signatory on the underlying loan documents, was understandable given the similarity of names and thus, inadvertent. Furthermore, the reluctance of FSMDB, to confirm the legitimacy of the immigration stamps on the daughter's tendered passport, which revealed the daughter's absence when these security instruments were executed, does not run afoul of the duty under Rule 11, concerning due diligence. Once FSMDB was in receipt of a certified birth certificate, reflecting the daughter had given birth off-island at the time in question, it withdrew its Opposition to a Motion to Vacate the respective Judgment which had been entered against this Defendant and she was dismissed from the action. In view of the inherent authenticity of the daughter's notarized signature, along with a possibility that the immigration stamps could have been falsified, the findings of the trial court's conclusions were proper and in keeping with the reasonable inquiry conducted by both FSMDB and its attorney, its decision not to impose Rule 11 sanctions will remain undisturbed.

Accordingly, the trial court's decision denying Defendants' (Appellants herein) Motion for Rule 11 sanctions, is hereby AFFIRMED.

* * * *

FSM SUPREME COURT TRIAL DIVISION

MARIANNE B. SETIK, individually and as Administratrix of the Estate of Raymond Setik; IRENE SETIK, individually and Administratrix of the Estate of Manney Setik and Personal Representative of the Heirs of Raymond Setik, Plaintiffs, vs. FELICIANO PERMAN, POHNPEI COURT OF LAND TENURE, POHNPEI STATE GOVERNMENT, and FSM DEVELOPMENT BANK, Defendants.	CIVIL ACTION NO. 2016-015

ORDER

Chang B. William
Specially Assigned Justice*

Decided: December 15, 2016

*Chief Justice, Kosrae State Court, Tofol, Kosrae

APPEARANCES:

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* * * *

HEADNOTES

Jurisdiction – Removal

When the Pohnpei Supreme Court granted the FSM Development Bank's motion to intervene, the bank was clearly a party to the action and therefore, entitled to remove the action to the FSM Supreme Court contingent upon the jurisdictional criteria being satisfied. Setik v. Perman, 21 FSM R. 31, 35 (Pon. 2016).

Business Organization – Corporations; Jurisdiction – Diversity

A corporation's citizenship, for diversity purposes, is the citizenship of its shareholders and only minimal diversity need exist. Setik v. Perman, 21 FSM R. 31, 36 (Pon. 2016).

Jurisdiction – Removal; Jurisdiction – Subject-Matter

Subject-matter jurisdiction in the FSM Supreme Court is proper in a case involving an FSM Development Bank mortgage foreclosure, on any one of the following as an independent basis: 1) the bank's classification as an instrumentality of the national government; 2) the parties' diversity of citizenship; and 3) the implied challenge to the superiority of FSM Supreme Court; hence a case arising under the FSM Constitution or national law. As such, removal of such a state court case to the FSM Supreme Court is deemed appropriate. Setik v. Perman, 21 FSM R. 31, 37 (Pon. 2016).

Torts – Conversion

The elements of a conversion action are the plaintiff's ownership and right to possession of the personalty, the defendant's wrongful or unauthorized act of dominion over the plaintiff's property inconsistent with or hostile to the owner's right, and resulting damages. Setik v. Perman, 21 FSM R. 31, 37 (Pon. 2016).

Property – Mortgages; Torts – Conversion

When a parcel was pledged as collateral for a loan in an executed security instrument and when the borrowers defaulted on the loan and the lender bank instituted enforcement proceedings and was allowed to enforce the mortgage's terms, the borrowers surrendered their ownership interest in this parcel and the ultimate transfer of ownership, as approved by the FSM Supreme Court, cannot be categorized as "wrongful or unauthorized," or a "frozen asset," when the borrowers had earlier obtained a Pohnpei Court of Land Tenure determination of heirship for the parcel that named them as the legal heirs to the property. Setik v. Perman, 21 FSM R. 31, 37-38 (Pon. 2016).

Constitutional Law – Due Process – Notice and Hearing

An allegation of a procedural due process violation, that takes issue with a purported lack of notice, strains credulity when it is belied by previously-filed, repeatedly unsuccessful motions to stave off the transfer of ownership that show that, not only were the claimants provided adequate notice, but they were also afforded ample opportunity to be heard and took full advantage of such participation. Setik v. Perman, 21 FSM R. 31, 38-39 (Pon. 2016).

Torts – Fraud

The winning bidder at a court-ordered land sale auction and therefore the new owner of the property pursuant to a court order transferring title, did not commit fraud or misrepresentation when

the bidder did not disclose, on the previous owners' behalf, an argument which had previously been rejected by the FSM Supreme Court. Setik v. Perman, 21 FSM R. 31, 39 (Pon. 2016).

Torts – Negligence

Liability for the tort of negligence requires that there be a duty of care owed by the defendant to the plaintiff, a breach of the duty, damages caused by the breach (i.e. proximate cause), and a determination of the value of the damages. Setik v. Perman, 21 FSM R. 31, 39 (Pon. 2016).

Torts – Negligence – Gross Negligence

A "gross negligence" claim lodged against the Pohnpei Court of Land Tenure that is predicated upon a purported failure to provide notice when it issued a new certificate of title, fails when, not only did the litigants have adequate notice, they took full advantage of an ability to be heard, as reflected in the numerous unsuccessful challenges that were mounted to the transfer of ownership, thereby contradicting this claim that notice was deficient. Setik v. Perman, 21 FSM R. 31, 39 (Pon. 2016).

Property – Land Registration

A valid certificate of title constitutes *prima facie* evidence of ownership. Courts must attach a presumption of correctness to a certificate of title. Setik v. Perman, 21 FSM R. 31, 39 (Pon. 2016).

Property – Land Registration

There is no need for the Pohnpei Court of Land Tenure to go through the whole process of having to designate the land, serve notice of the hearing, conduct a hearing, determine ownership and service notice of an issuance of this new title when the land already had a certificate of title and the FSM Supreme Court had issued an order transferring that title. Setik v. Perman, 21 FSM R. 31, 39 (Pon. 2016).

Civil Procedure – Dismissal – Before Responsive Pleading

On a Rule 12(b)(6) motion to dismiss, only the well pled or well-pleaded facts are to be accepted as true. No matter how artfully allegations may be crafted, the court does not assume the truth of legal conclusions merely because they are cast in the form of factual allegations. Conclusory allegations masquerading as factual conclusions will not suffice to prevent a motion to dismiss. Setik v. Perman, 21 FSM R. 31, 39 (Pon. 2016).

Judgments – Relief from Judgment – Independent Actions

An independent action which seeks to belatedly stave off the transfer of land ownership, concerning the same property at issue in the previous actions, constitutes a redundant attempt that is prohibited under earlier case law, and as such, that proscription presents another hurdle, which this action cannot overcome. Setik v. Perman, 21 FSM R. 31, 40 (Pon. 2016).

Civil Procedure – Default and Default Judgments; Civil Procedure – Res Judicata

The res judicata doctrine stands for the proposition, that a judgment entered in a cause of action conclusively settles that cause of action, as to all matters which were or might have been litigated and adjudged therein. A default judgment constitutes a final judgment with res judicata and claim preclusion effect. Setik v. Perman, 21 FSM R. 31, 40-41 (Pon. 2016).

Civil Procedure – Res Judicata

In determining whether the causes of action are the same, a court must compare the substance of the actions, not their form. For res judicata purposes, if the later case arises out of the same nucleus of operative facts or is based on the same factual predicate as the former action, then the two cases are really the same claim or cause of action. Setik v. Perman, 21 FSM R. 31, 41 (Pon. 2016).

Civil Procedure – Res Judicata

The objective of the judicial process is to decide issues according to judicially determined facts and not to give a disgruntled litigant the opportunity to continue disputing them. Res judicata thus encourages reliance on judicial decisions, bars vexatious litigation, and frees the court to resolve other disputes. Setik v. Perman, 21 FSM R. 31, 41 (Pon. 2016).

Civil Procedure – Dismissal; Civil Procedure – Res Judicata

When an action is merely an attempt to cast the same facts and claims in a different light in order to try to sneak under the bar of res judicata, it will be dismissed. Setik v. Perman, 21 FSM R. 31, 41 (Pon. 2016).

* * * *

COURT'S OPINION

CHANG B. WILLIAM, Specially Assigned Justice:

Plaintiffs' (Setiks') Complaint was filed in the Pohnpei Supreme Court on May 5, 2016 and on June 27, 2016, an Order was entered granting the Motion to Intervene filed by Defendant FSM Development Bank (FSMDB). FSMDB then filed a Verified Petition for Removal to this Court on July 13, 2016, followed by a Motion to Dismiss the Complaint on July 19, 2016. On September 5, 2016, Setiks filed an Opposition to both of FSMDB's above-mentioned filings.

PROCEDURAL BACKGROUND

The instant Complaint stems from previous Orders issued in FSM Development Bank v. Setik, 20 FSM R. 85 (Pon. 2015). In sum, a promissory note with FSMDB was entered into by Manney Setik on August 14, 2001. The loan amount of $658,000 was backstopped by two parcels of land, by virtue of a security instrument that was executed by both Manney Setik and Marianne B. Setik on November 16, 2001. The Setiks defaulted on the subject note, that precipitated FSMDB filing Civil Action No. 2007-008/ 20 FSM R. 85 (Pon. 2015) (on January 30, 2007), which sought to collect the outstanding balance and foreclose on the aforementioned property. As Manney Setik passed away (on December 7, 2004), Marianne B. Setik was named as a Defendant, along with the estate of Manney Setik and several heirs.

On February 1, 2008, a Default Judgment was entered in favor of FSMDB against Defendants Marianne B. Setik and Irene Setik in the amount of $856,016.07, plus interest. On December 24, 2013, an Order in Aid of Judgment (in the amount of $1,133,283.46, which included the principal, along with accrued post-judgment interest) was entered, whereby the two parcels that had been pledged by Setiks as security for the outstanding loan were to be sold.

Thereafter, a July 1, 2015 Order was entered which denied Setiks' Rule 60(b) motion to vacate the Judgment; 55(c) motion to set aside the underlying Default Judgment and an attempt to stay the proceedings, as well as the challenge regarding substitution of a land sale agent. [FSM Dev. Bank v. Setik, 20 FSM R. 85 (Pon. 2015)] On July 1, 2015, Defendants also filed a Motion to Set Aside the Order, which was similarly denied by the Court on November 13, 2015.

On August 3, 2015, Defendants filed an independent action (Civil Action 2015-031/ 20 FSM R. 236 (Pon. 2015)), which sought injunctive relief from the Orders that had been issued on December 24, 2014 and July 1, 2015, as the Complainants challenged the propriety of the underlying promissory notes and concomitant security instrument. On December 23, 2015, the Court dismissed this

Complaint, in its entirety.

In the wake of the aforementioned rulings, notice of an impending sale of the property at issue, via auction on October 30, 2015, was dutifully published. Defendant herein, Feliciano Perman (Perman) submitted the winning bid and after remitting the relevant sum to FSMDB, the imprimatur of the Court was sought, in terms of transferring the respective title to Perman. On November 24, 2015, an Order Transferring Title to the relevant property was issued, which set forth *inter alia*, that a "Certificate of Title for Parcel No. 025-A-158 to Feliciano Perman, in order to reflect this change in ownership."

On February 25, 2016, the Court denied Setiks' motion to reconsider such conveyance and consistent with the previous Orders entered by the FSM Supreme Court, on April 11, 2016, the Pohnpei Court of Land Tenure issued a new certificate of title to the subject property (Parcel No. 025-A-158); naming Perman as the owner of same. Finally, Appeal No. P2-2014, which challenged the underlying Order in Aid of Judgment that had been issued in Civil Action No. 2007-008, was dismissed on November 1, 2016. [Walter v. FSM Dev. Bank, 21 FSM R. 1 (App. 2016).]

The present Complaint constitutes, yet another independent action brought by Setiks, which challenges the transfer of the aforementioned parcel, as it names Perman, the Pohnpei Court of Land Tenure and Pohnpei State Government as party Defendants. The alleged causes of action include conversion; violation of due process; misrepresentation/fraud and negligence. As noted above, Setiks contest both FSMDB's Petition for Removal and Motion to Dismiss the Complaint.

REMOVAL

FSMDB's Petition for Removal maintains that subject matter jurisdiction properly lies within the FSM Supreme Court, by virtue of General Court Order (GCO) 1992-2; Article XI, Sections 6(a) 6(b) and 9(d) of the FSM Constitution, as well as this Court's decision in Ehsa v. FSM Development Bank, 20 FSM R. 498 (App. 2016). Setiks counter such a proposition and rely upon Section 6(a) of the FSM Constitution, claiming the exception clause contained therein is triggered, since an interest in land is at issue; consequently jurisdiction by the FSM Supreme Court is inappropriate.

GCO 1992-2 sets forth: "Any action brought in a state court[,] of which the trial division of the FSM Supreme Court has jurisdiction[,] may be removed by any party to the trial division of the FSM Supreme Court." [FSM GCO 1992-2, § I.]

Given the July 27th Order issued by the Pohnpei Supreme Court, which granted FSMDB's Motion to Intervene, the bank is clearly a party to the instant action and therefore, entitled to remove this action to the FSM Supreme Court contingent upon the jurisdictional criteria having been satisfied. Accordingly, whether the FSM Supreme Court possesses the requisite subject matter jurisdiction, constitutes the gravamen of the removal issue in question.

Article XI, Section 6(a) of the FSM Constitution provides:

> The trial division of the Supreme Court has original and exclusive jurisdiction in cases affecting officials of foreign governments, disputes between states, admiralty or maritime cases and in cases in which the national government is a party except where an issue in land is at issue.

Since an instrumentality of the national government is equivalent to the "national government" *per se*, with respect to the application of Section 6(a) and FSMDB is tantamount to such an instrumentality, subject matter jurisdiction properly exists in this Court. Ehsa, 20 FSM R. at 515;

Helgenberger v. FSM Dev. Bank, 18 FSM R. 498, 500 (App. 2013).

Article XI, Section 6(b) of the FSM Constitution sets forth:

> The national courts, including the trial division of the Supreme Court, have concurrent original jurisdiction in cases arising under this Constitution; national law or treaties; and in disputes between a state and citizen of another state, between citizens of different states and between a state or a citizen thereof and a foreign state, citizen or subject.

Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 45-48 (App. 1995), found that a corporation's citizenship, for diversity purposes, is the citizenship of its shareholders and only minimal diversity need exist. In light of the fact that FSMDB is a corporation, of which 1.3% of the respective shares are owned by the states of Kosrae and Chuuk coupled with Setiks' Pohnpeian citizenship, diversity of citizenship is satisfied. Accordingly,

> the FSM Supreme Court, in the alternative (since the existence of jurisdiction can only be exclusive or non-exclusive/concurrent), possesses concurrent jurisdiction under Article XI, Section 6(b), based on the diversity of citizenship, *to wit*: that of FSMDB being comprised, in part, by its Kosrae and Chuuk shareholders and the Pohnpeian citizenship of the [Setiks].

Ehsa, 20 FSM R. at 516.

Assuming *arguendo*, that an interest in land is actually present in this matter, the claim advanced by Setiks, *to wit:* subject matter is lacking, given the proscription of the land clause exception embodied within Article XI, Section 6(a), such a contention is misguided. In this regard, the case of FSM Development Bank v. Ifraim, 10 FSM R. 1 (Chk. 2001) is on all fours:

> Even were I to conclude that a mortgage foreclosure involved an interest in land in land at issue, I could not conclude that the FSM Supreme Court is barred from ever exercising jurisdiction ... because of the exception clause in section 6(a). There are three possible interpretations of this clause. One is that[,] if the national government is a party and an interest in land is at issue[,] the FSM Supreme Court would be completely barred from ever hearing the case. This cannot be so. If it were, it would mean that while the FSM Supreme Court can decide a land case under its diversity jurisdiction, *see, e.g.*, Luzama v. Ponape Enterprises Co., 7 FSM R. 40 (App. 1985); Etscheit v. Adams, 5 FSM R. 243, 246 (Pon. 1991), the mere addition of the national government as another party to a diversity case would divest the FSM Supreme Court of jurisdiction. This would be an illogical result. Another possible interpretation is that the FSM Supreme Court could have jurisdiction in an interest in land case[,] where the national government was a party, only if some other jurisdictional basis, such as diversity or "arising under" or the case affects foreign government officials or a dispute between states is present. The third possible interpretation is that jurisdiction still exists, but that it is not exclusive.

Ifraim, 10 FSM R. at 5.

In this vein, Setiks' related argument posits, but for FSMDB's intervention, with respect to the Pohnpei Supreme Court action, an interest in land case, sans any national government entity, would be present, therefore removal is improper. Ifraim is once again instructive, where the Court continued:

> I do not have to decide whether the second or third interpretation is the correct analysis[,] because under either interpretation the FSM Supreme Court could proceed on the mortgage foreclosure under its pendent jurisdiction[,] because it arises from the same nucleus of operative facts as the promissory note and is such that it would be expected to be tried in the same judicial proceeding. *See* Ponape Constr. Co. v. Pohnpei, 6 FSM R. 114, 116 (Pon. 1993); Ponape Chamber of Commerce v. Nett, 1 FSM R. 389, 396 (Pon. 1984). The Constitution would thus appear not to bar the FSM Supreme Court from exercising jurisdiction over FSM Development Bank foreclosures.

Ifraim, 10 FSM R. at 5.

Jurisdiction under Article XI, Section 6(b), as a case "arising under this Constitution [or] national law," also poses a viable basis for removal to this Court. Although Setiks maintain that the causes of action all sound in state law, implicit within the present Complaint is a contention, that a lower Court need not adhere to an Order issued by the FSM Supreme Court and is therefore liable for dutifully following the mandate of the latter. In other words, to suggest that the Pohnpei Court of Land Tenure somehow acted improperly by recognizing a transfer of ownership, as directed by the FSM Supreme Court, implicates a challenge to Article XI, Section 2 of the FSM Constitution, which labels the Supreme Court as "the highest court in the nation." Thus, "arising under" jurisdiction constitutes an alternate justification for invoking concurrent original jurisdiction in the FSM Supreme Court. Ehsa, 20 FSM R. at 518.

In sum, this Court finds that subject matter jurisdiction in the FSM Supreme Court is proper, in view of any one of the following as an independent basis: 1) FSMDB's classification as an instrumentality of the national government; 2) the parties' diversity of citizenship and 3) the implied challenge to the superiority of FSM Supreme Court; hence a case "arising under this Constitution [or] national law." As such, removal to this forum is deemed appropriate and Setiks' Opposition thereto is found to be without merit.

MOTION TO DISMISS

FSM Civil Rule 12(b)

FSMDB moves to dismiss the instant Complaint, pursuant to FSM Civil Rule 12(b) and submits that no relief is possible, given the causes of action pled. Setiks' response in opposition cites to the liberal pleading allowance embodied within FSM Civil Rule 8(a).

The first count of the present Complaint alleges conversion based on the fact that the property at issue: the C-Star Building – Parcel No. 025-A-158 (mortgaged to FSMDB as collateral for the underlying loan which was the subject of the Default Judgment) had been owned by Raymond Setik (who passed away on April 23, 1997) and since the estate of the decedent was tied up in probate, the transfer of this property constituted an unlawful acquisition. "The elements of an action for conversion are the plaintiff's ownership and right to possession of the personalty, the defendant's wrongful or unauthorized act of dominion over the plaintiff's property inconsistent with or hostile to the owner's right, and resulting damages." Rudolph v. Louis Family Inc., 13 FSM R. 118, 128-29 (Chk. 2005).

This frozen assets of the decedent argument is a central theme of the instant Complaint, despite having been rejected in Setik v. Mendiola, 20 FSM 236 (Pon. 2015). In short, with the passing of the original property owner (Raymond Setik), Manney Setik, was granted a Special Power of Attorney and oversaw the relevant property mortgage. Manney Setik, along with the Administratrix for the estate of the late Raymond Setik (Marianne B. Setik), pledged Parcel No. 025-A-158 as collateral for the

underlying loan when they executed the subject security instrument. Having defaulted on the subject loan agreement, the lender bank proceeded to institute enforcement proceedings and was thereafter allowed to enforce the terms of the aforementioned security instrument. As a result, Setiks surrendered their respective ownership interest in this parcel and the ultimate transfer of ownership, as approved by the FSM Supreme Court, can hardly be categorized as "wrongful or unauthorized."

Contrary to Setiks' pervasive claim concerning the property at issue as being tied up in the estate of the late Raymond Setik, it is noteworthy that a petition for heirship hearing and determination was filed by Manney Setik on May 28, 2001. In response thereto, the Pohnpei Court of Land Tenure issued its Determination of Heirship for the subject parcel on October 29, 2001, which named Plaintiffs herein as the legal heirs to this property.[1] Consequently, Setiks' ubiquitous argument along these lines is less than forthright.

Furthermore, as noted above, a case involving the same property and utilizing an identical argument, was addressed by the Court in Setik v. Mendiola, 20 FSM R. 236 (Pon. 2015), wherein the Complaint was dismissed in its entirety. In support of this ruling the Court stated:

> [T]he original Certificate of Title to the parcels of property in issue was held by the late Raymond Setik. With the passing of this family patriarch on August 23, 1997, a Special Power of Attorney, along with the real property mortgage, was granted to Manny Setik and dutifully registered in 2001. This documentation corroborates the fact that the heirs of the titled owner, Raymond Setik, consented to Manny Setik managing the affairs of the estate. The subject promissory note with the FSMDB was executed on August 14, 2001 and the parcels in issue were pledged as security for the underlying loan. It bears noting that the two signatories on this mortgage instrument, executed on November 16, 2001, were Manney Setik and Marianne B. Setik (Plaintiff herein).
>
> [Contrary] to the Plaintiffs' averment, that they operated under the premise the property was tied up in probate, the heirs of Raymond Setik exercised little compunction, in terms of securing the loan at issue in 2001 or executing the aforementioned mortgage, to which the Administratrix was a signatory. Accordingly, Plaintiffs are estopped from bringing an action sounding in conversion.

20 FSM R. at 242.

Under the facts of this case, Defendant Perman happened to submit the winning bid at a public auction of the property at issue. This auction was conducted by FSMDB in an effort to offset the debt incurred by the Setiks, in accordance with the Default Judgment entered by the Court. Equally important, is the fact that the subject land auction was publicly announced and the Court (in FSM Dev. Bank v. Setik, 20 FSM R. 85 (Pon. 2015)) countenanced the award of this property, by virtue of an Order Transferring Title, issued on November 24, 2015. As such, Defendant Perman was a *bona fide* purchaser and the remaining Defendants dutifully adhered to the above-mentioned FSM Supreme Court's Order, directing "the Registrar of Pohnpei issue a Certificate of Title for Parcel No. 025-A-158 to Feliciano Perman, in order to reflect this change of ownership."

The second count alleged within Setiks' present Complaint alleges violation of due process and takes issue with a purported lack of notice. Such an affirmation is belied by the fact that Setiks had previously filed repeated unsuccessful motions (as set forth above) to stave off the transfer of

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[1] Ex. "B" of Def. FSMDB's Verified Pet. for Removal (July 13, 2016).

ownership. As a result, not only were Setiks provided adequate notice, they were afforded ample opportunity to be heard and took full advantage of such participation. Accordingly, this claim, sounding in a violation of procedural due process, strains credulity.

Misrepresentation and fraud constitute the penultimate count, which is leveled at Defendant Perman. The same hackneyed argument is posited to buttress this claim, *to wit*: the estate of the late Raymond Setik is tied up in probate, a fact to which Setiks claim Perman was allegedly privy and therefore this *scienter* on his part, in terms of not disclosing this "material fact" warrants these two tort claims. At the expense of stating the obvious, Perman was simply the winning bidder at the subject land sale auction and therefore deemed the new owner of the property at issue, given the November 24, 2015 Order Transferring Title, issued by the "highest Court in the nation." As a result, for Setiks to propose that this new owner had a duty to disclose an argument on their behalf, which had previously been rejected by the FSM Supreme Court (in Setik v. Mendiola, 20 FSM R. 236 (Pon. 2015)) is nothing short of ludicrous.

The final amorphous cause of action alleges negligence on the part of the Pohnpei Court of Land Tenure and Pohnpei State Government. "Liability for the tort of negligence requires that there be a duty of care owed by the defendant to the plaintiff, a breach of the duty, damages caused by the breach [i.e. proximate cause], and a determination of the value of the damages." William v. Kosrae State Hosp., 18 FSM R. 575, 580 (Kos. 2013). The "gross negligence" claim lodged against the Pohnpei Court of Land Tenure is predicated upon a purported failure to provide notice when the new certificate of title was issued. At the expense of repetition, not only did Setiks have adequate notice, they took full advantage of an ability to be heard, as reflected in the numerous unsuccessful challenges that were mounted to the transfer of ownership, thereby contradicting this claim that notice was deficient.

In the event that Setiks' Complaint implies the issuance of this new certificate of title required additional notice, such an argument is misguided. The late Raymond Setik held a valid certificate of title to the parcel at issue, which constituted *prima facie* evidence of ownership. In fact, Courts must attach a presumption of correctness to a certificate of title. Anton v. Shrew, 12 FSM R. 274, 277 (App. 2003).

As such, the actions of both Manney Setik, who possessed a Special Power of Attorney and the Administratrix of the estate of Raymond Setik: Marianne B. Setik, in terms of executing the security instrument which pledged the parcel as collateral, acknowledged their dominion and control over this property. Given the Default Judgment secured by FSMDB and subsequent November 24, 2015 Order issued by the FSM Supreme Court, directing the issuance of a certificate of title for Parcel No. 025-A-158 to Perman, there was no need for the Pohnpei Court of Land Tenure to go through the whole process of having to designate the subject land, serve notice of the hearing, conduct a hearing, determine ownership and service notice of an issuance of this new title. In short, this lower Court was dutifully complying with the aforementioned Order issued by the "highest Court in the nation" and issuance of the new certificate of title to Perman was therefore proper.

> [O]n a Rule 12(b)(6) motion to dismiss, only the well pled or well-pleaded facts are to be accepted as true. No matter how artfully allegations may be crafted, the court does not assume the truth of legal conclusions merely because they are cast in the form of factual allegations. . . . [C]onclusory allegations . . . masquerading as factual conclusions will not suffice to prevent a motion to dismiss.

Arthur v. Pohnpei, 16 FSM R. 581, 593 (Pon. 2009) (citations omitted). The Complaint filed by Setiks does not fit this bill, as the Court is not inclined to lending credence to self-serving and inefficacious affirmations that largely disregard prior rulings addressing the same factual allegations.

*FSM Civil Rule 60(b) Motion **or** an Independent Cause of Action*

As noted above, Setiks were placed on notice in Setik v. Mendiola, 20 FSM R. 236 (Pon. 2015), that an independent cause of action was no longer a viable alternative. In that case the Court opined:

> [T]he instant Complaint endeavors to abrogate the Orders entered in [FSM Dev. Bank v. Setik] Civil Action 2007-008 [20 FSM R. 85 (Pon. 2015)] (on December 24, 2013 and July 1, 2015); seeking *inter alia*, to have the underlying promissory note, along with the security instrument, deemed null and void. . . . Plaintiffs previously sought, albeit unsuccessfully, to nullify those same Rulings, having filed . . . motions to vacate the Judgment, set aside the default and stay the proceedings. . . .
>
> In light of the fact, the Plaintiffs have already opted to seek, essentially the same relief, via a Rule 60(b) motion, the present Complaint is therefore tantamount to an independent cause of action. From a procedural standpoint however, Arthur v Pohnpei, 16 FSM R. 581, 596 (Pon. 2009), has held that a movant seeking relief from a Judgment is constrained to choosing, either a Rule 60(b) motion or an independent action. In light of this Ruling taking pains to frame these two avenues in the disjunctive, Plaintiffs are thereby precluded from bringing the ostensibly redundant cause of action at hand.
>
> Furthermore, FSM Dev. Bank v. Carl, 20 FSM R. 70 (Pon. 2015), has followed the lead of Arthur. In Carl, the Defendant filed a separate matter, in an effort to secure relief in the initial case and thereafter proceeded to file a 60(b) motion, in a similar attempt to obtain relief from the subject Judgment. In addition to finding the 60(b) mechanism as untimely, the Carl Court found, that the movant could not employ both an independent action and a Rule 60(b) motion in an endeavor to acquire relief from Judgment. *Id.* at 72.
>
> In light of this Court's prior denial, predicated on the merits of the aforementioned motions, Plaintiffs are barred from seeking relief *de novo*, with respect to the instant Complaint . . . .
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> . . .
>
> . . . Accordingly, this Court finds the Decisions rendered in both Arthur v. Pohnpei, 16 FSM R. 581 (Pon. 2009) and Carl, 20 FSM R. 70 (Pon. 2015) are controlling and Plaintiffs are therefore precluded from bringing this independent action.

20 FSM R. at 240-41.

This Court finds, that Setiks' independent action at bar which seeks to belatedly stave off the transfer of ownership, concerning the same property at issue in the previously cited actions, constitutes a redundant attempt that is similarly prohibited under both Arthur and Carl. As such, this proscription presents another hurdle, which the instant Complaint cannot overcome.

Res Judicata

Setiks were similarly apprised that *res judicata* posed another impediment to their attempt to revisit the transfer of the subject property in Setik v. Mendiola, 20 FSM R. 236 (Pon. 2015):

> The doctrine of *res judicata* stands for the proposition, that a Judgment entered in a cause of action conclusively settles that cause of action, as to all matters which were

> or might have been litigated and adjudged therein. Sorech v. FSM Dev. Bank, 18 FSM R. 151, 156 (Pon. 2012). Furthermore, a Default Judgment constitutes a final Judgment with *res judicata* and claim preclusion effect. Mori v. Hasiguchi, 17 FSM R. 630, 644 (Chk. 2011).

20 FSM R. at 241.

> In determining whether the causes of action are the same, a court must compare the substance of the actions, not their form. [For purposes of *res judicata*,] if [the later] case arises out of the same nucleus of operative facts or is based on the same factual predicate as a former action, then the two cases are really the same claim or cause of action.

Ragsdale v. Rubbermaid, Inc., 193 F.3d 1235, 1239 (11th Cir. 1999). Although new Defendants have been joined in the present action, within the context of a post-issuance of the new certificate of title to Perman, an argument utilized in earlier cases, "arises out of the same nucleus of operative facts and is based on the same factual predicate" is *marshaled, to wit*: an inappropriate conveyance of ownership, since assets of the late Raymond Setik were tied up.

The objective of the judicial process is to decide issues according to judicially determined facts and not to give a disgruntled litigant the opportunity to continue disputing them. "*Res Judicata* thus encourages reliance on judicial decisions, bars vexatious litigation, and frees the Court to resolve other disputes." Brown v. Felsen, 442 U.S. 127, 131, 99 S. Ct. 2205, 2209, 60 L. Ed. 2d 767, 771 (1979). "It is just as important that there should be a place to end [litigation], as there should be a place to begin." Stoll v. Gotleib, 305 U.S. 165, 172, 59 S. Ct. 134, 138, 83 L. Ed. 104, 109 (1938).

The November 24, 2015 Order Transferring Title to Perman constituted a final Judgment regarding the transfer of ownership. Courts must strive to ensure that the final Judgments fairly rendered are upheld, so that all interested parties may know when an issue has been justly concluded. Nahnken of Nett v. United States (III), 6 FSM R. 508, 529 (Pon. 1994). Thus, the Defendants herein, were all entitled to rely on the FSM Supreme Court's November 24, 2015 Order Transferring Title and as such, are all beyond reproach in this regard. Bottom line: the instant action "is merely an attempt to cast the same facts and claims in a different light in order to try to sneak under the bar of *res judicata*." Arthur v. Pohnpei, 16 FSM R. 581, 600 (Pon. 2009).

Conclusion

Subject matter jurisdiction before this Court, in order to warrant removal, is found to be proper. Such authority is present, since FSMDB constitutes an instrumentality of the national government, diversity of citizenship exists and Setiks' arguments implicate a question "arising under [the] Constitution [or] national law," *to wit*: the FSM Supreme Court's superiority over lower tribunals.

In a previous independent action brought by these Plaintiffs involving the property at issue: Setik v. Mendiola, 20 FSM R. 236 (Pon. 2015), the Court dismissed the Complaint in its entirety. The Mendiola Court opined:

> [M]any of the arguments raised in the case at hand constitute a mere regurgitation of issues which were previously broached and denied by this Court. In other words, although the instant Complaint seeks injunctive relief, framing it as such, does little to mask the fact, that once again, a stay of the relevant Judgments is coveted, thereby mirroring claims that were raised and ruled upon in FSM Dev. Bank v. Setik, 20 FSM R.

85 (Pon. 2015).

20 FSM R. at 238-39.

Whereas the dismissed Mendiola Complaint had been leveled against FSMDB, along with various bank personnel and took issue with the formulation of the loan agreement (including the security instrument which pledged the property at issue) the focus of the present Complaint, albeit naming different Defendants, is on the conveyance of the relevant parcel. Nevertheless, arguments which were previously rejected are utilized once again in this independent action. First and foremost, this Court finds the Complaint at bar to be deficient, as it does not appear Plaintiffs are entitled to any relief as pled. Furthermore, the Complaint, not only offends the doctrine or *res judicata*, but runs afoul of precedent, which forbids a party from seeking relief via a Rule 60(b) motion and bringing an independent action. In view of the aforementioned, the present Complaint cannot survive the Motion to Dismiss Complaint brought by FSMDB.

Accordingly, this Court hereby GRANTS the Petition for Removal and given this jurisdictional authority, the Complaint is DISMISSED in its entirety.

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FSM SUPREME COURT APPELLATE DIVISION

CHRISTOPHER CORPORATION, PATRICIA (PEGGY) SETIK, MARIANNE B. SETIK, THE ESTATE OF MANNEY SETIK, ATANASIO SETIK, WALTER, MARLEEN SETIK, JUNIOR SETIK, ELEANOR SETIK SOS, JOANITA SETIK PANGELINAN, MERIAM SETIK SIGRAH, CHRISTOPHER JAMES SETIK, and GEORGE SETIK, individually and d/b/a CHRISTOPHER STORE, Appellants, vs. FSM DEVELOPMENT BANK, Appellee.	APPEAL CASE NO. C1-2014 APPEAL CASE NO. C1-2015 APPEAL CASE NO. C2-2015 (Civil Action No. 2007-1008)

ORDER DENYING APPELLEE'S MOTION FOR RECUSAL

Decided: December 22, 2016

BEFORE:

Hon. Cyprian J. Manmaw, Specially Appointed Justice*
Hon. Benjamin F. Rodriguez, Specially Appointed Justice**
Hon. Chang B. William, Specially Appointed Justice***