


FILED

12/11/17 TIME: 5:07 am/pm

By: 
CLERK, FSM SUPREME COURT
POHNPEI
TRIAL DIVISION

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

7 Counsel for Defendants

8 **IN THE SUPREME COURT OF**
9 **THE FEDERATED STATES OF MICRONESIA**
10 **TRIAL DIVISION - STATE OF POHNPEI**

11 **FSM SOCIAL SECURITY) CIVIL ACTION NO. 2014-037**
12 **ADMINISTRATION,)**

13 **Plaintiff,)**

14 **v.)**

15 **MOTION FOR AN**
16 **ENLARGEMENT OF TIME**

17 **APSCO, SHIRO AKINAGA,)**
18 **IDELPHONSE PANGELINEN, PETER)**
19 **MAKIO JACOB, and SUSI KUSTIN)**

20 **Defendants.)**

21 _____
22 COMES NOW, Defendants, except for Peter Makio Jacob and
23 Susi Kustin, by and through the undersigned counsel, and moves
24 the Court for an enlargement of time within which to file an
25 Answer to the Complaint in this matter. This motion is based on
the following memorandum of points and authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

The Answer was due on November 12, 2014. However,
undersigned counsel was not able to consult with all the
defendants prior to the expiration of the deadline to respond

1 and therefore request that an enlargement of time be granted up
2 to December 1st 2014 for the defendants to respond to the
3 Complaint.

4 APPLICABLE LEGAL STANDARD

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

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

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

25 Defendants did not ask for an enlargement of time before
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

1 Intrm. 197, 198 (Pon. 1997); Medabalmi v. Island Imports Co., 10
2 FSM Intrm. 217, 219 (Chk. 2001).

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

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

24 Furthermore, the delay has only been over two weeks and
25 plaintiff's counsel was contacted about this motion. In the

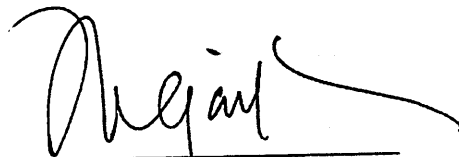
1 Bank of Guam court (supra), it was stated that a defendant's
2 motion to enlarge time to file an answer may be granted, even
3 though excusable neglect has not been shown, when it would be
4 conducive to a speedy and inexpensive determination of the
5 action, the delay has not been long, and no prejudice to the
6 plaintiff is apparent.

7 Defendants seek the court's kind understanding in granting
8 this motion to allow the defendants up to December 1st 2014 to
9 respond to the Complaint.
10

11 **CONCLUSION**

12 Therefore, even if this Court finds that there is no
13 showing of excusable neglect, the *Bank of Guam* court has ruled
14 that the enlargement may be granted even in the absence of
15 excusable neglect if it would be conducive to a speedy and
16 inexpensive determination of the action, the delay has not been
17 long, and no prejudice to the plaintiff is apparent.
18

19
20 Respectfully Submitted:

21
22 

23
24 Marstella E. Jack
25 Counsel for Defendants

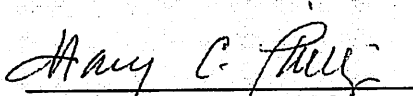
24 Date: 1 December 2014

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

CERTIFICATE OF SERVICE

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