIONAL TRADING CO.,)	APPEAL CASE NO. P17-2016
)	
Petitioner,)	
)	
vs.)	
)	
ASSOCIATE JUSTICE MAYCELEEN JD ANSON,)	
Trial Division, Supreme Court of Federated)	
States of Micronesia,)	
)	
Respondent,)	
)	
MWOALEN WAHU ILEILE EN POHNPEI, through)	
ISO NAHNKEN NETT SALVADOR IRIARTE,)	
CONSERVATION SOCIETY OF POHNPEI,)	
MARCELO PETERSON, Governor of Pohnpei,)	
CASIANO SHONIBER, as OFA Director, and)	
POHNPEI STATE GOVERNMENT,)	
)	
Real Parties in Interest.)	
)	

ORDER DENYING STAY AND WRIT

Ready E. Johnny
Associate Justice

Decided: August 26, 2016

586
Young Sun Int'l Trading Co. v. Anson
20 FSM R. 585 (App. 2016)

APPEARANCE:

For the Petitioner: Joseph S. Phillip, Esq.
P.O. Box 464
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HEADNOTES

Appellate Review – Stay – Civil Cases

An application to the appellate division for a stay must show that an application to the court appealed from for the relief sought is not practicable, or that the court appealed from has denied the application with any reasons given by the court appealed from for its action. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 585, 587 (App. 2016).

Appellate Review – Stay – Civil Cases

A motion for a stay must also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the motion must be supported by affidavits or other sworn statements or copies thereof, and such parts of the record as are relevant must be filed with the motion. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 585, 587 (App. 2016).

Appellate Review – Stay – Civil Cases

When a party's application to the appellate division for a stay does not state what reasons were given by trial justice for her action in denying a stay and when if there were relevant parts of the record, none were provided, there is not enough before the appellate division for it to consider a stay. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 585, 587 (App. 2016).

Appellate Review – Decisions Reviewable – Interlocutory; Civil Procedure – Injunctions

A party may appeal from FSM Supreme Court trial division interlocutory orders granting, continuing, modifying, refusing, or dissolving injunctions, or refusing to dissolve or modify injunctions or the party to an order concerning injunctive relief, or the party may await final judgment (and the entry or denial of a permanent injunction) and appeal the entire matter then. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 585, 587 (App. 2016).

Appellate Review – Decisions Reviewable – Interlocutory; Civil Procedure – Injunctions

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. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 585, 588 (App. 2016).

Mandamus and Prohibition – When May Issue

A petition for a writ of prohibition will be denied when the petitioner's new points do not buttress its position, but instead further support the court's earlier denial of its previous petition. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 585, 588 (App. 2016).

* * * *

COURT'S OPINION

READY E. JOHNNY, Associate Justice:

On August 24, 2016, the Young Sun International Trading Company ("Young Sun"), filed its Defendant Young Sun Joins the Petition for Writ of Prohibition and Motion for a Stay of Proceedings. The petition and the motion are both denied. The court's reasons follow.

I. RELIEF SOUGHT

On two previous occasions, Young Sun sought a writ of prohibition directed to Associate Justice Mayceleen JD Anson prohibiting her from presiding, as an FSM Supreme Court temporary justice, over FSM Supreme Court Civil Action No. 2016-014 because her father holds the traditional title of Wasahi Sokehs. Both of those petitions were denied. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 563 (App. 2016) (procedural deficiencies); Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 577 (App. 2016) (Justice Anson's father not a member of plaintiff council).

Young Sun again seeks a writ prohibiting Associate Justice Mayceleen JD Anson from presiding, as an FSM Supreme Court temporary justice, over FSM Supreme Court Civil Action No. 2016-014. Young Sun contends that since Justice Anson's father holds the high title of Wasahi Sokehs, next in line to the Nanmwarki of Sokehs, a member of the Mwoalen Wahu Ileile En Pohnpei (the Traditional Leaders Council of Paramount Chiefs of Pohnpei) Justice Anson's impartiality might reasonably be questioned.

II. STAY DENIED

Young Sun further requests a stay of the trial court proceedings, including an imminent preliminary injunction hearing, until the outcome of its petition (and of another party's separate petition for a writ of prohibition, docketed as P16-2016) for a writ of prohibition. An application to the appellate division for a stay must "show that application to the court appealed from for the relief sought is not practicable, or that the court appealed from has denied the application . . . with any reasons given by the court appealed from for its action." FSM App. R. 8(a). Young Sun asserts that a stay was sought from Justice Anson and that she denied the stay from the bench. Young Sun's application does not state what reasons were given by Justice Anson for her action. Nor does Young Sun's stay request contain any other matter in support of the request. A motion for a stay must "also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the motion shall be supported by affidavits or other sworn statements or copies thereof." FSM App. R. 8(a). And "[w]ith the motion shall be filed such parts of the record as are relevant." *Id.* If there were relevant parts of the record, none were provided. Thus, there is not enough before the appellate division for it to consider a stay.

Furthermore, the proceeding that Young Sun seeks to stay is a preliminary injunction hearing and presumably whatever order that may result from that hearing. That order may be favorable to Young Sun, or it may be an order that Young Sun can abide with while awaiting final judgment, or it may be an order from which Young Sun desires relief. The court notes that within forty-two days of entry of such an order, a party may appeal "from interlocutory orders of the Federated States of Micronesia Supreme Court trial division granting, continuing, modifying, refusing, or dissolving injunctions, or refusing to dissolve or modify injunctions." FSM App. R. 4(a)(1)(B). Or the party to an order concerning injunctive relief, may await final judgment (and the entry or denial of a permanent injunction) and appeal the entire matter then. Berman v. FSM Nat'l Police, 19 FSM R. 118, 123 (App. 2013) (party has option to either pursue an interlocutory appeal or, if still aggrieved after the final judgment,

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