

FILED

12/15/14 DATE TIME: 11:42 am/pm

By: 
CLERK, FSM SUPREME COURT
POHNPEI
TRIAL DIVISION

Nora E Sigrah
FSM Development Bank
P. O. Box M
Kolonia, Pohnpei, FM 96941
Phone Nos.: (691) 320-2840/5300
Fax No. (691) 320-6533
Email: noras@fsmdb.fm
ATTORNEY FOR FSM DEVELOPMENT BANK

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

FSM Development Bank,)	CIVIL ACTION NO. 2014-013
)	
Plaintiff,)	
v.)	FSMDB'S MOTION TO COMPEL
)	DISCOVERY DIRECTED AT
QUIRINO GILMETE, ETWIHKA)	DEFENDANT GILLIARD GILMETE
GILMETE AND GILLIARD GILMETE,)	AND AWARD OF ATTORNEY'S FEES;
)	FSMDB'S MOTION TO STAY
Defendants.)	DISCOVERY DEADLINES
)	
)	
ALL COUNTER AND CROSSCLAIMS)	
)	

FSMDB'S MOTION TO COMPEL DISCOVERY DIRECTED AT DEFENDANT
GILLIARD GILMETE AND FOR AWARD OF ATTORNEYS' FEES; AND
FSMDB'S MOTION TO STAY DISCOVERY DEADLINES

Plaintiff, FSM Development Bank ("FSMDB"), pursuant to FSM Civ. R. 37(a)(2), hereby moves that this Court enter an order compelling Defendant Gilliard Gilmete to respond to FSMDB's discovery requests, which were filed and served on September 8, 2014. FSMDB further moves for an order awarding the costs of this motion, including attorney's fees, pursuant to FSM Civ.R. 37(a)(4). FSMDB further moves to stay discovery deadlines set by

the August 19, 2014 scheduling order. This Motion is supported by the memorandum below.

MEMORANDUM OF POINTS AND AUTHORITIES

Defendant Gilliard Gilmete failed to respond to FSMDB's discovery request by December 1, 2014, which was the deadline established by this Court's order of November 4, 2014. By email dated December 4, 2014, Counsel for Gilliard Gilmete requested from undersigned FSMDB counsel an additional enlargement to December 12, 2014, stating that he was only recently able to make contact with his client via email. Based on these representations, undersigned FSMDB counsel consented to the requested enlargement to December 12, 2014. Defendant Gilliard Gilmete failed to provide responses to FSMDB's discovery requests by December 12, 2014.

As shown in motion for enlargement of time filed December 5, 2014, agreement was reached by all parties to extend the discovery request deadline to January 15, 2015. FSMDB's position on this extension was based upon the expectation that Defendant Gilliard Gilmete's discovery responses would be filed and served by December 12, 2014, and because undersigned counsel currently is and will remain off-island through January 3, 2015.

A. FSMDB'S MOTION TO COMPEL DISCOVERY.

FSMDB served 3 discovery requests directed at Defendant Gilliard Gilmete on September 8, 2014: request for answers to

interrogatories, request for production of documents and request for admissions. Pursuant to FSMDB's latest consent for enlargement, Defendant Gilliard Gilmete's responses were due by December 12, 2014, however no responses were served on FSMDB.

Defendant Gilliard Gilmete has not provided to FSMDB any discovery responses nor produced any documents for inspection until now.

FSM Civ. R. 37(a)(2) provides, in pertinent part:

If a deponent fails to answer a question propounded or submitted under Rules 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request.

An order compelling discovery is appropriate here. The requests for discovery directed at Gilliard Gilmete requested responses, and Defendant Gilliard Gilmete failed to respond those discovery requests. Therefore, under FSM Civ. R. 37(a)(2), an order compelling answers to the interrogatories, and inspection and production of the documents is appropriate.

In addition to the order compelling responses, inspection and production, FSMDB requests that it be awarded its reasonable attorney's fees for bringing this motion, pursuant to FSM Civ.

R. 37(a)(4). The award of attorney's fees is proper here, where Defendant Gilliard Gilmete has completely failed to respond to FSMDB's Requests for Discovery. FSM Dev. Bank v. Kaminanga, 12 FSM Intrm. 454 (Chk. 2004); Primo v. Semes, 11 FSM Intrm. 603, 606 (Pon. 2003).

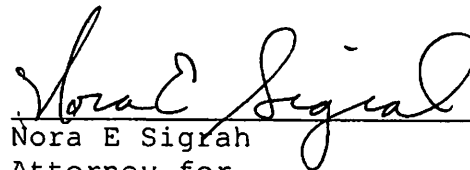
2. FSMDB'S MOTION TO STAY DISCOVERY DEADLINES.

FSMDB further requests that the deadlines set by the 8/19/2014 scheduling order be stayed pending resolution of FSMDB's motion to compel discovery. This request is made in the event that FSMDB's motion is not resolved by the January 15, 2015 deadline that the parties have jointly agreed to through the December 5, 2014 motion. This motion to stay is based upon good cause, to allow resolution of FSMDB's motion above, as discovery directed at Defendant Gilliard Gilmete is necessary regarding the Gilmetes' counterclaims of negligent and predatory lending, which are causes of action of first impression in this Nation and before this Court.

I have contacted counsel for the Gilmetes and APSCO via email on December 15, 2014 regarding the filing of these motions, and no response was received prior to ECF filing time.

Respectfully submitted:

Dated: December 15, 2014


Nora E Sigrah
Attorney for
FSM Development Bank

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the foregoing Response and Motion were served this 15th day of December 2014 upon:

Salomon Saimon
MLSC Pohnpei Office
Kolonias, Pohnpei, FM 96941

HAND DELIVERY

Stephen Finnen
Kolonias, Pohnpei, FM 96941

HAND DELIVERY

