



1 Michael J. Sipos, Esq.  
P.O. Box 2069  
2 Pohnpei, FM 96941  
Tel: (691) 320-6450  
3 Fax: (691) 320-6451  
E-mail: MSipos@mail.fm

4 Attorney for Plaintiff  
5 BANK OF HAWAII

6  
7 **IN THE SUPREME COURT OF THE**  
**FEDERATED STATES OF MICRONESIA**  
8 **TRIAL DIVISION - POHNPEI STATE**

9 BANK OF HAWAII, ) CIVIL CASE No. 1999-021  
10 )  
Plaintiff, ) UNOPPOSED MOTION TO FURTHER  
11 ) MODIFY ORDER IN AID OF JUDGMENT  
v. ) TO INCLUDE WRIT OF GARNISHMENT  
12 ) OF PROCEEDS OF ANY MONETARY  
ALBERT PANUELO, ) AWARD FAVORING DEFENDANT IN FSM  
13 ) C.A. No. 2014-006  
Defendant. )  
14 )

15  
16 Plaintiff Bank of Hawaii ("BOH" or "Plaintiff"), through  
17 counsel, hereby moves the court to further modify the order in  
18 aid of judgment directing sale of particular assets to include a  
19 writ of garnishment directed toward the proceeds, if any,  
20 awarded to defendant Albert Panuelo in connection with his  
21 pending lawsuit against the FSM National Government in FSM Civil  
22 Action No. 2014-006. Counsel for the defendant, Salomon Saimon  
23 of MLSC, has been contacted pursuant to FSM Civil Rule 6(d) and  
24 is in agreement with the issuance of the order requested by this  
25 motion.

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 1. Facts

3 On November 21, 2014 the court issued an amended order in  
4 aid of judgment directing the sale of particular assets that  
5 requires the defendant to sell his personal automobile within  
6 60-days. Since that time the parties, through counsel, have  
7 been in settlement discussions for a potential lump sum  
8 compromise payment, which if agreed to will resolve the matter  
9 entirely. While discussions continue no such compromise has yet  
10 been reached.

11 The court's order further directed plaintiff BOH to reduce  
12 its oral motion for the writ of garnishment addressed here to be  
13 reduced to a written motion. Prior to filing this motion the  
14 undersigned spoke with opposing counsel, Salomon Saimon, more  
15 than once as part of efforts to potentially reach a compromise  
16 solution. Since a compromise has not been reached but the  
17 deadline for filing this motion is now at hand, the parties have  
18 agreed to the order requested here which will be contingent on  
19 Mr. Panuelo prevailing on his current claims against the FSM  
20 government and receiving a money judgment or monetary award.

21 2. Applicable Law

22 Rule 69 of the FSM Rules of Civil Procedure provides in  
23 pertinent part as follows:

24 Process to enforce a judgment for the payment of  
25 money shall be a writ of execution, unless the court

1 directs otherwise. The procedure on execution, in  
2 proceedings supplementary to and in aid of a judgment,  
3 and in proceedings on and in aid of execution shall be in  
4 accordance with the practice and procedure of the state  
5 in which the court is held, existing at the time the  
6 remedy is sought, except that any statute of the  
7 Federated States of Micronesia governs to the extent that  
8 it is applicable....

9  
10 The applicable law governing this motion is found in the  
11 FSM Code, Title 6, Sections 1409 and 1410, which provide in  
12 pertinent part as follows:

13 **§ 1409. Orders in aid of judgment - Application.**

14 At any time after a finding for the payment of money  
15 by one party to another and before any judgment based  
16 thereon has been satisfied in full, either party may  
17 apply to the Court for an order in aid of judgment.  
18 Thereupon the Court, after notice to the opposite party,  
19 shall hold a hearing on the question of the debtor's  
20 ability to pay and determine the fastest manner in which  
21 the debtor can reasonably pay a judgment based on the  
22 finding. In making this determination the Court shall  
23 allow the debtor to retain such property and such portion  
24 of his income as may be necessary to provide the  
25 reasonable living requirements of the debtor and his  
dependents, including fulfillment of any obligations he

1 may have to any clan, lineage, or other similar group, in  
2 return for which obligations he, or his dependents,  
3 receive any necessary part of the food, goods, shelter,  
4 or services required for their living.

5 **§ 1410. Orders in aid of judgment - Hearings...**


6 (2) This order in aid of judgment may provide for  
7 the transfer of particular assets at a price determined  
8 by the Court, or for the sale of particular assets and  
9 payment of the net proceeds to the creditor, or for  
10 payments, in specified installments on particular dates  
11 or at specified intervals, or for any other method of  
12 payment which the Court deems just.

13 The requested writ is allowed pursuant to 6 F.S.M.C.  
14 1405(2) and as otherwise permitted under the authority of Bank  
15 of Guam v. Eliwise, 4 FSM Intrm. 150 (Pohnpei 1989).

16 Since the court has already held a hearing on the debtor's  
17 ability to pay and this motion is unopposed, plaintiff Bank of  
18 Hawaii respectfully requests the court to grant this motion by  
19 issuing an order imposing a writ of garnishment against the FSM  
20 national government directing that any proceeds it may be  
21 ordered to pay Mr. Panuelo in connection with his claims against  
22 it in FSM Civil Action No. 2014-006 be paid to the undersigned  
23 in trust for Bank of Hawaii instead.  
24  
25

1 Respectfully submitted.

2 Dated: December 22, 2014

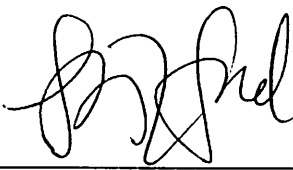
  
3 Michael J. Sipos, Esq.  
4 Attorney for Plaintiff  
5 Bank of Hawaii

6 **Certificate of Service**

7 I certify that on December 22, 2014 I hand-served a true  
8 and correct copy of Bank of Hawaii's unopposed motion to further  
9 modify for order in aid of judgment to include a writ of  
10 garnishment against Albert Panuelo by delivery to defendant's  
11 counsel as follows:

12 Salomon Saimon  
13 MLSC - Pohnpei Office  
14 Pohnpei, FM 96941

15 Counsel for Defendant  
16 Albert Panuelo

17   
18 \_\_\_\_\_  
19 Kehlen Halbert  
20  
21  
22  
23  
24  
25