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.

* * * *

FSM SUPREME COURT APPELLATE DIVISION

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| 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,<br><br>Appellants,<br><br>vs.<br><br>FSM DEVELOPMENT BANK,<br><br>Appellee. | APPEAL CASE NO. C1-2014<br>APPEAL CASE NO. C1-2015<br>APPEAL CASE NO. C2-2015<br>(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***

*Chief Justice, State Court of Yap, Colonia, Yap
**Chief Justice, Pohnpei Supreme Court, Kolonia, Pohnpei
***Chief Justice, Kosrae State Court, Lelu, Kosrae

APPEARANCES:

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* * * *

HEADNOTES

Courts – Recusal

Under 4 F.S.M.C. 124(1), a Supreme Court justice must disqualify himself in any proceeding where his impartiality might reasonably be questioned. The standard for disqualification is whether a disinterested reasonable person, knowing all the circumstances, would harbor doubts about a judge's impartiality. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 45 (App. 2016).

Courts – Recusal – Bias or Partiality

Judicial officers are presumed to be unbiased and the burden of proof rests with the party asserting an unconstitutional bias to demonstrate otherwise. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 45 (App. 2016).

Courts – Recusal – Extrajudicial Knowledge; Courts – Recusal – Financial Interest

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. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 45 (App. 2016).

Courts – Recusal – Financial Interest

Unless unusual circumstances exist, a judge is not obligated to disqualify himself or herself because the judge has a loan from a financial institution that is a litigant before the judge. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 45 (App. 2016).

Courts – Recusal – Financial Interest; Statutes – Construction

Since 4 F.S.M.C. 124(1) is based on the United States model and its statutory language is verbatim thereto, the court should consider United States legal authority under 28 U.S.C. § 455 for guidance in determining 4 F.S.M.C. 124's meaning concerning recusal as a result of a financial relationship with a lending institution. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 46 (App. 2016).

Courts – Recusal – Financial Interest

If it is acceptable for a judge to accept an ordinary loan from a financial institution, the same should not serve as grounds for disqualification. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 46 (App. 2016).

Courts – Recusal; Courts – Recusal – Financial Interest

Accepting a loan from a lending institution in its regular course of business on the same terms available to the general public, is fully consistent with a judge's obligation to conduct personal activities so as to minimize the risk of conflicts that would result in frequent disqualifications. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 49 (App. 2016).

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

When unusual circumstances exist, questions about impartiality may arise. For example, if a judge were presently appealing to the bank for a loan or an extension for or restructuring of a loan, or if the loan is currently in default and is presently or soon will be litigated, there would exist a real question about the appearance of impropriety. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 49 (App. 2016).

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

The mere fact of a relationship between a judge and a financial institution as borrower/lender or mortgagor/mortgagee does not give rise to an inference that the judge's impartiality might reasonably be questioned. Something more than an ordinary financial transaction between the judge and financial institution must be present for disqualification to be necessary as when the financial relationship affords the judge services and benefits not generally available to the public. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 49 (App. 2016).

Courts – Recusal; Courts – Recusal – Financial Interest

When a consumer loan was issued to the judge well before he was appointed to the appellate panel; when the bank does not aver any special circumstances necessitating the judge's disqualification since the loan was issued on standard terms available to the general public and were negotiated before his designation to the panel; and when the loan is current and not in default or delinquent nor at risk thereof, and is not currently being negotiated for extension, restructuring, or refinancing, the bank has not overcome the presumption that a judicial official is unbiased. Without more, a judge's consumer loan and the mere relationship between the bank and the judge as creditor-debtor, is insufficient to require the judge's disqualification. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 50 (App. 2016).

* * * *

COURT'S OPINION

PER CURIAM:

On May 13, 2016, Appellee FSM Development Bank ("FSMDB"), through its attorney Norah E. Sigrah, filed a motion for recusal pursuant to FSM Appellate Rule 27 and 4 F.S.M.C. 124 requesting Specially Appointed Justices Aisek and Rodriguez to disqualify themselves from hearing this matter. On May 20, 2016, Appellants Christopher Corp. et al., through their attorney Yoslyn G. Sigrah, filed their Opposition to Appellee's Motion for Recusal. On June 16, 2016, Specially Appointed Justice Aisek recused himself from sitting on this appeal. On September 2, 2016, FSMDB filed its Renewed Motion for Recusal of Specially Appointed Justice Rodriguez ("Justice Rodriguez").

Under 4 F.S.M.C. 124(1), a Supreme Court Justice shall disqualify himself in any proceeding where his impartiality might reasonably be questioned. FSMDB has moved for Justice Rodriguez's recusal on the ground that he has a consumer loan from them. Justice Rodriguez finds insufficient grounds to require his disqualification and we agree based on the following reasoning.

## I. ANALYSIS

### A. *General Standard for Disqualification of a Supreme Court Justice*

FSMDB moves to disqualify Justice Rodriguez from sitting on this panel pursuant to 4 F.S.M.C. 124(1), which states "[a] Supreme Court Justice shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."

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); Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 6-7 (App. 1997); Adams v. Island Homes Constr., Inc., 12 FSM R. 181, 183 (Pon. 2003); Fu Zhou Fuyan Pelagic Fishery Co. v. Wang Shun Ren, 7 FSM R. 601, 605 (Pon. 1996); Jano v. King, 5 FSM R. 266, 270 (Pon. 1992); FSM v. Skilling, 1 FSM R. 464, 475 (Kos. 1984). 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. at 6; 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).

### B. *Recusal of a Judge Based on a Relationship with a Financial Institution that is a Party to the Proceeding*

For the reasons set forth below, unless unusual circumstances exist, a judge is not obligated to disqualify himself or herself because the judge has a loan from a financial institution that is a litigant before the judge.

FSMDB argues that "[t]he status of a Justice being a borrower of FSMDB serves as grounds for disqualification of the Justice from proceedings in which FSMDB is a party, because his impartiality might reasonably be questioned." Appellee's Mot. for Recusal 3. In support of its argument, FSMDB states that "[s]ince her investiture in 2010, Associate Justice Carl-Worswick has not presided over any trial court matters nor served on any appellate panels in cases in which FSMDB is a party" because of her status as a current borrower of FSMDB. FSMDB attached a copy of Justice Carl-Worswick's recusal in Civil Action No. 2014-026 which states, in relevant part: "Under 4 FSMC sec. 124(1), a Supreme Court Justice shall disqualify himself or herself in any proceeding where his or her impartiality might be reasonably questioned. I am a current borrower of the FSM Development Bank. Accordingly, I hereby RECUSE MYSELF from the handling of this matter." Appellee's Mot. for Recusal Ex. A, at 1. FSMDB argues that "[t]herefore[,] on these same grounds, Justices Benjamin Rodriguez and Midasy Aisek should also be recused from this Appellate Panel." *Id.*

Although we recognize the fact that Justice Carl-Worswick has systematically recused herself from cases where FSMDB is a party to the litigation, we believe it proper to look carefully at the issue in order to further develop the court's recusal jurisprudence, especially in light of the fact that Justice Carl-Worswick's recusal orders are ordinarily summarily issued. Furthermore, although the general standard for a judge's disqualification is well established in FSM jurisprudence, FSMDB does not provide

any reported case law that addresses exactly the instant issue in its motion or reply nor has this Court found any during the course of its own research. Thus, because 4 F.S.M.C. 124(1) is based on the United States model[1] and, in fact, the statutory language is verbatim thereto, we should consider United States legal authority under 28 U.S.C. § 455 for guidance in determining 4 F.S.M.C. 124's meaning in the context of recusal as a result of a financial relationship with a lending institution. *See* FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 596 & n.6 (Kos. 2013); Kaminanga v. Chuuk, 18 FSM R. 216, 219 n.1 (Chk. 2012). The language in 4 F.S.M.C. 124(1) and 28 U.S.C. § 455 is also substantially identical to Canon 3C(1)(c) of the Code of Judicial Conduct,[2] to which FSM Supreme Court justices are also subject. 4 F.S.M.C. 122.[3] "[I]n responding to claims of unconstitutional bias, we should lean heavily upon the standards supplied by the Code of Judicial Conduct." Etscheit v. Santos, 5 FSM R. 35, 39 (App. 1991).

Canon 5C(4)(b) of the ABA Model Code of Judicial Conduct contemplates the exact situation presented in this matter. It provides, *inter alia*,

> (4) Neither a judge nor a member of his family residing in his household should accept a gift, bequest, favor, or loan from anyone except as follows: . . . (b) a judge or a member of his family residing in his household may accept . . . a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges . . . .

ABA Model Code of Judicial Conduct Canon 5C(4)(b) (1972). It follows that if it is acceptable for a judge to accept an ordinary loan from a financial institution, *a fortiori*, the same should not serve as grounds for disqualification.

The instant issue was also recently addressed in the United States District Court in Ausherman v. Bank of America Corp., 216 F. Supp. 2d 530 (D. Md. 2002), *aff'd*, 352 F.3d 896, 899 n.2 (4th Cir. 2003). In that case, the plaintiffs sought to recuse the presiding magistrate judge, Judge Grimm,

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[1] 28 U.S.C. § 455 – "Disqualification of justice, judge or magistrate judge (a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."

[2] Canon 3:

A Judge Should Perform the Duties of His Office Impartially and Diligently

The judicial duties of a judge take precedence over all his other activities. His judicial duties include all the duties of his office prescribed by law. In the performance of these duties, the following standards apply:

. . .

C. Disqualification

(1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned . . . .

[3] "Justices of the Supreme Court shall adhere to the standards of the Code of Judicial Conduct of the American Bar Association except as otherwise provided by law or rule." 4 F.S.M.C. 122. There is no hint that Canon 3C, as incorporated by the Judiciary Act of 1979, and 4 F.S.M.C. 124 were intended by Congress to have different meanings. FSM v. Skilling, 1 FSM R. 464, 471 n.2 (Kos. 1984).

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. Ausherman, 216 F. Supp. 2d at 531. In denying the plaintiff's motion for recusal, Judge Grimm, after analyzing why recusal was not required under the financial interest provision of the statute,[4] made the following conclusion:

> There is no allegation—and indeed none could be made in good faith—that the resolution of this case may somehow affect my interest as a mortgagor to the Bank of America, F.S.B. . . . . 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. If a routine, commercial loan transaction is not viewed as a financial interest that requires automatic recusal then, *a fortiori*, its existence, alone, reasonably cannot give rise to any legitimate concern about impartiality.

*Id.* at 534. In his opinion, Judge Grimm stated that "'[d]ebt 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." *Id.* at 532; Judicial Conference of the U.S. Committee on Codes of Conduct, Guide to Judiciary Policies and Procedures, Compendium, at V-I, V-26 & V-27 (2001).[5] The opinion also refers to Advisory Opinion No. 101,[6] which discusses disqualification due to debt interests. That advisory opinion, which the Ausherman court adopted in its own opinion, states, *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

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[4] 28 U.S.C. § 455(b)(4), which is substantially identical to 4 F.S.M.C. 124(2), states:

> (a) He shall also disqualify himself in the following circumstances:
>
> . . .
>
> (4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding.

Take note that FSMDB does not allege that Justice Rodriguez should be disqualified based on 4 F.S.M.C. 124(2)(b)(4), and we therefore abstain to address the issue. Furthermore, Justice Rodriguez does not hold any financial interest in FSMDB that would require his recusal.

[5] The Judicial Conference of the United States has authorized its Committee on Codes of Conduct to publish formal advisory opinions on ethical issues that are frequently raised or have broad application. These opinions provide ethical guidance for judges and judicial employees and assist in the interpretation of the codes of conduct and ethics regulations that apply to the judiciary.

[6] We note that although the Judicial Committee is not authorized to interpret 28 U.S.C. § 455, the Code of Judicial Conduct, which the Judicial Committee is authorized to interpret, contains language substantially identical to 28 U.S.C. §455, and thus 4 F.S.M.C. 124. Because it is common for United States judges to rely on the Judicial Committee's opinions in evaluating their conduct, this court similarly affords the Advisory Opinion persuasive value. *See In re* Cameron Int'l Corp., slip op., No. 10-30631, 2010 WL 2930736, at *1-2 (5th Cir. July 22, 2010).

> 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.

Ausherman, 216 F. Supp. 2d at 533; Judicial Conference of the U.S., *supra*, at § 3.1-4; 2B Judicial Conference of the U.S., Comm. on Codes of Conduct, Guide to Judiciary Policy 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 no possible benefit to the mortgagor.

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

The advisory opinions of the judicial committees and commissions of many states and the District of Columbia are consistent with our view and offer what we view as persuasive authority for our ruling on this issue. *See, e.g.*, Advisory Comm. on Judicial Conduct of the D.C. Courts, Advisory Opinion No. 12, at 4 (2012) ("Unless unusual circumstances exist, a judge need not disqualify himself or herself because the judge accepted a loan from a financial institution that later became a litigant before the judge [because] a fully informed, objective person could not reasonably question a judge's impartiality merely because the judge previously borrowed money from the institution."); N.Y. Advisory Committee on Judicial Ethics, Opinion 04-50, at 1 (2004) (""[G]iven the ubiquity and routine nature of home mortgage and automobile loans, and the fact that such transactions are rarely predicated on a special or personal relationship between the borrower and the institutional lender, neither recusal nor disclosure is required in foreclosure or other proceedings where the institutional lender appears as a party."); Utah Judicial Council, Formal Opinion 96-1, at 1 (1996) (advising that, although a judge should recuse himself where a program was specifically negotiated for judges with a specific bank, recusal is not required where a judge obtains a loan from a financial institution on the same terms generally available to the public); Ind. Comm'n on Judicial Qualifications, Advisory Opinion No. 3-93, at 1 (1993) (concluding that, except in unusual circumstances, "disqualification is not required . . . assuming the judge's loan is ordinary in every respect and the merits of the particular case do not implicate the judge's business with the bank in any significant way"); Judicial Inquiry Comm'n of Ala., Opinion 89-369, at 2 (1989) ("[T]he mere existence of the debtor/creditor relationship does not cause disqualification under Canon 3C. However, if additional factors exist such as the granting of special favors or the creation of a personal bias either in favor or against the bank, disqualification would exist."); Judicial Qualifications Comm'n of Ga., Opinion No. 40, at 1 (1980) ("[B]y making a loan with a regular lending institution the judge does not have 'a financial interest' in the institution or an 'interest that could be substantially affected by the outcome of the proceeding,' nor does it place the judge in a position 'in which his impartiality might reasonably be questioned,' and that therefore the judge is not disqualified to sit in cases in which the financial institution is a party."); Judicial Ethics Advisory Committee of Fla., Opinion 79-4, at 1 (1979) (advising, in part, that a judge may obtain a loan at a favorable rate provided that rate was also available to non-judges); *cf.* In re United States, 158 F.3d 26 (1st Cir. 1998) (district court not required to recuse in case prosecuting bank officials of a bank where judge and her husband had a delinquent loan with the bank); Delta Air Lines, Inc. v. Sasser, 127 F.3d 1296 (11th Cir. 1997) (finding judges were not required to recuse themselves on the ground that they accumulated and used frequent flyer miles in a case where Delta Airlines sued a defendant for tortious interference with business relations, alleging the defendant had illegally purchased airline tickets and frequent flier awards); In re Zow, slip op., No. 12-41944, 2013 WL 445385, at *2 (Bankr. S.D.

Ga. Jan. 24, 2013) (denying motion for recusal where the nature and terms of the judge's transactions were standard and available to all qualified borrowers);*but see* Judicial Inquiry Comm'n of Ala., Opinion 86-276, at 3 (1986) ("[I]n order to avoid even the appearance of impropriety and even though there is no technical violation of the Canon, a judge should inform the parties of the fact of the relationship [to the bank] and should recuse himself on motion of either party.").

Therefore, accepting a loan from a lending institution in their regular course of business on the same terms available to the general public is fully consistent with a judge's obligation to conduct personal activities to minimize the risk of conflicts that would result in frequent disqualifications. *See* ABA Model Code of Judicial Conduct Canon 5 (1972); ABA Model Code of Judicial Conduct Canon 3 (1972).

Where there exist unusual circumstances, however, questions about impartiality may arise. For example, if a judge were presently appealing to the bank for a loan or an extension for or restructuring of a loan, or if the loan is currently in default and is presently or soon will be litigated, there would exist a real question about the appearance of impropriety. One such example occurred in In re Seraphim, 294 N.W.2d 485 (Wis. 1980) wherein the judge was disciplined for, among other things, accepting a favorable automobile lease rate from a litigant that had appeared before the judge where the particular rate secured by the judge was unavailable to other persons.

Notwithstanding, the mere fact of a relationship between a judge and a financial institution as borrower/lender or mortgagor/mortgagee does not give rise to an inference that the judge's impartiality might reasonably be questioned. To wit, something more than an ordinary financial transaction between the judge and financial institution must be present for disqualification to be necessary like where the financial relationship affords the judge services and benefits not generally available to the public.

In the present case, as discussed above, FSMDB argues that "[t]he status of a Justice being a borrower of FSMDB serves as grounds for disqualification of the Justice from proceedings in which FSMDB is a party, because his impartiality might reasonably be questioned." Appellee's Mot. for Recusal at 3. In support of the motion, FSMDB points to the fact that a current FSM Supreme Court associate justice has systematically recused herself from any cases wherein FSMDB is a party as a result of her status as a borrower from FSMDB. FSMDB argues that it should follow that all current borrowers of FSMDB should be disqualified in cases where FSMDB is a party, including Justice Rodriguez in the present matter.

C. *Disqualification of Specially Appointed Justice Benjamin F. Rodriguez*

FSMDB sets forth the following pertinent facts regarding Justice Rodriguez's financial relationship with FSMDB:

1. Justice Rodriguez is a current borrower from FSMDB;

2. The loan was approved on October 1, 2015 and matures on October 14, 2018;

3. The loan has an outstanding balance as of May 13, 2016, the date of FSMDB's filing.

Appellee's Mot. for Recusal at 2-3; Sigrah Aff. ¶¶3-4; Alik Aff. ¶ 3. Based on these facts, FSMDB argues that "Justice Rodriguez's status as a current borrower from FSMDB constitutes circumstances in which his impartiality may be reasonably questioned, in this appeal in which FSMDB is a party." Appellee's Mot. for Recusal at 3. For the reasons set forth in Part II, *supra*, and below, Justice

Rodriguez's financial relationship with FSMDB does not present extraordinary circumstances which require his disqualification from this matter.

First, the consumer loan was issued well before the designation letter appointing Justice Rodriguez to sit on this appellate panel; the loan was issued on October 1, 2015 and the designation letter sitting Justice Rodriguez on this panel was dated March 2, 2016. Therefore, it cannot be said that Justice Rodriguez was applying for the loan from FSMDB while also sitting on this panel. By the time he had begun sitting on this panel and working on this matter, the loan had already been issued. It follows that the terms of the loan were negotiated during a time which Justice Rodriguez had no knowledge of his forthcoming membership on this panel and that therefore he could not use his status as a member of this panel to secure more favorable terms. *See* Adams v. Island Homes Constr., Inc., 12 FSM R. 181, 183 (Pon. 2003) (a judge's thinking in the course of a case could not have been influenced by a fact of which he was not aware).

Second, FSMDB does not aver any special circumstances necessitating Justice Rodriguez's disqualification. The loan was issued on standard terms available to the general public, the terms were negotiated before his designation to this panel, the loan is current and not in default or delinquent nor at risk thereof, and is not currently being negotiated for extension, restructuring, or refinancing. The resolution of the issues in this appeal cannot be reasonably expected to affect the terms of the loan or otherwise affect Justice Rodriguez's financial relationship with FSMDB. A loss for FSMDB, even if ruinous, would not extinguish or reduce the obligation of Justice Rodriguez to repay. Similarly, a victory for FSMDB, regardless of how substantial, affords no possible benefit to Justice Rodriguez.

FSMDB has not overcome the presumption that a judicial official is unbiased because the facts presented to the court do not present a situation which would cause a disinterested reasonable person who knows all the circumstances would harbor doubts about Justice Rodriguez's impartiality. Justice Rodriguez's consumer loan does not involve any collateral to secure the debt and the payments are automatically deducted from his biweekly paycheck. Without more, for the reasons set forth above, the mere relationship between FSMDB and Justice Rodriguez as creditor-debtor is insufficient to require disqualification.

ACCORDINGLY, FSMDB's Motion for Recusal of Justice Rodriguez is hereby DENIED.

* * * *