

because the parties to the promissory note include only the bank and Tropical Waters, and not the FDA, the defendants lack standing to raise or enforce the rights of third parties.

II. ANALYSIS

The appropriate standard for reviewing a Rule 12(b) motion to dismiss is for the court “to assume the allegations in the complaint to be true and give the plaintiff the benefit of all reasonable inferences” and grant the motion “only if it appears to a certainty that no relief can be granted under any state of facts which could be proven in support of the claim.” Jano v. King, 5 FSM Intrm. 388, 390 (Pon. 1992) (quoting Mailo v. Twum-Barimah, 2 FSM Intrm. 265, 267 (Pon. 1986)). In paragraph one of the complaint, the bank alleges that its ability and authority arises out of Title 30 of the FSM Code. Compl. at 1. Subsections 303(3) and 303(5) provide:

- (3) The Federated Development Authority shall be responsible for:
 - (a) Approving financing for the projects submitted for funding pursuant to section 309 of this chapter;
 - (b) Approving the actions by the Development Bank taken pursuant to subsection (5) of this section as the Federated Development Authority deems appropriate.

....

- (5) The Development Bank, pursuant to the direction of the Federated Development Authority, shall be responsible for administering all loans, loan guarantees, lease and sale-leaseback arrangements, and other similar financings, including the maintenance of all files on such financings, the monitoring of the progress of projects funded from such financings, collecting any repayments of such financings (including resort to property hypothecated to secure payments due under a financing, or legal action to enforce payment obligations), and, only with specific approval from the Federated Development Authority on a case-by-case basis, renegotiating the terms of such financing. Except as otherwise provided in this chapter, the authority and responsibilities of the Development Bank, with respect to the administration of the Fund, shall be executed by the President of the Development Bank pursuant to the guidelines, policies, and procedures, and general terms and conditions, prescribed by the Federated Development Authority and this chapter, and the Board of Directors of the Development Bank shall have no authority or

responsibility with respect to the administration of the Fund.
30 F.S.M.C. 303(3) and (5).

The court concludes that, under a plain reading of the statute, the bank is not required to obtain permission on a case-by-case basis before starting collection actions for FDA loans. The court will not broaden the statute beyond the meaning of the law as written. Nena v. Kosrae, 14 FSM Intrm. 73, 82 (App. 2006). Statutes are not to be construed by singling out a particular phrase, because the court must construe the words and terms at issue in the context of the other language used in the statute. *See* 1 F.S.M.C. 208. A common maxim of statutory construction is that the expression of one thing means the exclusion of others. *E.g.*, Grigg v. Commonwealth, 297 S.E.2d 799, 803 (Va. 1982); *see, e.g.*, Pacific Coast Enterprises v. Chuuk, 9 FSM Intrm. 543, 547 (Chk. S. Ct. Tr. 2000) (when an act lists 23 different prohibited gaming devices but makes no mention whatsoever of poker machines in the extended list, the legislature excluded such machines from the law's application by failing to list them and the court will not include what the legislature excluded). When both general and specific statutes address a matter, the specific controls the subject. Setik v. FSM, 5 FSM Intrm. 407, 411 (App. 1992).

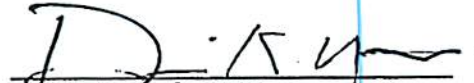
These cannons of statutory construction explain and define the "approval" and "authority" requirements of Sections 303(3)(a) and (b). A plain reading of the statutes, in context, includes a case-by-case requirement for refinancing and by its specific inclusion excludes that requirement from collection efforts.

III. CONCLUSION


Accordingly, reviewing the facts alleged in the bank's complaint in the light most favorable to it, the court is unable to conclude that the bank's complaint fails to state a claim upon which relief can be granted. the defendants' motion to dismiss

is hereby denied.

So ordered the 17th day of August, 2012.


Dennis K. Yamase
Associate Justice

Entered this 23th day of August, 2012.


Linson Waguk
Assistant Clerk of Court