

In its May 12, 2016 motion to recuse Justice Samuel to preside over this matter, FSMDB argues and states as grounds for the recusal that Justice Samuel is a current borrower of FSMDB and his impartiality might reasonably be questioned. FSMDB's Mot. to Recuse Presiding Justice at 1 and 2.

Here, Justice Samuel took out a loan with FSMDB. It was a personal loan, and he is not in default. There is no reason to think that his decision in this case will in any way influence his loan with the bank, either way he decides. His loan is no different than other loans given to people that are not judges. Based on legal authority cited above, his loan with FSMDB is not grounds for disqualification. Like other justices before the FSM Supreme Court who have personally recused themselves over cases where FSMDB is a party, and the justices have outstanding loans with FSMDB, Justice Samuel could also decide for himself whether to recuse or not if the issue of impartiality arises.

III. CONCLUSION

Based on the forgoing, FSMDB's motion for recusal is DENIED.

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FSM SUPREME COURT TRIAL DIVISION

FSM DEVELOPMENT BANK,)	CIVIL ACTION NO. 2007-035
)	
Plaintiff,)	
)	
vs.)	
)	
PERDUS I. EHSA and TIMAKYO I.)	
EHSA a/k/a TIMAKIO I. EHSA,)	
)	
Defendants.)	
)	

ORDER GRANTING MOTION TO TRANSFER TITLE

Ready E. Johnny
Associate Justice

Decided: September 13, 2016

APPEARANCES:

For the Plaintiff: Nora E. Sigras, Esq.
P.O. Box M
Kolonias, Pohnpei FM 96941

For the Defendants: Benjamin M. Abrams, Esq.
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HEADNOTES

Debtors' and Creditors' Rights – Orders in Aid of Judgment

When the land whose title transfer is sought was owned only by one defendant, that defendant is the only defendant with standing to oppose the title transfer. FSM Dev. Bank v. Ehsa, 20 FSM R. 608, 611 n.1 (Pon. 2016).

Jurisdiction – FSM Supreme Court Exclusive

That the FSM Development Bank seeks to sell land of undisputed ownership does not divest the court of jurisdiction when it otherwise has jurisdiction. FSM Dev. Bank v. Ehsa, 20 FSM R. 608, 612 (Pon. 2016).

Bankruptcy

The Bankruptcy Code, Title 31 of the FSM Code, stays the collection of judgments against the debtor who has sought bankruptcy protection and requires that all debt collection from the debtor take place within the bankruptcy proceeding wherein the bankrupt debtor's liability for his debts will either be satisfied or be discharged. FSM Dev. Bank v. Ehsa, 20 FSM R. 608, 612 (Pon. 2016).

Bankruptcy

Since one debtor's bankruptcy will not afford a different debtor protection from liability for his own indebtedness or his own liability, a corporation's bankruptcy will thus not release a guarantor from his personal liability for the judgment against him. FSM Dev. Bank v. Ehsa, 20 FSM R. 608, 612 (Pon. 2016).

Debtors' and Creditors' Rights – Orders in Aid of Judgment

Since an order in aid of judgment may provide for the sale of the judgment debtor's particular assets and the payment of that sale's net proceeds to the judgment creditor, a judgment creditor does not have to first acquire title to a particular asset before it is sold for the creditor's benefit. FSM Dev. Bank v. Ehsa, 20 FSM R. 608, 612 (Pon. 2016).

Federalism – National/State Power; Jurisdiction

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. FSM Dev. Bank v. Ehsa, 20 FSM R. 608, 613 (Pon. 2016).

Debtors' and Creditors' Rights – Orders in Aid of Judgment

Since a statute provides for the sale of a judgment debtor's particular non-exempt assets with the net proceeds to be paid to the judgment creditor and since such an order may be made only after a hearing on a motion for an order in aid of judgment, when such a hearing was held and the judgment debtor appeared at that hearing and agreed to the land's sale, the court may issue an order in aid of judgment that contained an order of sale for that parcel. FSM Dev. Bank v. Ehsa, 20 FSM R. 608, 613 (Pon. 2016).

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COURT'S OPINION

READY E. JOHNNY, Associate Justice:

This comes before the court on the plaintiff's Motion for an Order Transferring Title, filed February 12, 2013; Defendant's Opposition to Transfer of Title, filed October 2, 2013; Plaintiff's Reply

to Defendants' Opposition to Transfer of Title, filed October 14, 2013; Defendants' Surreply to Plaintiff's Reply to Defendants' Opposition to Transfer of Title, filed October 22, 2013; Defendants' Supplemental Opposition to Transfer of Title with supporting affidavits, filed November 11, 2013; and Plaintiff's Response to Defendants' Supplemental Opposition to Transfer of Title, filed December 10, 2013.

The plaintiff judgment creditor FSM Development Bank seeks an order transferring the title to land owned by judgment debtor Timakyo I. Ehsa a/k/a Timakio I. Ehsa, that the bank sold to Jose Gallen by way of auction pursuant to the court's December 22, 2011 Order of Sale and to Timakyo I. Ehsa's consent given in open court during an October 12, 2011 hearing. It was only some time after the judgment creditor bank had conducted an auction and a qualified buyer had paid the purchase price he had bid, that Timakyo Ehsa asserted that he was withdrawing his consent and filed an opposition.

The bank objected, as untimely made, to the oppositions to its motion. Defendants' counsel, at the October 2, 2013 hearing, gave as the only reason for the late filing (that same day) of the opposition to the sale that he had been retained only the week before. The court, in its October 3, 2013 Order Setting Schedule, noted that that ground was "wholly without merit and disingenuous" because counsel had entered a general appearance on the defendants' behalf on December 7, 2012. Nevertheless, the court did not strike Ehsa's opposition and allowed the bank to file a reply and Ehsa to file a surreply.

In their various oppositions to the plaintiff's Motion for an Order Transferring Title, the defendants, Perdue Ehsa and Timakyo I. Ehsa,¹ raise numerous grounds. Most of those grounds attack either the court's subject-matter jurisdiction or the validity of the judgment against them. Those grounds have all already been rejected by the court in its orders of March 19, 2013, FSM Dev. Bank v. Ehsa, 18 FSM Intrm. 608 (Pon. 2013), *aff'd*, 20 FSM R. 498 (App. 2016); of September 2, 2013, FSM Dev. Bank v. Ehsa, 19 FSM R. 128 (Pon. 2013); of October 13, 2014, FSM Dev. Bank v. Ehsa, 19 FSM R. 579 (Pon. 2014); and of January 6, 2016, FSM Dev. Bank v. Ehsa, 20 FSM R. 286 (Pon. 2016). Those orders constitute the law of the case. They do not need to be repeated here. The court will thus now consider only those grounds that were not addressed in these previous orders.

Only five of Timakyo Ehsa's opposition grounds were not addressed (and rejected) in previous orders. Those grounds are Ehsa's contentions 1) that the court lacks subject-matter jurisdiction because an interest in land is at issue; 2) that the borrower, Pacific Foods and Services, Inc., has been declared bankrupt and that obviates the transfer of title; 3) that, in order to be able to transfer title to the land, the bank would first have to own the land itself and Pohnpei Constitution Article 12, section 2 bars that; 4) that, under Pohnpei State Law No. 3L-99-95, § 11-26, only the Pohnpei Supreme Court can effect a judicial sale of land never pledged as collateral to secure a mortgage, guaranty, or promissory note; and 5) that the transfer would violate Pohnpei Constitution Article 12, section 5.

1. *Interest in Land at Issue and Jurisdiction*

Timakyo Ehsa contends that the court lacks jurisdiction under FSM Constitution, Article XI, § 6(a), since an interest in land is now at issue because Ehsa disputes Gallen's right to title to Parcel 055-D-14.

Ehsa misunderstands the nature of the proceeding. The court is not, as Ehsa maintains, trying

¹ The land whose title transfer is sought was owned only by Timakyo Ehsa. Therefore he is the only defendant with standing to oppose the title transfer.

to resolve a disputed interest in land. All parties, including buyer Gallen, acknowledge that Timakyo Ehsa is the owner of Parcel No. 055-D-14. What this proceeding, relying on Timakyo Ehsa's undisputed ownership of Parcel No. 055-D-14, entails is the court is providing a means for the satisfaction of part of Timakyo Ehsa's liability for his judgment debt to the bank. That the bank seeks to sell land of undisputed ownership does not divest the court of jurisdiction when it otherwise has jurisdiction. See FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 432 (App. 2014).

2. *Pacific Foods and Services, Inc.'s Bankruptcy*

The Bankruptcy Code, Title 31 of the FSM Code, stays the collection of judgments against the debtor who has sought bankruptcy protection, 31 F.S.M.C. 106(1), and requires that all debt collection from the debtor take place within the bankruptcy proceeding wherein the bankrupt debtor's liability for his debts will either be satisfied, 31 F.S.M.C. 204, or be discharged, 31 F.S.M.C. 208(1).

Pacific Foods and Services, Inc. voluntarily sought bankruptcy protection under Bankruptcy Code, chapter 2. Timakyo Ehsa has not sought bankruptcy protection. One debtor's bankruptcy will not afford a different debtor protection from liability for his own indebtedness or his own liability. Pacific Foods and Services, Inc.'s bankruptcy will thus not release Timakyo Ehsa from his personal liability for the judgment against him.

3. *Whether the Bank Needs to Own the Land First*

Ehsa contends that the bank must first own the land before the bank could sell it. There is no authority that the bank must first own the land before the land's title can be transferred to the buyer. By statute, an order in aid of judgment may provide for the sale of particular assets of the judgment debtor and the payment of that sale's net proceeds to the judgment creditor. 6 F.S.M.C. 1410(2) ("order in aid of judgment may provide for . . . the sale of particular assets and payment of the net proceeds to the creditor"). A judgment creditor does not have to first acquire title to a particular asset before it is sold for the creditor's benefit.²

Pohnpei Constitution Article 12, section 2 limits "[t]he acquisition of permanent interest in real property . . . to Ponapean citizens who are also pwilidak of Pohnpei." Since Ehsa does not dispute that the auction buyer, Joses Gallen, is a Pohnpei citizen and pwilidak, Ehsa's reliance on this provision is thoroughly misplaced.³

4. *Pohnpei State Law No. 3L-99-95, § 11-26*

Ehsa contends that Pohnpei State Law No. 3L-99-95, § 11-26 (now codified at 58 Pon. C. § 8-125) divests the FSM Supreme Court of jurisdiction to sell or to order the transfer of title to land on Pohnpei because that statute mandates that "[t]he Trial Division of the Pohnpei Supreme Court shall have exclusive jurisdiction to issue writs of execution against real property situated within this state." Ehsa contends that this provision means that the FSM Supreme Court can never issue an order for the sale of land in Pohnpei.

² The FSM Development Bank does have the statutory authority to hold fee simple title to land, 30 F.S.M.C. 137, but that is irrelevant here.

³ Also, since Gallen is a Pohnpeian citizen and pwilidak, the court does not have to consider whether Article 12, section 2 would violate the FSM Constitution's equal protection provisions.

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