

FILED
 DATE: 12/2/14 TIME: 10:35 am
 JUDGE: *A*
 CLERK, FSM SUPREME COURT
 POHNPEI

Nora E Sigrah
 FSM Development Bank
 PO Box M
 Kolonia, Pohnpei, FM 96941
 Phone Nos: 320-2840/5300
 Fax No. 320-6533
 Email: noras@fsmdb.fm
 ATTORNEY FOR PLAINTIFF

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

FSM Development Bank,)	CIVIL ACTION NO. 2014-026
)	
Plaintiff,)	PLAINTIFF'S MOTION FOR AN
v.)	ORDER IN AID OF JUDGMENT;
)	AFFIDAVIT OF NORA E SIGRAH;
JOSEPH PHILLIP,)	EXHIBITS "A" TO "C"
)	
Defendant.)	
_____)	

Plaintiff, FSM Development Bank ("FSMDB"), through its counsel, files this motion for an order in aid of judgment providing for the enforcement of the assignment of rent, and for an award of costs and attorney's fees. This Motion is made pursuant to FSM Civil Rules 7 and 69, 6 FSMC Sections 1409, 1410 and 1411, the parties' Joint Motion/Stipulated Order in Aid of Judgment filed September 10, 2014, and is supported by the memorandum below and the attached affidavit and exhibits.

MEMORANDUM OF POINTS AND AUTHORITIES

1. FSMDB's Motion for an Order in Aid of Judgment.

The parties stipulated to judgment on September 10, 2014, which was entered by this Court on September 17, 2014. The

parties further stipulated to an Order in Aid of Judgment also filed on September 10, 2014, which required Defendant to pay \$ 203.00 per month to FSMDB on the outstanding judgment.¹ Through the stipulated order in aid of judgment, Defendant agreed to make installment payments of \$ 203.00 per month beginning September 2014. Following filing of the parties' stipulation, Defendant failed to make any payments. As of December 1, 2014, arrears for September, October and November 2014 now total \$ 609.00. Affidavit of Sigrah.

As of December 1, 2014, the amount of \$ 9,378.29 remains outstanding on this judgment, including principal and accrued interest. Statutory post-judgment interest accrues at \$ 68.00 per month. Affidavit of Sigrah.

As security for the underlying debt, Defendant executed and delivered to FSMDB an assignment of rents, which assigned to FSMDB the monthly rent of \$ 400.00 due from Hi Speed Auto Parts Store for lease of a portion of parcel no. 018-A-26. The lease, amendment to lease agreement and assignment of rents were attached to the complaint, and are attached hereto as Exhibit A (lease agreement), Exhibit B (amendment to lease agreement) and Exhibit C (assignment of rents).

¹The parties' Joint Motion/Stipulated Order in Aid of Judgment was filed by FSMDB through ECF on September 10, 2014, however FSMDB has not yet received a copy entered by the Court.

The lease agreement provides for lease of a portion of parcel 018-A-26 to High Speed Auto Parts for a 15 year term beginning January 2013. Exhibit "A". The amendment to lease agreement provides for the payment of the rent by Hi Speed Auto Parts directly to FSMDB. Exhibit "B". And the assignment of rents provided by Defendant to FSMDB irrevocably assigns the rent due from Hi Speed Auto Parts directly to FSMDB for a 5 year period or when the loan remains unpaid. Exhibit "C". There is no dispute that the judgment remains outstanding and unpaid.

Prior to filing the complaint herein, FSMDB loan division staff had sought to enforce the assignment of rent provided by Defendant. In early 2014, FSMDB loan staff presented Defendant's assignment of rent document to Hi Speed Auto Parts and requested payment directly to FSMDB. However FSMDB loan staff was informed that Defendant had requested advance payment of the rent from High Speed Auto Parts through December 2014. Affidavit of Sigrah. Therefore, due to Defendant's affirmative conduct to deprive FSMDB of its security, FSMDB believes that a Court Order enforcing the assignment of rents is required.

Based upon the security provided by Defendant for the underlying debt, non-payment of the judgment as promised by Defendant, and Defendant's past conduct to deprive FSMDB of its security, FSMDB's motion for an order in aid of judgment

providing for the enforcement of the assignment of rents is warranted. 6 FSMC 1409, 1410(2).

2. FSMDB's Request for Award of Costs and Attorneys' Fees.

FSMDB requests an award of costs and reasonable attorney's fees be awarded based upon the parties' September 10, 2014 stipulation. Paragraph 7 of the stipulated Order in Aid of Judgment provides that Defendant is responsible for FSMDB's legal fees and other costs necessary to collect on the judgment.

Based upon Defendant's continuing failure to make any payments on the judgment to FSMDB, FSMDB now takes further action to collect on the judgment and therefore an award of costs and reasonable attorney's fees is appropriate.


3. FSMDB's Request for Hearing.

Pursuant to 6 FSMC 1410, FSMDB requests that a hearing be set, so that the Defendant may be called to answer to this motion.

Defendant's current email is not known to the undersigned and therefore could not email him in advance of this motion.

Respectfully submitted:

Date: December 2, 2014


Nora E Sigrah
Attorney for Plaintiff
FSM Development Bank

AFFIDAVIT OF NORA E SIGRAH

I, Nora E Sigrah, being first duly sworn, depose and state as follows:

1. I am above the age of majority and am competent to testify. I have personal knowledge of the facts contained in this affidavit.

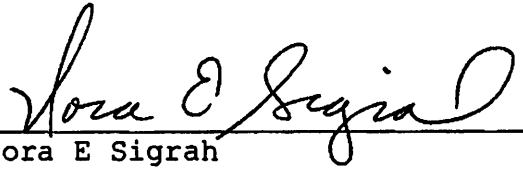
2. I am the Legal Counsel for the FSM Development Bank ("Bank") and am counsel of record for this case.

3. I have reviewed the computer files kept in the usual course of the Bank's business, which keeps track of the payments made on the judgment herein. The computer files show that no payments have been made on the judgment entered September 17, 2014. The computer files show that as of December 1, 2014, the amount of \$ 9,378.29 remains outstanding on this judgment, including principal and accrued interest. Statutory post-judgment interest accrues at \$ 68.00 per month.

4. The Bank's records show that on about May 8, 2014, Loan Officer Vicky Hartman visit Hi Speed Auto Parts Store and requested payment of rent from Hi Speed directly to the Bank pursuant the assignment of rent executed by Joseph Phillip. Ms Hartman was informed by Hi Speed that Joseph Phillip had requested advance payment of rent through December 2014, and that Hi Speed had made that advance payment of rent to Phillip.

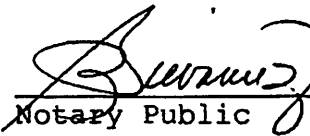
5. The Bank's records show that on October 1, 2014, Joseph Phillip called the undersigned's office to state that FSM SSA failed to make the deduction of \$ 203.00 from his SSA benefits to FSMDB, and that Phillip would be coming to the Bank that day to make his payment. As shown by the Bank's records, Joseph Phillip failed to appear at the Bank to make the promised payment.

Nothing Further.

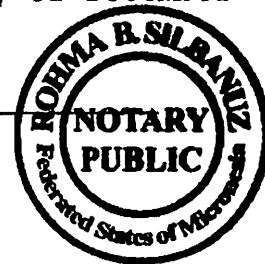


Nora E Sigrah

Subscribed and sworn to before me this 2nd day of December 2014.



Notary Public
[SEAL]




My commission expires: Oct. 14, 2016

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of Plaintiff's motion for an order in aid of judgment was served this 2nd day of December 2014 by personal delivery upon:

Joseph Phillip
PO Box 464
Kolonias, Pohnpei, FM 96941





**KOLONIA TOWN
Pohnpei State
Federated States of Micronesia
FM 96941**

LEASE AGREEMENT

Whereas, Lessor, Joe Phillip, is the owner of the private land located in Section 4 of Kolonia Town, Pohnpei State, and,

Whereas, H.S. Auto Parts is desirous of leasing the said private property for lawful purposes; Now Therefore, Joseph "Joe" Phillip hereinafter Lessor and High Speed Auto Parts hereafter Lessee hereby enters into a lease agreement as follows:

1. Lessor, Joe Phillip, hereby leases to Lessee, High Speed Auto Parts and Lessee hereby accept to lease a portion of Land Parcel No. 018-A-26 containing an area of 800 sq. meters more or less, as shown on Pohnpei Cadastral Plat No. 018-A-00 dated September 27, 1972.
2. The term of this lease agreement shall be for a period fifteen (15) years beginning on the date of execution or signing of this lease agreement and ending fifteen (15) years thereafter, the date of signing. Lessee shall have the option to renew this lease for additional ten (10) years provided that the rent shall be renegotiated in good faith and will not be based on the improved value of the property.
3. The Lessee H.S. Auto Parts shall use the property for all lawful purposes, including car repair shop, car sales and any other businesses and for residential or dwelling place.

EXHIBIT "A"

Page 2. Lease Agreement

4. The Lessee agree to pay yearly rent in advance, at the the rate of four hundred (\$400.) U.S dollars per month for the first five (5) years of the lease. First rental payment is made on the date of signing of the lease, and each year thereafter on or before the month of signing of the lease. The second five (5) year of the lease the rent shall be at the rate of five hundred (\$500.) U.S dollars per month payable on a yearly basis in advance. The final five (5) year of the lease the rent shall be at the rate of six (\$600.) hundred U.S dollars per months payable in like manner as above.

5. The Lessor agrees that his heirs, successors and assigns shall be bound by this agreement. The Lessee may assign and/or sublet its interest in the lease only upon approval of the Lessor. Upon Lessor's death, all payments shall be made payable to Leilani Phillip, Lessor's daughter who is presently residing in the United States of America. By this instrument, Lessor has conveyed, grant and transfer all rights, title and interest in Parcel No. 018-A-26 to Leilani Phillip effective upon Lessor's death.

6. All structures erected by Lessee on the leased premises shall become part of the land, unless removed by consent and at the direction of Lessor.

7. Lessor agree to provide Lessee quiet, peaceful and exclusive possession of the leased premises during the full term of this Lease.

In witness whereof, Lessor and Lessee executed this Lease on the date shown below

LESSOR: *[Signature]*
Joseph "Joe" Phillip

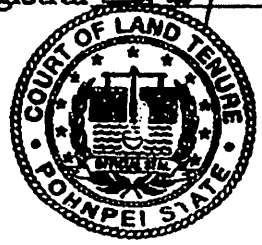
Date: 1/11/13

LESSEE: *Chaoxiong Huang*
Chaoxiong Huang
High Speed Auto Parts Co.

Date 1/11/13

This Lease agreement is recorded at the office of the Registrar of Land, Pohnpei Court of Land Tenure as Doc. No. 23852 on this 11 th day of January 2013.

Registrar *[Signature]*



Joseph Phillip
P.O. Box 464
Pohnpei, FM 96941
Tel. 320-2374- Mobile 924-9091 or 924-6576

Amendment to Lease Agreement

The Lease agreement by and between High Speed Auto-Parts Company and Joseph Phillip is hereby amended, as to the terms of payment of rent to read as follows:

“ The rental payment of \$400.00 per month shall be payable each month beginning in April, 2013, directly to the FSM Development Bank for the next five (5) years.”

In witness whereof, the parties signed their signature on this ___th Day of March 2013.

Date 3/21/13


Joseph Phillip
Lessor

Date 3/21/13

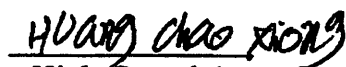

High Speed Auto Co.
C. Huang
Lessee


EXHIBIT “B”

*Pohnpei State
Federated States of Micronesia
(691) 96941*

ASSIGNMENT OF RENTS

I, Joseph Phillip, a citizen of Pohnpei and the FSM and resident of Kolonia Town, do hereby assigns, transfers, convey and grant to the FSM Development Bank, all my rights, interests and title to all monthly rents of \$400.00 for my real property, parcel No. 018-A-26, located in Kolonia Town which is under a 15 years lease agreement with High Speed Auto-parts Co.

That this assignment shall be for five (5) years or more and/or until my loan with the FSM Development Bank is paid in full. This assignment shall be irrevocable for five (5) years or when the loan remains unpaid.



Joseph Phillip
Assignor/grantor

Subscribed and sworn to before me this 25th day of March 2013.



Clerk of Courts, Pohnpei

EXHIBIT "C"