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POHNPEI  
TRIAL DIVISION

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IN THE SUPREME COURT OF THE  
FEDERATED STATES OF MICRONESIA  
TRIAL DIVISION – POHNPEI STATE

FSM Development Bank,  
  
Plaintiff,  
  
vs.  
  
Berysin Salomon and Nancy Salomon,  
  
Defendants.

CIVIL ACTION.: 2014-021

Defendants' Opposition to Plaintiff's  
Motion for Award of Reasonable  
Expenses; Exhibits "A" and "B";  
Certificate of Service

COME NOW, Berysin Salomon and Nancy Salomon, Defendants in the above entitled case by and through their undersigned counsel hereby bring their opposition to Plaintiff's motion for award of reasonable expenses dated November 20, 2014. Defendants oppose all of Plaintiff's arguments on grounds stated below.

MEMORANDUM OF POINTS AND AUTHORITIES

A. FSM Civil Procedure Rule 26(g)

Plaintiff used FSM Civ. R. 26(g) to advance its argument to justify its motion for expenses. R. 26(g) is not applicable to the facts in this matter and the surrounding legal issues.

The following points support defendants' position:

1. Defendants deny any allegations of R. 26(g) violations

The issues herein stemmed from the Motion to Disqualify filed by the plaintiff on August 1, 2014. The undersigned counsel timely filed a Motion for Reconsideration on October 10, 2014, and thereafter has remained the counsel of record for defendants in this case responsible for the gathering and submission of evidence required to support the pending motion for reconsideration. Rule 1.1 of the Model Rules of Professional Responsibilities requires that, lawyer shall provide competent representation to a client. Rule 1.3 requires that, lawyer shall act with reasonable diligence and promptness in representing client. With due diligence, undersigned counsel of record for defendants sought prompt protection of the clients' interests by filing Defendants' motion for reconsideration.

Plaintiff FSM Development Bank's previous motion to disqualify counsel raised several alleged facts that were left uncorroborated after the September 30<sup>th</sup> hearing. There were certain missing key facts relating to the stated communications made between the bank's Board Director Lipar George and the undersigned counsel. The bank alleged certain statements that were presented to the court in too general a form, and such generality of allegations require further corroboration to allow complete fact-findings. The bank represented to the court incomplete, inaccurate accounts of what truly transpired relating to the Rule 4.2 issue, necessitating the defendants to seek further evidentiary support for the issues pending before the court.

At the hearing on the motion to disqualify held on September 30, 2014, Plaintiff failed to produce Director George, their main witness. The files and records of this case would show that Plaintiff brought Director George to Pohnpei to execute an Affidavit which the plaintiff submitted to this court on September 23, 2014. Shortly before the hearing on September 30, 2014, Plaintiff produced an Affidavit from Lipar George stating simply that what Anna Mendiola said that Lipar George said was true. Plaintiff did not produce Director George at the hearing.

Defendants were not given the opportunity to cross-examine Director George. Since the court granted Plaintiff's motion for disqualification based mostly on what the bank represented to the court regarding what Board Director Lipar George stated to the bank's counsel and bank's Chief Executive Officer Defendant Anna Mendiola, the testimonies of Director George and other witnesses are vital to the motion for reconsideration. The bank did not meet the burden of proof, the Affidavits by CEO Mendiola and Director George are insufficient to present the whole complete transactions that took place. The testimonies sought through depositions were to offer preponderance of evidence to this court regarding the extent of the communications between Director George and undersigned counsel, to support the motion for reconsideration. The effort was to avoid challenge to evidentiary issues such as hearsay, authenticity, admissibility, hence the need for discovery of the actual truth from the original source of all alleged communications.

In order to produce the best evidence, the aggrieved party, the defendants sought the direct testimonies from the witnesses to the Rule 4.2 complaint, all in consistent with the Best Evidence Rule. Thus, the Notices for Oral Depositions were proper under the circumstances, and could not be construed as a matter under Rule 26(g).

The discovery rules provides for taking of depositions. FSM Civ. R. 26(a) provides that "[p]arties may obtain discovery by one or more of the following methods: depositions upon oral examination. . ." The witnesses' testimonies are relevant to the issues raised in defendants' motion for reconsideration filed on October 10, 2014. Witness George was expected to testify to the communications allegedly made between him and undersigned counsel, such communication was used as the main grounds for disqualifying defendants' counsel. Witness John Sohl, Defendant was not required to be subpoenaed since he is a party. Defendant Sohl is the Chairman and main overseer of FSMDB's board members, was expected to testify to his

knowledge regarding matters surrounding the communications between board and the bank, Board Director George, Defendant Mendiola and defendants' counsel and other relevant disputed issues. The scope of discovery under FSM Civ. R. 26(b)(1) permits defendants' notices for depositions, "[p]arties may obtain discovery regarding any matter, not privileged which is relevant to the subject involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of the party seeking discovery. . ." The anticipated testimonies to be given which did not materialize are not matters to be considered privileged. Defendants were seeking the truth of all of the matters asserted by the plaintiff, relevant under Rule 26(b)(1). Defendants relied under the authority of the Scheduling Order filed July 7, 2014 (Exhibit "A"), and the discovery rules FSM Civ. R. 26(a) and (b)(1) including Rule 30 (Deposition may be taken after commencement of an action), and Rule 45(a) for attendance of witnesses, every subpoena shall be issued by the clerk under the seal of the court.

## 2. Claims of Harassment, Unduly Burdensome and Unreasonable not Applicable

To support the motion for reconsideration, defendants in genuine good faith, intended to introduce complete testimony of Board Director George, whom the plaintiff FSM Development Bank claimed was the original source of the published Rule 4.2 communication charged against defendants' counsel resulting in disqualification.

The defendants intended to take the deposition of Board Chairman Defendant John Sohl as a party of interest, secondary source of information, and primary overseer of information deposited with the FSMDB Board. The attempts to take depositions of key witnesses were made in genuine good faith. There is no evidence of bad faith. Defendants simply wish to defend their rights under the judicial system by using the available rules. Defendants already suffered tremendous monetary losses from the irregular conducts and handling of their loan from

the bank, suffered harsh treatments from the people's bank, and have been prejudiced by the tactics of the bank. Defendants have no interest in employing bad faith tactics to get to the truth of all matters asserted.

Defendants were deprived from getting the truth from the witnesses through oral depositions. There cannot be any claims of harassment when the deponents were never deposed, and possibly had received no actual knowledge of the notices of oral depositions. The deponents were never put on the witness stand to actually experience harassment and emotional distress. The plaintiff prevented the depositions to take place, and stopped any further discovery activities. There was never any discovery. The bank's counsel's receipt of the deposition notices could not be construed as unduly burdensome discovery activities. The plaintiff cannot be making any imaginary claims of unduly burdensome and unreasonableness of discovery (depositions) that never took place, to support its quest to collect more money.

Defendants would not have sought to depose witnesses (at the earliest possible date to gather evidence to their motion for reconsideration), had the bank did not seek and obtain disqualification of defendants' counsel. Defendants had to absorb the costs of defending the motion to disqualify and continue to absorb the costs of defending these ongoing tactical motions filed by plaintiff bank. Thus, any costs incurred by Plaintiff as a result to the challenge to its motion to disqualify should be borne by the plaintiff. Plaintiff started this chain reaction of filings by the defendants necessary to defend defendants' rights. The type of unfair advantage in disabling opposite party from having counsel was not anticipated by defendants. Through its motion to quash, the bank sought court order to bar defendants (and court) from learning and obtaining the truth. The defendants observed that upon the opening of the cases in both Civil Actions 2014-021 and 2014-023, the bank appeared to exert almost exclusive total control of the

flow of these cases, by dictating to the court how this case should be handled, beginning with their ingenious attempts at Rule 4.2 claims which would in essence, allow the bank to decide which counsel should represent the opposite party, not answering Complaint filed in 2014-023, not producing material witnesses, and now seeking that the court gives them more money to pay the bank's lawyer. Defendants' sole purpose in seeking information from witnesses is to obtain more evidentiary support to their Motion for Reconsideration. Defendants are entitled to seek evidence to support their motions just like any other parties that come before this court. Defendants are authorized to seek discoverable materials pursuant to the Court Order of 7-17-14, and cited authorities. It is the defendants' properties and rights at stake, not the counsel for Defendants. The bank has been attempting to divert the focus of this case on defendants' counsel and not the matters complaints of such as the bank's Misrepresentation, Unconscionability, and Fraud, Violation of Title 30 FSMC, and Public Policy, Violation of Usury Law, bank's other conducts not authorized by law, and so forth.

It is apparent that the bank can afford to complain about every miniature issues because the bank has huge financial resources to finance each lodged complaint against the opposite parties. The borrowers, not financed by government money have to scurry for resources to defend the bank's tactics. The bank received millions of dollars in government subsidies to help run the bank's operation. Here, the borrowers defendants received no subsidy from the government to help run the people's medical clinic and received no governmental aid to further help them with their legal fight against the government's bank.

It is undisputed that Title 30 FSMC development bank never authorizes lawyers for the development bank to create new source of income such as billing \$125 hour in addition to the income received as a bank's employee. Such deviation is contrary to Title 30 economic

development scheme. What happened so far on Civil Actions 2014-021 and 2014-023 are testament to what others similarly situated borrower complained about regarding the way the bank with the money – FSM Development Bank – will try the classic corporate attack against the little guys by using weapons in the form of tactical motions and more motions, such as the bank’s recent motion asking for money. The court should take judicial notice of the incongruity of how the people’s development bank has evolved into an instigator of harm and perpetrator of injustices never envisioned by the people and the government that created the bank.

B. Cases Cited by Plaintiff are not Applicable

The plaintiff did not cite any cases to aid its argument on Rule 26(g). The cases cited by Plaintiff were mostly to aid its argument on established market rate for lawyers in the community. On page 6 of its motion, Plaintiff cited FSM v. GMP Hawaii, Inc., 17 FSM R. 86, 89 (Pon. 2010), which is about failure on the part of the responding party to produce discovery, resulting in the court invoking a Rule 37 failure to make discovery and sanctions under R. 37(a). Here, plaintiff never had to respond to any discovery requests because the court’s instant grant of the motion to quash. Therefore, Rule 37 is not applicable here as there is no outstanding discovery request, no obstruction of discovery to entertain a Rule 37 sanction.

The rest of the cases cited by the bank have to do with attorney’s hourly rate of \$125 an hour as the established rate in the community. The issues before this court do not amount to a dispute of hourly rate(s). There is no need to resolve the going rate for the bank to charge defendants-borrowers. Here, Plaintiff’s attorney asked that the lawyers for the aggrieved borrowers pay their attorney’s fees on recent defense work done on the case. Plaintiff’s counsel is a salaried employee of the bank. See Exhibit “B”. It appears as if the bank is requesting for more money to pay more money to their lawyer on top of what the bank already paid their

lawyer. There is a question of whether an employee of FSM Development Bank, considered an institutionality of the FSM Government has standing to request from other parties or the public, more attorneys' fees on top of the subsidy the people's government paid to the bank for operational support.

Based on the above, this court must deny the bank's motion for award of reasonable expenses, allow defendants to recover fees and costs in defending this groundless motion, and to allow this case (along with case 2014-023) to progress without having to continually subject defendants to more of the bank's tactical filings.

Respectfully submitted. Dated: December 12, 2014



\_\_\_\_\_  
YOSLYN G. SIGRAH  
Attorney for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing opposition will be duly served upon the following party via hand delivery to the party's last known address on the date indicated below or soon thereafter:

NORA SIGRAH, ESQ.  
P.O. Box M, Kolonia, Pohnpei FM 96941  
Attorney for Plaintiff  
FSM Development Bank

Dated: December 12, 2014.



\_\_\_\_\_  
YOSLYN G. SIGRAH



7/17/14 1135 am

By: [Signature]  
CLERK OF THE SUPREME COURT

IN THE SUPREME COURT OF THE  
FEDERATED STATES OF MICRONESIA  
TRIAL DIVISION — STATE OF POHNPEI

FSM DEVELOPMENT BANK,  
Plaintiff,  
v.  
BERYSIN SALOMON and NANCY  
SALOMON,  
Defendants.

CIVIL ACTION NO. 2014-021  
SCHEDULING ORDER

The defendant having answered, this case is now at issue.

NOW THEREFORE IT IS HEREBY ORDERED that the following  
schedule is hereby set:

- 1) the parties shall make all their discovery requests by  
November 14, 2014;
- 2) all discovery shall be completed by December 10, 2014;
- 3) all pretrial motions shall be filed by January 6,  
2015; and
- 4) a date for hearing, if needed, pretrial motions will  
be set after the motions have been filed.

So ordered the 17th day of July, 2014.

[Signature]  
Reedy E. Johnny  
Associate Justice

Entered this 17th day of July, 2014.

[Signature]  
Kohsak M. Keller  
Chief Clerk of Court

"A"

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## Re: Motion Enlarge Time Cv. No.: 2014-021

From: **Nora Sigrah** (noras@fsmdb.fm)  
Sent: Sun 11/30/14 12:31 PM  
To: Yoslyn Sigrah (yosgsig@hotmail.com)

Yoslyn,  
I have been a salaried employee of FSMDB since being hired in 2006.  
Nora

On Sun, Nov 30, 2014 at 10:37 PM, Yoslyn Sigrah <yosgsig@hotmail.com> wrote:

Nora,

I will be filing tomorrow, a Motion to Enlarge Time to file Opposition to your motion for award of your attorney's fees, due to off-island travel. I am requesting enlargement of time to Dec. 15th.

For the meantime, can you please confirm whether you are on an employment contract with FSMDB with a fixed salary, or are you a private lawyer paid hourly by FSMDB?

Thank you.

Yoslyn

"B"