

FILED
12/1/14 AME: \$ 505

AV

CLERK, FSM SUPREME COURT
POHNPEI
TRIAL DIVISION

1 Law Office of Marstella E. Jack
Marstella E. Jack, Esq.
P.O. Box 2210
2 Kolonia, Pohnpei FSM 96941
Phone (691) 320-7400; Fax (691) 320-4002
ejacklaw@gmail.com
3

4 Counsel for Defendants

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

7 **FSM SOCIAL SECURITY**)
8 **ADMINISTRATION,**)
9 **Plaintiff,**)
10 **v.**)
11 **APSCO CONSTRUCTION CO.,**)
12 **APSOC CONSTRUCTION CO.**)
13 **(KOSRAE) SHIRO AKINAGA, and**)
14 **TAKURO AKINAGA,**)
15 **Defendants.**)

CIVIL ACTION NO. 2014-036

**MOTION FOR AN
ENLARGEMENT OF TIME**

15 COMES NOW, Defendants, by and through the undersigned
16 counsel, and moves the Court for an enlargement of time within
17 which to file an Answer to the Complaint in this matter. This
18 motion is based on the following memorandum of points and
19 authorities.

20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 The Answer was due on November 12, 2014. However,
22 undersigned counsel was not able to consult with all the
23 defendants prior to the expiration of the deadline to respond
24 and therefore request that an enlargement of time be granted up
25

1 to December 1st 2014 for the defendants to respond to the
2 Complaint.

3 APPLICABLE LEGAL STANDARD

4 Rule 6(b) of the FSM Supreme Court Rules of Civil Procedure
5 provides:

6 "(b)Enlargement. When by these rules or by a
7 notice given thereunder or by order of the Court,
8 an act is required or allowed to be done at or
9 within a specific time, the Court for cause shown
10 may at any time in its discretion (1) with or
11 without motion or notice order the period enlarged
12 if request therefore is made before the expiration
13 of the period originally prescribed or as extended
14 by a previous order, or (2) upon motion made after
15 the expiration of the specific period, permit the
16 act to be done where the failure to act was the
17 result of excusable neglect...." (emphasis mine)

18 In this instant matter, the deadline to file an Answer was
19 November 12th 2014. Counsel was retained after the deadline to
20 file an Answer had lapsed. Furthermore, counsel needed to
21 consult with the other defendants before an Answer could be
22 filed. Therefore, defendants needed additional time to file an
23 Answer.

24 Defendants did not ask for an enlargement of time before
25 the deadline expired. A showing of excusable neglect is
required to grant a request for enlargement of time made after
the time allowed had elapsed. Bank of Guam v. Ismael, 8 FSM
Intrm. 197, 198 (Pon. 1997); Medabalmi v. Island Imports Co., 10

1 FSM Intrm. 217, 219 (Chk. 2001).

2 What is excusable neglect? To establish excusable neglect
3 a movant must show good faith and a reasonable basis for
4 noncompliance. In Medabalmi v. Island Imports Co., 10 FSM
5 Intrm. 217, 219 (Chk. 2001), the Court said that the
6 determination of what sorts of neglect that can be considered
7 "excusable" is at bottom an equitable one, taking account of all
8 relevant circumstances surrounding the party's omission. *Id.*
9 These include the danger of prejudice to the nonmovant, the
10 length of delay and its potential impact on judicial
11 proceedings, the reason for the delay, including whether it was
12 in the reasonable control of the movant, and whether the movant
13 acted in good faith. *Id.*

14
15 In the instant matter, plaintiff's counsel was not at work
16 from 24-28 November 2014 due to 2 family funerals during that
17 week. This was the week after counsel was just retained by the
18 defendants to represent them in the current suit. That is why
19 an enlargement motion was never filed either before or
20 immediately after the deadline to file an Answer or otherwise
21 defend the Complaint.
22

23 Furthermore, the delay has only been over two weeks and
24 plaintiff's counsel was contacted about this motion. In the
25 *Bank of Guam* court (supra), it was stated that a defendant's

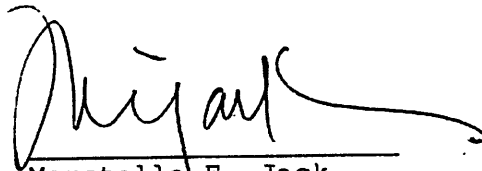
1 motion to enlarge time to file an answer may be granted, even
2 though excusable neglect has not been shown, when it would be
3 conducive to a speedy and inexpensive determination of the
4 action, the delay has not been long, and no prejudice to the
5 plaintiff is apparent.

6 Defendants seek the court's kind understanding in granting
7 this motion to allow the defendants up to December 1st 2014 to
8 respond to the Complaint.
9

10 **CONCLUSION**

11 Therefore, even if this Court finds that there is no
12 showing of excusable neglect, the *Bank of Guam* court has ruled
13 that the enlargement may be granted even in the absence of
14 excusable neglect if it would be conducive to a speedy and
15 inexpensive determination of the action, the delay has not been
16 long, and no prejudice to the plaintiff is apparent.
17

18
19 Respectfully Submitted:

20
21 

22
23 Marstella E. Jack
24 Counsel for Defendants
25

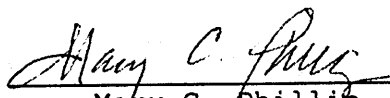
Date: 1 December 2014

CERTIFICATE OF SERVICE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

The undersigned certify that on 1 December 2014, I served a true and correct copy of the above Motion for Enlargement of Time on the following office:

Mike Sipos
Counsel for Plaintiff FSM SSA
2nd Floor Ace Commercial Building
Nett, Pohnpei 96941


Mary C. Phillip