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FILED
4/11/13
DATE: _____ TIME: _____ am/pm
By: Law
CLERK, FSM SUPREME COURT
KOSRAE
TRIAL DIVISION

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

FSM Development Bank,)
)
Plaintiff,)
v.)
)
TROPICAL WATERS KOSRAE, INC.,)
CLAUDE PHILLIP, AND RONALD)
BICKETT,)
)
Defendants.)
)

CIVIL ACTION NO. 2012-2003
PLAINTIFF'S MOTION TO
STRIKE DEFENDANT BICKETT'S
ANSWER TO DISCOVERY
QUESTIONS PROPOUNDED;
MOTION TO COMPEL DISCOVERY;
REQUEST FOR AWARD OF
EXPENSES

COMES NOW, Plaintiff FSM Development Bank, through its counsel, to file this Motion to Strike Defendant Bickett's Answer to Discovery Questions Propounded, Motion to Compel Discovery and Request for Award of Expenses of these Motions. These Motions and Request are made pursuant to FSM Civil Rules 30 and 37, and are supported by the memorandum below, Defendant Bickett's filing of April 2, 2013, and the record of this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

On April 2, 2013, Plaintiff FSM Development Bank ("FSMDB") was served the Answer of Ronald Bickett to Discovery Questions Propounded. The Answer responded to FSMDB's discovery request

propounded on October 1, 2012, and included a 17 page mostly single spaced response to FSMDB's discovery request. Most of the 17 page response was dedicated to Bickett's listing of numerous objections made under FSM and California state law. The last page of the 17 page response was dated March 29, 2013, and provided a space for Defendant Bickett's signature. However the response itself was not signed by Bickett.

The 17 page response was attached to a single page submission signed by Bickett's counsel, which specifies that the answers and objections "are solely by Defendant Ronald Bickett", and that "this counsel neither adopts or certifies in any manner these responses." Counsel's submission is essentially a transmission of Bickett's unsigned objections and responses.

The April 2, 2013 discovery response fails to comply with FSM Civil Rule 33(a) which requires that:

Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney or trial counselor making them.

Bickett's discovery response fails to comply with Rule 33(a) because the person providing the answers has not signed the answers under oath. The objections provided within the 17 page response are also improper as they are not signed. Bickett has

failed to sign the objections and his counsel expressly disclaims adoption or certification of the objections. Thus neither the answers nor the objections comply with Rule 33(a).

On April 2, 2013, undersigned counsel for FSMDB contacted Bickett's counsel by email and requested compliance with Rule 33(a) with a response signed under oath. On April 5, 2013, undersigned again contacted Bickett's counsel by email and requested compliance with Rule 33(a). The undersigned also advised Bickett's counsel that FSMDB would move to strike the response if a compliant response was not provided. No response has been received by the undersigned.

Interrogatory answers of natural persons must be signed under oath by the natural person making the answer. Helgenberger v. Mai Xiong Pacific Int'l, Inc., 17 FSM Intrm. 326, 332 (Pon. 2011). Thus Bickett is required to sign his answers under oath, which he has failed to do. Interrogatory answers which are not answered under oath may be stricken, and ordered filed and served in compliance with the rules. Talley v. Talley, 10 FSM Intrm. 570, 572 (Kos. S. Ct. Tr. 2002). FSMDB now requests this Court to enter an order striking Bickett's unsigned discovery responses filed April 2, 2013.

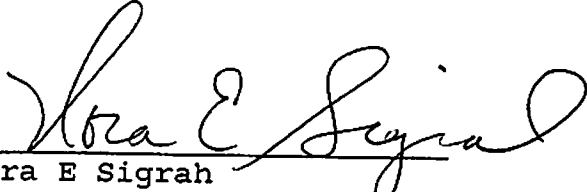
FSMDB further requests entry of an order compelling that the interrogatories propounded by FSMDB on October 1, 2012, be

answered by Bickett under oath, filed and served in compliance with FSM Civil Rules 33(a) and 37(a). FSMDB further seeks an award of expenses, including reasonable attorney fees, in bringing this motion, pursuant to FSM Civil Rule 37(a)(4). FSMDB submits that the award of expenses is appropriately directed at Defendant Bickett himself, as Bickett is also an attorney who has practiced law in the FSM, and is charged with the knowledge of the requirements of the FSM Rules of Civil Procedure.

It is evident from the 17 page response prepared by Bickett that he spent much time researching and drafting his numerous lengthy objections to the interrogatories, which included references to the California Code of Civil Procedure (which are not applicable here). But even had Bickett relied upon the California Code of Civil Procedure in providing his responses to the interrogatories, the signatory requirements would be the same. The California Code of Civil Procedure, Section 2030.210(a)(1) requires answers to interrogatories to be signed under oath - same as the FSM Rules of Civil Procedure. Based upon these grounds, FSMDB requests that this Court enter an order granting FSMDB an award of its expenses in bringing this motion, including attorney fees, directed at Defendant Bickett.

Respectfully submitted:

DATED: April 11, 2013.


Nora E Sigrah
Attorney for Plaintiff
FSM Development Bank

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the foregoing Motion to were served on the following by hand delivery on April 11, 2013:

Stephen Finnen
Kolonias, Pohnpei, FM 96941

Carney Palsis
MLSC Kosrae
Tofol, Kosrae, FM 96944

