

AND, an answer having been filed, IT IS FURTHER ORDERED that the following schedule is set: 1) the parties shall make all their discovery requests by November 15, 2016; 2) all discovery shall be completed by December 20, 2016; and 3) all pretrial motions shall be filed by January 31, 2016.

* * * *

CHUUK STATE SUPREME COURT TRIAL DIVISION

IN THE MATTER OF THE ESTATE OF)	CSSC PROBATE NOS. 48-97; 50-97; and 4-98
RAYMOND SETIK,)	
)	
Deceased,)	
)	
MARIANNE SETIK,)	
)	
Petitioner.)	
_____)	

ORDER DENYING FSMDB'S MOTION TO RECUSE

Jayson Robert
Associate Justice

Hearing: August 25, 2016
Decided: September 9, 2016

APPEARANCES:

For the Petitioner: Yoslyn Sigrah, Esq.
P.O. Box 3018
Kolonias, Pohnpei FM 96941

For the Intervenor:
(FSM Dev. Bank) Nora E. Sigrah, Esq.
P.O. Box M
Kolonias, Pohnpei FM 96941

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HEADNOTES

Courts – Recusal

The applicable recusal statute requires that a Supreme Court justice disqualify himself in any proceeding in which his impartiality might reasonably be questioned. In re Estate of Setik, 20 FSM R. 604, 606 (Chk. S. Ct. Tr. 2016).

Courts – Recusal – Procedure

A Chuuk State Supreme Court justice exceeds his jurisdiction when he refuses to refer a recusal motion to another trial division justice. For purposes of the referral procedure set forth in section 22(5) of the Chuuk Judiciary Act, a motion to recuse and one to disqualify are one and the same. In re Estate of Setik, 20 FSM R. 604, 606 (Chk. S. Ct. Tr. 2016).

In re Estate of Setik
20 FSM R. 604 (Chk. S. Ct. Tr. 2016)

Courts – Recusal; Courts – Recusal – Procedure

The standard for disqualification in a proceeding is whether a disinterested reasonable person, knowing all the circumstances, would harbor doubts about a judge's impartiality. There is a presumption that judicial officers are unbiased and the burden of proof rests with the party asserting an unconstitutional bias to demonstrate otherwise. *In re Estate of Setik*, 20 FSM R. 604, 606 (Chk. S. Ct. Tr. 2016).

Courts – Recusal

A typical situation where recusal may be required is when a sitting judge's extrajudicial knowledge, relationship, or dealings with a party or the judge's own personal or financial interests might be such as to cause a reasonable person to question whether the judge could impartially preside over and decide a particular case. *In re Estate of Setik*, 20 FSM R. 604, 606 (Chk. S. Ct. Tr. 2016).

Courts – Recusal

In an issue of first impression, U.S. court decisions about judicial disqualification can be used for guidance. *In re Estate of Setik*, 20 FSM R. 604, 607 (Chk. S. Ct. Tr. 2016).

Courts – Recusal – Financial Interest

Since debt securities do not give rise to a financial interest in the debtor which issued the securities, a judge who is indebted to a bank in a routine loan transaction is not thereby disqualified from cases in which a bank is a party. *In re Estate of Setik*, 20 FSM R. 604, 607 (Chk. S. Ct. Tr. 2016).

Courts – Recusal – Financial Interest

Debt interests are not considered to give rise to a financial interest in the debtor that issued the security because the debt obligation does not convey ownership interest in the issuer. Therefore, disqualification is not required solely because a party in a matter before the judge is a corporation or governmental entity that has issued a debt security owned by the judge. *In re Estate of Setik*, 20 FSM R. 604, 607 (Chk. S. Ct. Tr. 2016).

Courts – Recusal – Financial Interest

Common sense compels the conclusion that a debt obligation to a bank is not a disqualifying interest since a routine debt like a mortgage, fully secured by real property of an appraised value in excess of the debt, cannot be affected by the outcome of litigation involving the bank that is a mortgagee because a loss for the bank, even if ruinous, would not extinguish or reduce the obligation of the mortgagor to repay, or undermine the value of the property securing the loan, or, similarly, a bank victory, regardless of how substantial, affords not possible benefit to the mortgagor. *In re Estate of Setik*, 20 FSM R. 604, 607 (Chk. S. Ct. Tr. 2016).

Courts – Recusal – Financial Interest

When the presiding judge has a personal bank loan and he is not in default, there is no reason to think that his decision in the case will in any way influence his loan with the bank, either way he decides, since his loan is no different than other loans given to people that are not judges. *In re Estate of Setik*, 20 FSM R. 604, 608 (Chk. S. Ct. Tr. 2016).

Courts – Recusal – Bias or Partiality; Courts – Recusal – Financial Interest

A justice with an outstanding bank loan can also decide for himself whether to recuse himself if the issue of impartiality arises. *In re Estate of Setik*, 20 FSM R. 604, 608 (Chk. S. Ct. Tr. 2016).

COURT'S OPINION

JAYSON ROBERT, Associate Justice:

I. BACKGROUND

A hearing was held on August 25th, 2016 at 4:00 p.m. on Intervenor FSM Development Bank's motion to recuse presiding Justice Repeat R. Samuel. Present were Justice Jayson Robert, who was assigned to hear the motion of recusal; Yoslyn Sighrah, representing Heirs of Raymond Setik ("Heirs"), except Vicky Irons, and also representing the interests of Petitioner, Marianne Setik, as she had accepted Marianne's Setik's counsel, Marstella Jack's request, to do so as to save costs as she is based in Pohnpei; and Nora Sighrah, representing FSM Development Bank ("FSMDB"). After hearing arguments from both Yoslyn Sighrah on why to deny the recusal motion, and Nora Sighrah on why to grant the motion, the Court took the matter under advisement and set a scheduling order as follows. Parties have until September 2nd, 2016, to file any supplemental motions in this matter if they wish. A ruling will be rendered on September 9th, 2016 on whether to grant or deny the recusal motion.

FSMDB filed a supplemental motion for recusal on September 2nd, 2016. Heirs filed an opposition to this motion on September 6th, 2016.

II. LEGAL AUTHORITY AND ANALYSIS

The Chuuk State Judiciary Act Section 22(1) [Chk. S.L. No. 190-08, § 22(1)] states "[a] justice or a municipal judge may not hear any proceeding in which his impartiality might reasonably be questioned . . ." The applicable recusal statute requires that a Supreme Court justice disqualify himself in any proceeding in which his impartiality might reasonably be questioned. FSM v. Wainit, 11 FSM Intrm. 424, 430 (Chk. 2003).

Section 22(5) of the Chuuk Judiciary Act [Chk. S.L. No. 190-08, § 22(5)] states:

A party may move to disqualify a Justice or a municipal judge for one of the reasons stated in subsection (1) or (2) of this Section. The motion shall be accompanied by an affidavit stating the reasons for the belief that grounds for disqualification exist, and shall be filed before the trial or hearing unless good cause is shown for filing it at a later time. Upon receipt of such motion, the Justice shall refer the motion to another Justice, to hear the motion and rule upon it.

A Chuuk State Supreme Court justice exceeds his jurisdiction when he refuses to refer a recusal motion to another trial division justice. For purposes of the referral procedure set forth in section 22(5) of the Chuuk Judiciary Act, a motion to recuse and one to disqualify are one and the same. Ruben v. Petewon, 14 FSM Intrm. 177, 185 (Chk. S. Ct. App. 2006). The standard for disqualification in a proceeding is whether a disinterested reasonable person, knowing all the circumstances, would harbor doubts about a judge's impartiality. Damarlane v. Pohnpei Legislature, 14 FSM R. 582, 584-85 (App. 2007) (stating the facts must provide what an objective knowledgeable member of the public would find to be a reasonable basis for doubting the judge's impartiality). There is a presumption that judicial officers are unbiased and the burden of proof rests with the party asserting an unconstitutional bias to demonstrate otherwise. Ting Hong Oceanic Enterprises, 8 FSM R. 1, 6 (App. 1997); Suldan v. FSM (II), 1 FSM R. 339, 362 (Pon. 1983). A typical situation where recusal may be required is when a sitting judge's extrajudicial knowledge, relationship, or dealings with a party or the judge's own personal or financial interests might be such as to cause a reasonable person to question whether the judge could impartially preside over and decide a particular case. Ting Hong Oceanic Enterprises, 8

FSM R. at 7; In re Main, 4 FSM R. 255, 260 (App. 1990).

FSMDB does not supply any Chuuk State case law that addresses exactly the instant issue in its motion for recusal nor has this Court found any during the course of its own research. Since this is an issue of first impression, the US Court decisions are used for guidance. Kama v. Chuuk 18 FSM Intrm. 326 (Chk. S. Ct. Tr. 2012). Canon 3.13(B)(4) of the ABA Model Code of Judicial Conduct contemplates the exact situation presented in this matter. It provides, *inter alia*,

(B) . . . a judge may accept the following without publicly reporting such acceptance...

(4) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regularly course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not judges.

ABA Model Code of Judicial Conduct Canon 3.13(B)(4) (2011).

"Debt securities do not give rise to a financial interest in the debtor which issued the securities,' and . . . '[a] judge who is indebted to a bank in a routine loan transaction is not thereby disqualified from cases in which a bank is a party.'" Ausherman v. Bank of America Corp., 216 F. Supp. 2d 530, 532 (D. Md. 2002), *aff'd*, 352 F.3d 896, 899 n.2 (4th Cir. 2003).¹

The advisory opinion, which the Ausherman court adopted its own opinion, *inter alia*:

Debt interests, however, are not considered to give rise to a financial interest in the debtor that issued the security because the debt obligation does not convey ownership interest in the issuer. Therefore, disqualification is not required solely because [a] party in a matter before the judge is a corporation or governmental entity that has issued a debt security owned by the judge.

Id. at 533 (quoting II Guide to Judicial Policies and Procedures Published Advisory Opinions IV-251); Judicial Conference of the U.S., Comm. On Codes of Conduct, *Guide to Judiciary Policy* fol. 2B, Ch. 2 at 180-81 (2009), Finally, the Ausherman court added:

Common sense compels this conclusion. A routine debt like a mortgage, fully secured by real property of an appraised value in excess of the debt, cannot be affected by the outcome of litigation involving the bank that is a mortgagee. A loss for the bank, even if ruinous, would not extinguish or reduce the obligation of the mortgagor to repay, or undermine the value of the property securing the loan. Similarly, a victory for the bank, regardless of how substantial, affords not possible benefit to the mortgagor.

Ausherman, 216 F. Supp. 2d at 533-34 (footnote omitted).

¹ In that case, the plaintiffs sought to recuse the presiding magistrate judge (Judge Grimm) because the bank held the mortgage on his principal residence and therefore claimed that this relationship called into question his impartiality to resolve discovery matters referred to him by another judge. Judge Grimm noted in his opinion that there was no indication that his resolution of that case would affect his interest as a mortgagor to the Bank of America. Were this not so, then a judge would have to recuse himself in every case involving, even somewhat remotely, the issuer of credit cards kept in his wallet or the lender who financed the purchase of the judge's car.

It is a long-standing principle that a state law vesting exclusive jurisdiction in a state court cannot divest the FSM Supreme Court of jurisdiction over a matter it would otherwise have jurisdiction, as mandated by the FSM Constitution. Gimnang v. Yap, 5 FSM R. 13, 23 (App. 1991). Since, as determined in previous court orders, see above at page 611, and as affirmed by the appellate division, Ehsa v. FSM Dev. Bank, 20 FSM R. 498 (App. 2016), the court otherwise has jurisdiction over this case, Pohnpei State Law No. 3L-99-95, § 11-26 (58 Pon. C. § 8-125) cannot divest the FSM Supreme Court of jurisdiction.

5. *Pohnpei Constitution Article 12, Section 5*

Ehsa also contends that Pohnpei Constitution Article 12, Section 5 bars the transfer of title because that section provides that "[n]o land shall be sold, except as authorized by statute."

As noted above, a statute, 6 F.S.M.C. 1410(2) provides for the sale of a judgment debtor's particular non-exempt assets with the net proceeds to be paid to the judgment creditor. Such an order may be made only after a hearing on a motion for an order in aid of judgment. 6 F.S.M.C. 1409. Such a hearing was held. Timakyo Ehsa appeared at that hearing and agreed to Parcel No. 055-D-14's sale. The court then issued an order in aid of judgment that contained an order of sale for that parcel.

None of Ehsa's grounds being meritorious, NOW THEREFORE IT IS HEREBY ORDERED that the plaintiff's Motion for an Order Transferring Title is granted. That order shall issue herewith.

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FSM SUPREME COURT TRIAL DIVISION

ROSA RODRIGUEZ JACOB,)	CIVIL ACTION NO. 2011-040
)	
Plaintiff,)	
)	
vs.)	
)	
NICKONTRO W. JOHNNY, in his capacity as)	
Associate Justice in the Pohnpei Supreme Court,)	
Pohnpei State Police Department Director LUCAS)	
CARLOS, in his official capacity, and Pohnpei)	
Supreme Court Chief Clerk LEON FELIX,)	
individually and in his official capacity,)	
)	
Defendants.)	
)	

ORDER GRANTING PARTIAL SUMMARY JUDGMENT

Aliksa B. Aliksa
Specially Assigned Justice

Decided: September 16, 2016