


FILED 10/3/12
DATE: _____ TIME: 2:25pm
By: 
CLERK, FSM SUPREME COURT
Kosrae
TRIAL DIVISION

Stephen V. Finnen
A Law Corporation
P. O. Box 1450
Kolonia, FM 96941
Phone: (691) 320 2871
Fax: (691) 320 5502

ATTORNEYS FOR DEFENDANT TROPICAL WATERS KOSRAE, INC., CLAUDE PHILLIP
AND RONALD BICKETT,

IN THE SUPREME COURT OF THE
FEDERATED STATES OF MICRONESIA
KOSRAE STATE-TRIAL DIVISION

FSM DEVELOPMENT BANK,)	CIVIL ACTION NO. 2012-2003
)	
Plaintiff,)	
)	
vs.)	MOTION TO ENLARGE TIME
)	TO RESPOND TO COMPLAINT
TROPICAL WATERS KOSRAE, INC.,)	
CLAUDE PHILLIP and RONALD BICKETT,)	
)	MOTION TO FILE BY FACSIMILE
Defendants.)	
_____)	

TO THE HONORABLE COURT AND ALL PARTIES:

Defendants TROPICAL WATERS KOSRAE, INC., CLAUDE PHILLIP and RONALD BICKETT appear and file this motion to enlarge time to answer or otherwise respond to the complaint filed by plaintiffs on March 22, 2012. This motion is supported by the attached Memorandum of Points and Authorities.

The defendants, by and through counsel, hereby move for an order of the Court to allow filing by facsimile. Pursuant to General Court Order, 1990-1, plaintiffs move the Court to be allowed to file this Motion to Enlarge Time by facsimile, on the basis that the Court might not receive a filing by mail in time. Filing by mail would not be received timely.

MEMORANDUM OF POINTS AND AUTHORITIES

FACTS

This complaint against the defendants is brought by the Development Bank for five causes of action, breach of the promissory note, an action on the guaranty by Claude Phillip, an action on the guaranty by Ron Bickett, an action on the chattel mortgage issued by the Tropical Waters Kosrae, Inc., (hereinafter "TWKI") and an action on the assignment of income and exclusive possession. A motion to dismiss was previously filed and this court denied the motion on August 23, 2012. A previous enlargement granted defendants until October 3, 2012. Just prior to October 3, 2012, defendant Claude Phillip passed away, and this will require additional review concerning the status of a deceased defendant. Defendants request until October 17, 2012, to file the answer or other responsive pleading.

LEGAL ARGUMENT

Rule 6(b) of the FSM Rules of Civil Procedure states,

"(b) Enlargement. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specific time, the court for cause shown may at any time in its discretion (1) with or without notice order the period enlarged if request therefore is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under rules 52(b), 59(b), (d) or (e), and 60(b), except to the extent and under the conditions stated in them."

For the foregoing reasons, counsel seeks until October 17, 2012, to respond to the complaint.

RULE 6(D)

This counsel emailed Nora Sigrah on October 1, 2012, requesting this enlargement. She did not object.

CONCLUSION

For the foregoing reasons, counsel for defendants requests that the Court allow an enlargement of time for defendants to respond to the complaint until October 17, 2012.

Dated: 10-2-12

Respectfully submitted,



Stephen V. Finnen
A Law Corporation
Attorneys for Defendants

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I caused to have a copy of the Motion to Enlarge Time on plaintiff by having it delivered by hand delivery to their attorneys' address of record at the address below. Service was made on this 3rd day of October, 2012.

Nora Sigrah, Esq.
FSM Development Bank
Kolonia, Pohnpei, FM 96941

Dated: Oct/3/12